



Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024

Report No. 8, 57th Parliament

Education, Employment, Training and Skills Committee

July 2024

Education, Employment, Training and Skills Committee

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All web address references are current at the time of publishing.

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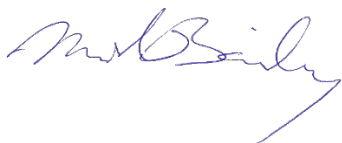
Chair's foreword

This report presents a summary of the Education, Employment, Training and Skill Committee's examination of the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General and the Department of Child Safety, Seniors and Disability Services.

I commend this report to the House.



Hon Mark Bailey MP

Chair

Recommendations

Recommendation 1 **11**

The committee recommends the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 be passed.

Recommendation 2 **15**

The committee recommends that the Bill be amended to remove the requirement that adult household members of kinship carers hold a Blue Card.

Executive Summary

About the Bill and the inquiry

The stated objective of the Bill is to amend the *Child Protection Act 1992*, *Disability Services Act 2006*, and the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) alongside 15 other Acts related to child protection. The Bill proposes to introduce major changes to Queensland's Blue Card system in line with recommendations made by the Queensland Family and Child Commission (QFCC), the Royal Commission into Institutional Response to Child Sex Abuse, and the former Legal Affairs and Safety Committee. This includes changes to: the decision making-framework; the scope of regulated employment and regulated businesses; information sharing arrangements; auditing and compliance; and self-disclosure requirements.

In addition, the Bill seeks to implement recommendations made in the QFCC *Kinship Care Report* in relation to kinship care. This includes the recommendation that kinship carers no longer be required to hold a Blue Card if they are caring for children in their family.

We received 23 submissions to our inquiry, including one confidential submission. We also held a public briefing and a public hearing.

Recommendations

The committee made 2 recommendations:

1. That the Bill be passed.
2. That the Bill be amended to remove the requirement that adult household members of kinship carers hold a Blue Card.

Human rights and fundamental legislative principles

We are satisfied that the Bill is compatible with the *Human Rights Act 2009* (HRA) and that the statement of compatibility contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights. On one side of the scale, provisions in the Bill may potentially limit the human rights of those engaged in forms of employment and categories of business to which the Blue Card system will apply. On the other side of the scale, the rights of children will be protected by these measures. On balance, therefore, we are satisfied that this provision is compatible with the HRA.

Regarding compliance with fundamental legislative principles and the *Legislative Standards Act 1992*, a number of possible breaches were considered. We are satisfied these are reasonable and sufficiently justified.

Removing Blue Card requirements for kinship carers

Caring for family and supporting family connection is not 'employment'. The committee welcomes the proposal to remove the requirement that kinship carers must hold a Blue Card – a requirement that has posed significant barriers for Aboriginal and Torres Strait Islander children and communities. However, we hold significant reservations about the Bill's proposal to continue requiring adult household members of prospective kinship carers to hold a Blue Card. We share the view of submitters that the unintended consequences of this measure may undermine the wider intention behind the Bill. We recommend that the Bill be amended so that this requirement be removed.

New decision-making framework

We support the proposed new decision-making framework for Blue Cards based on whether a person poses a risk to the safety of children. While we acknowledge submitter's concerns about the role of

systematic bias and historical discrimination, we are satisfied that the new framework will provide a more flexible and nuanced approach to decision making that will better recognise rehabilitation and reintegration, especially for historically marginalised groups.

Expanded scope of regulated employment and businesses

We support the proposal to extend the scope of types of employment and businesses captured by the Blue Card scheme. We believe that the removal of the exemption for Australian lawyers is proportionate to the risks involved and will not impact upon access to justice. We are also satisfied that the new consistent exemption for parental volunteers will, in fact, make school compliance obligations easier to understand and enforce. We are further reassured by the range of transitional provisions included in the Bill where 'grace periods' have been tailored to the industries involved.

Self-disclosure requirements

Like submitters, we support the Bill's intention to include a range of matters – such as Domestic Violence Orders – that an applicant must disclose when applying for a Blue Card. While we acknowledge that there were concerns about some of these matters and whether applicants will be sufficiently aware of the requirements, we were reassured by the department's clarifications and the work being undertaken to simplify correspondence and application forms.

1 Introduction

1.1 Policy objectives of the Bill

The Bill seeks to amend the *Child Protection Act 1992* (CP Act), the *Childrens Court Act 1992*, the *Disability Services Act 2006*, the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act), and 15 other Acts set out in Schedule 1 of the Bill.

The objectives of the Bill are to:

- implement, either in full or in part, 12 recommendations from the Queensland Family and Child Commission (QFCC) report *Keeping Queensland's children more than safe: review of the blue card system* (QFCC Blue Card Review)
- implement recommendations made by the former Legal Affairs and Safety Committee, the Women's Safety and Justice Taskforce and the former Youth Justice Reform Select Committee to alter the Blue Card decision-making framework
- make a range of other amendments to simplify, streamline, and improve the operation of the Blue Card system
- implement the first stage of the Government's response to the QFCC report, *A thematic analysis of provisionally approved kinship carers who receive a subsequent blue card negative notice* (QFCC Kinship Care Report), by removing the requirement that kinship carers hold a Blue Card
- provide for the sharing of Childrens Court child protection records with other Australian courts and tribunals.¹

1.2 Queensland's Blue Card system

Queensland's Working with Children Check (WWCC) system is administered by Blue Card Services (BCS) and regulated via the WWC Act and the Working with Children (Risk Management and Screening) Regulation 2020 (WWC Regulation).

The requirement to hold a Blue Card depends on several factors including the type, frequency and location of the work or volunteering. There are currently 16 categories of 'regulated employment' and 'regulated businesses' to which the requirement to hold a Blue Card applies. One in 5 adults in Queensland either have a Blue Card or have applied for one.²

There are currently 2 main steps in the Blue Card application process. The first involves determining whether an individual is qualified to apply for a Blue Card. A person is disqualified from applying for a Blue Card if they:

- are a reportable offender with current reporting obligations under the *Child Protection (Offender Reporting) Act 2004*
- are subject to a child protection offender prohibition order
- are subject to a disqualification order prohibiting them from applying for or holding a Blue Card
- are subject to a sexual offender order under the *Dangerous Prisoners (Sexual offenders) Act 2003*

¹ Explanatory notes, p 1.

² QFCC Blue Card Review, p 5.

- have been convicted of a disqualifying offence.³

Disqualifying offences are listed in Schedule 4 of the WWC Act and includes, for example, sexual offences, offences related to child pornography and child sexual abuse, murder, torture and drug offences such as drug production, supply and trafficking.⁴

If an individual is eligible to apply, a 'Blue Card check' will be undertaken. This includes checking for:

- charges or convictions for any offence in Australia
- child protection prohibition orders
- domestic violence information
- disciplinary information (including about teachers and foster parents)
- police investigations on matters related to allegations of child sex related offences (even if no charges were laid).⁵

There are exceptional circumstances where a disqualified person may satisfy strict criteria and be issued an 'Eligibility Declaration' enabling them to apply for a Blue Card.⁶

1.2.1 Foster and kinship carers

Currently, all foster and kinship carers as well as adult household members over the age of 18 are legally required to hold a Blue Card or exemption card to reside in the home of the child. Regular visitors may also be required to hold a Blue Card.⁷

A kinship carer is a person related to the child or is considered to be part of the family or a close friend. For Aboriginal and Torres Strait Islander children, a kinship carer may also be another Aboriginal or Torres Strait Islander person who is a member of their community or language group, or compatible with the child's community or language group.⁸ Currently, Queensland sits with all other states and territories (with the exception of the Australian Capital Territory) in requiring kinship carers to hold a Blue Card.⁹

³ Blue Card Services, *Disqualifications from applying or holding a Blue Card*, https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/6b645ead-f886-4810-ae38-8154ed7080ff/5137800_fact-sheet_-_disqualification_from_applying_for_or_holding-a-blue-card.pdf

⁴ WWC Act, Schedule 2.

⁵ Queensland Government, *The blue card system explained*, June 2024, <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/blue-card/system/system-explained>

⁶ Blue Card Services, *Disqualifications from applying or holding a Blue Card*, https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/6b645ead-f886-4810-ae38-8154ed7080ff/5137800_fact-sheet_-_disqualification_from_applying_for_or_holding-a-blue-card.pdf

⁷ Registered teachers and police officers are eligible for exemption cards.

⁸ Queensland Government, 'How to become a kinship carer', December 2023, <https://www.qld.gov.au/community/caring-child/foster-kinship-care/foster-kinship-care-become-a-carer/how-to-become-a-kinship-carer>

⁹ Explanatory notes, pp 27-28.

1.3 QFCC Blue Card Review

The QFCC Blue Card Review report was published in July 2017. It was prompted by the murder of 12-year-old Logan resident, Tiahleigh Palmer, by her foster father.¹⁰ The Blue Card Review was informed by the findings of the 2013 Queensland Child Protection Commission of Inquiry and the work of the Royal Commission into Institutional Response to Child Sex Abuse (Royal Commission) report, *Working With Children Checks Report*, which proposed a nationally consistent approach to Blue Cards.¹¹ The Blue Card Review recommended adopting the Royal Commission's recommendations as a minimum standard but maintaining current safeguards where they are stronger in Queensland.¹²

The Blue Card Review also recommended other measures to strengthen the Blue Card system, improve its governance, and streamline its operation. For example, recommendation 41 proposed to alter the basis of the decision-making framework away from being based principally on a series of legislative tests (i.e. whether the applicant had a conviction for an offence). This reflected the fact that, as the WWC Act stood, an individual would be *eligible* to apply for a Blue Card even if they had multiple charges for child-sex related offences but no convictions.¹³ However, an *eligible* individual may also be denied a Blue Card on the basis of previous minor charges or convictions.

The Blue Card Review also acknowledged that Aboriginal and Torres Strait Islander people experience contact with the criminal justice system at a much higher rate than non-Indigenous Australians, therefore experiencing 'significant disadvantage at every stage of the WWCC process'.¹⁴

The Queensland Government indicated its broad support for the intent of all 81 recommendations made in the Review.¹⁵ In November 2019, the National Standards for Working With Children Checks (National Standards) were endorsed.¹⁶

1.4 Former Legal Affairs and Safety Committee Report

On 1 September 2021, Mr Robbie Katter MP, Member for Traeger, introduced the Working with Children (Indigenous Communities) Amendment Bill 2021 which was examined by the former LASC. The Bill proposed a new Blue Card framework in which Indigenous communities, through local Community Justice Groups, would be able to make a binding recommendation to the BCS chief executive (chief executive) to issue a Blue Card to an individual to work within that community even if they would normally have been denied a card due to minor previous criminal offences.¹⁷

While the former committee did not recommend that the Bill be passed, it commented that the Blue Card framework 'should be reviewed so that historical offences of a non-serious nature and not involving children are not taken into account.'¹⁸ This reflected evidence submitted to the committee regarding the impact that negative Blue Card notices (due to minor convictions for young offenders)

¹⁰ Tiahleigh Palmer death: Queensland orders foster care, Blue Card review, ABC News, 21 September 2016, <https://www.abc.net.au/news/2016-09-21/government-asks-for-blue-card-review-in-the-wake-of-tiahleigh-p/7864986>

¹¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks Report*, August 2015, <https://www.childabuseroyalcommission.gov.au/working-children-checks>

¹² QFCC Blue Card Review, p 7.

¹³ QFCC Blue Card Review, p 84.

¹⁴ QFCC Blue Card Review, pp 12, 51.

¹⁵ Explanatory notes, p 2.

¹⁶ Explanatory notes, p 2.

¹⁷ Working with Children (Indigenous Communities) Amendment Bill 2021, explanatory notes, pp 1-4.

¹⁸ Former LASC, Report No. 38, 57th Parliament, *Examination of the Working with Children (Indigenous Communities) Amendment Bill 2021*, October 2022, p 17.

were having on Indigenous communities, especially in relation to kinship care and employment.¹⁹ The LASC recommended that the Queensland Government accelerate the implementation of the QFCC Blue Card Review recommendations, including recommendation 41 regarding the decision-making framework.

Similar recommendations were also made by the Women’s Safety and Justice Taskforce report, *Hear Her Voice – Report two: Women and girls’ experiences across the criminal justice system*²⁰, and the Youth Justice Reform Select Committee’s draft Interim Report.²¹

1.5 QFCC Kinship Care Report

The QFCC Kinship Care Report was released in October 2023. It analysed 11 case studies where a kinship carer applicant who was provisionally approved by the Department of Child Safety, Seniors and Disability Services (DCSSDS) went on to receive a negative notice for a Blue Card. It found that Blue Card screening is not designed for kinship care, and that its processes create additional barriers for Aboriginal and Torres Strait Islander kinship carers.²²

The QFCC Kinship Care Report made 2 recommendations:

- remove the requirement for Aboriginal and Torres Strait Islander kinship carers, as defined in the CP Act, to hold a Blue Card if they are caring for children in their family
- retain the existing departmental assessment and approval process, in relation to Aboriginal and Torres Strait Islander kinship carers, removing the provisional status period in the absence of the Blue Card condition.²³

1.6 Legislative compliance

The committee’s deliberations included assessing whether or not the Bill complies with the Parliament’s requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.6.1 Legislative Standards Act 1992



Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.²⁴

The committee’s assessment of the Bill’s consistency with the LSA considered potential issues relating to the following fundamental legislative principles raised by the Bill and its respective proposals.

¹⁹ Former LASC, Report No. 38, 57th Parliament, *Examination of the Working with Children (Indigenous Communities) Amendment Bill 2021*, October 2022, pp 15-17.

²⁰ See Recommendation 174; Women’s Safety and Justice Taskforce, *Hear Her Voice – Report two: Women and girls’ experiences across the criminal justice system*, pp 37-8, July 22, pp 37-8, https://www.womenstaskforce.qld.gov.au/__data/assets/pdf_file/0008/723842/Hear-her-voice-Report-2-Volume-1.pdf

²¹ See Recommendation 24; Youth Justice Reform Select Committee, *Report No. 1, 57th Parliament, Interim Report: Inquiry into ongoing reforms to the youth justice system and support for victims of crimes*, p ix, <https://documents.parliament.qld.gov.au/tp/2024/5724T612-1B7E.pdf>

²² Explanatory notes, p 3.

²³ Explanatory notes, p 3.

²⁴ LSA, s 4(2).

1.6.1.1 Potentially insufficient regard to rights and liberties of individuals

The following aspects of the Bill raised possible issues regarding the abrogation of rights and liberties without sufficient justification, treating all persons reasonably and fairly and unduly restricting ordinary activities without sufficient justification:

- **amendments to the decision-making framework** for the WWCC system, by including provisions for dealing with and deciding WWCC applications and risk assessments
- **expansion of the definitions of regulated employment and regulated business** by including new categories such as gyms and play facilities, entertainment or party services, beauty or talent competitions and photography services.

The committee also considered:

- **penalties for offences concerning the use or disclosure of protected information** and that the consequences for legislation should be both relevant and proportionate; and penalties within legislation should be consistent with each other.
- **additional powers provided to the chief executive**, including the power to suspend or cancel an authority and to withdraw an application to cancel a negative notice, and its impact on the principles of natural justice, including the right to be heard.

1.6.1.2 Potentially insufficient regard to the institution of Parliament

In addition, the committee considered whether the Bill's proposal to:

- **prescribe by regulation particular matters**, including the type of disciplinary action taken against a person that is a 'disclosable matter' and 'another matter that is relevant to whether a person poses a risk to the safety of children', raised issues with the delegation of legislative power.

Committee comment

The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children and young people in Queensland through a scheme requiring the development and implementation of risk management strategies, and the screening of persons engaged in particular forms of employment or carrying on particular categories of businesses.

The explanatory notes state the proposed amendments to the existing decision-making framework may result in a 'rebalancing of the rights and liberties of individuals', including by impacting the right to obtain and keep employment and the right to conduct business without interference. It is the committee's view that any such 'rebalancing of the rights and liberties' arising from the Bill, accords with the object of the WWC Act.

On balance, the committee is satisfied the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The committee is also satisfied that the explanatory notes tabled with the Bill contain the information required by Part 4 of the LSA and a sufficient level of information to facilitate understanding of the Bill's origins and aims.

1.6.2 Human Rights Act 2019



A law is compatible with human rights if it does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable.²⁵

The committee's assessment of the Bill's compatibility with the HRA considered the potential issues and limitations relating to the following human rights:

- rights of the child (HRA, s 26(2))²⁶
- right to privacy and reputation (HRA, s 25)
- recognition and equality before the law (HRA, s 15).

Committee comment

The WWCC system is designed to protect the rights of children. These rights have been considered in the context of their compatibility with other rights (such as the rights of adults engaged in particular forms of employment and carrying on particular categories of businesses) which are potentially limited by the Bill. Some of the amendments proposed by the Bill could be considered an 'easing' of the stringency of the current system (e.g. the removal of the Blue Card requirement for kinship carers), whereas other amendments may be considered to 'tighten' the system (e.g. the expansion of the categories of employment and business subjected to Blue Card requirements).

On balance, the committee is satisfied that any potential limitations on human rights proposed by the Bill are reasonable and demonstrably justified.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The committee is satisfied that the statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.7 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Removing Blue Card requirements for kinship carers

In line with the recommendations of the QFCC Kinship Care Report, the Bill proposes to:

- amend the WWC Act so approved kinship carers are not considered to be in regulated employment

²⁵ HRA, s 8.

²⁶ HRA, s 26(2): Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

- remove the requirement under the CP Act for approved kinship carers to hold a Blue Card.

It is proposed that the amendments will commence on a date to be fixed by proclamation to allow DCSSDS time to consult on the development of a new fit-for-purpose screening framework for kinship carers and ensure any new framework keeps children safe, has sufficient safeguards and minimises unintended consequences.²⁷

2.1.1.1 Submitter comments

There was strong support amongst submitters for the removal of the Blue Card requirement for kinship carers.²⁸ A number of submitters acknowledged the importance of this amendment for Aboriginal and Torres Strait Islander communities. For example, the First Nations Women's Legal Service submitted that the Bill restores a level of balance by recognising the rights of Aboriginal and Torres Strait Islander children to family, community and culture.²⁹

Some submitters raised concerns about the proposed delayed commencement of the amendments concerning the removal of the Blue Card requirement for kinship carers.³⁰

QFCC Commissioner Natalie Lewis told the committee that the action to establish the alternative assessment process should be approached with a level of urgency commensurate with the stated level of priority.³¹ Commissioner Lewis added:

Currently, there are Aboriginal and Torres Strait Islander children living away from their families—almost 2,000. Currently, there are over 700 Aboriginal and Torres Strait Islander children in residential care. If even half of those children can safely return to live within their family, their futures will look very different.³²

The Aboriginal and Torres Strait Islander Legal Service (ATSILS) highlighted that Child Safety already performs risk assessments on parents and suitability assessments on carers, that could be leveraged to create a suitable framework that is fit for purpose.³³ Commissioner Lewis expanded upon this issue, advising that the design and implementation of an optimal assessment process, in partnership with stakeholders, is readily achievable within 12 months.³⁴

2.1.1.2 Departmental response

In response to issues raised about the delayed commencement of amendments for the removal of the Blue Card requirement for kinship carers, the Department of Justice and Attorney-General (DJAG) (the department) advised that:

- currently, the Blue Card and Child Safety legislative frameworks enable access to different types of information to inform assessments under the respective frameworks and delaying commencement will enable the department to determine a framework for access to the necessary information to inform a nuanced assessment of kinship carers in the absence of the Blue Card requirement (i.e. create a framework that is specific to kinship carers).

²⁷ Explanatory notes, pp 14-15.

²⁸ See submissions 3, 5, 6, 9, 11, 13, 14, 15, 17, 18, 20, 22.

²⁹ Submission 13, p 2.

³⁰ See for example submissions 7 and 17.

³¹ Public hearing transcript, Brisbane, 17 July 2024, p 8.

³² Public hearing transcript, Brisbane, 17 July 2024, p 7.

³³ Submission 17, p 4.

³⁴ Public hearing transcript, Brisbane, 17 July 2024, p 8.

- delayed commencement of the provisions will provide time for consultation with peak stakeholders to ensure a new framework is fit for purpose, culturally safe, and informed by the experience of carers, children and families.
- the department will work to minimise any impacts of the two-stage approach to implementation and keep stakeholders informed about progress of the reforms.³⁵

2.1.2 Adult household members still require a Blue Card

While a kinship carer would be exempt from requiring a Blue Card should the Bill be passed, each adult member of the household would still be required to obtain a Blue Card.³⁶ A number of submitters recommended that adult members of a carer's household should also be exempt from this requirement.³⁷

2.1.2.1 Submitter comments

Key issues raised by submitters in relation to this requirement are summarised below:

- there are a number of negative consequences to this requirement, including for instance, a family being obliged to break up a household to care for a child in need of placement, and the potential for a prospective kin carer refusing to accept a child, which undermines the intention of the Bill³⁸
- removing the requirement for adult household members does not remove appropriate safeguards given an assessment of all relevant information, including criminal history of adult household members, would remain part of any safety and suitability assessment³⁹
- the requirement for adult household members to hold a Blue Card is inconsistent with self-determination of Aboriginal and Torres Strait Islander families, and has insufficient regard for and recognition of Aboriginal and Torres Strait Islander child rearing practices⁴⁰
- the Blue Card system creates difficulties for adhering to the Aboriginal and Torres Strait Islander Child Placement Principle under the CP Act and these issues will not be alleviated by only exempting kinship carers from the Blue Card requirements⁴¹
- a Blue Card alone, is not a guarantee of safety and is not necessary to create a child safe environment; rather, the proposed screening framework to be applied by the DCSSDS under the child protection framework could ensure the safety of First Nations children would not be compromised by the absence of Blue Cards for kinship care household members.⁴²

With respect to the requirement for adult household members to obtain a Blue Card, QFCC Commissioner Natalie Lewis drew attention to the Government's commitment to increase the use of kinship care, reduce the over-representation of First Nations children in care, and faithfully implement the Aboriginal and Torres Strait Islander Child Placement Principle. Ms Lewis advised the committee that the Bill creates barriers to these established goals.⁴³

³⁵ DJAG, correspondence dated 22 July 2024, pp 1-2.

³⁶ Explanatory notes, p 15.

³⁷ See for example submissions 11, 17, 18, and 22.

³⁸ QFCC, submission 11, pp 6-7.

³⁹ QFCC, submission 11, pp 6-7.

⁴⁰ ATSILS, submission 17, p 4.

⁴¹ Queensland Human Rights Commission, submission 18, p 3.

⁴² Queensland Human Rights Commission, submission 18, p 3.

⁴³ Public hearing transcript, Brisbane, 17 July 2024, p 7.

The QFCC proposed that the Bill be amended to remove the requirement for adult household members, particularly given the rigorous assessments of household suitability for kinship care placements that already take place.

Commissioner Lewis explained:

Current child safety practice in the assessment of household suitability for kinship care placements already includes a comprehensive criminal history and child protection history screening process of the primary kinship carer and all adult household members. Where this screening produces information that presents a real risk to children, which includes disqualifying offences and serious offences that are relevant to children, the placement is deemed unsuitable. Carers have a positive obligation to notify not just changes to their own criminal history and circumstances but also changes to the composition of the household. The ongoing safety of the child and the suitability of that placement is reviewed at least every six months.

The same safeguards that exist in relation to primary kinship carers apply to all adult household members. The same structural barriers that exist for Aboriginal and Torres Strait Islander kinship carers exist for all adult household members. Removing the first barrier and leaving a second in its place is contrary to the objectives of this bill.⁴⁴

2.1.2.2 *Departmental response*

In response to concerns raised about the Blue Card requirement remaining for adult household members of approved kinship carers, DJAG acknowledged that this can be a barrier for kinship carer families.⁴⁵

DJAG also advised that:

- the current definition of an adult household member in the CP Act is broad, and can include anyone living in the carer's household, or any adult who may create an unacceptable level of risk to the child because of the nature and context of their contact with the child
- ongoing work will consider the most appropriate approach to the assessment of adult household members, and the risk to children in the context of a kinship carer's household, as the reform is progressed.⁴⁶

DJAG acknowledged the concerns raised by the QFCC that while the Government is extending the reform to all kinship carers, issues relating to adult household members 'almost exclusively impact Aboriginal and Torres Strait Islander kinship carers.' In response, DJAG advised that Aboriginal and Torres Strait Islander stakeholders will be consulted during development of the second stage of the reforms to create a nuanced screening framework that is culturally safe and responds to the unique needs of Aboriginal and Torres Strait Islander families caring for kin.⁴⁷

Committee comment

Caring for family and supporting family connection is not 'employment'. It is clear that the Blue Card system is not suitable for kinship care and poses significant barriers for Aboriginal and Torres Strait Islander kin to care for Aboriginal and Torres Strait Islander children. As highlighted by the QFCC, these barriers are at odds with adherence to the legislative requirements of the *Child Protection Act 1999* regarding self-determination, recognition of cultural child rearing practices and prioritising the placement of Aboriginal and Torres Strait Islander children with family and community members (the Aboriginal and Torres Strait Islander Child Placement Principle).

⁴⁴ Public hearing transcript, Brisbane, 17 July 2024, p 7.

⁴⁵ DJAG, correspondence dated 22 July 2024, p 2.

⁴⁶ DJAG, correspondence dated 22 July 2024, p 2.

⁴⁷ DJAG, correspondence dated 22 July 2024, p 2.

On the one hand, the committee acknowledges that the Bill proposes significant progress toward removing structural barriers to Aboriginal and Torres Strait Islander kinship care by removing the requirement that kinship carers obtain a Blue Card.

On the other, the committee holds significant concerns about the Bill's proposal to continue requiring the adult household members of approved kinship carer households to obtain a Blue Card. In particular, the committee is concerned that the requirement for adult household members to obtain a Blue Card simply shifts the unintended consequences of the Blue Card system currently felt by kinship carers to the adult household members of their households.

The committee acknowledges stakeholders' concerns that the proposed requirement for adult household members to obtain a Blue Card risks undermining the intention of the Bill. Prospective kinship carers may, in some circumstances, for example, be forced to choose between breaking up their household to provide care to a child or deciding not to pursue a kinship care certificate.

The committee acknowledges that the department has advised that Aboriginal and Torres Strait Islander stakeholders will be consulted during development of the second stage of the reforms to create a nuanced screening framework that is culturally safe and responds to the unique needs of Aboriginal and Torres Strait Islander families caring for kin. However, it is not clear why the delayed commencement period could not have the dual purpose of developing a new screening framework specific to kinship carers which includes consultation and development of the most appropriate approach to the assessment of adult household members.

Recommendation 2

The committee recommends that the Bill be amended to remove the requirement that adult household members of kinship carers hold a Blue Card.

2.2 New decision-making framework

In accordance with recommendation 41 of the Blue Card Review, the Bill proposes to introduce a new decision-making framework. Consistent with the findings of the QFCC and the Royal Commission, the Bill proposes to shift away from a principally legislative basis for decision-making to implement a new 'risk to the safety of children' test to guide Blue Card assessments. This is defined in the Bill to mean a 'real and appreciable risk'.⁴⁸

Key elements of the proposed decision-making framework set out in the Bill are as follows:

- A new statutory threshold for assessments requiring the chief executive to be satisfied that an applicant presents a real and appreciable risk to the safety of a child to refuse a Blue Card (replacing the previous 'best interest of children' test). This will bring Queensland into line with all other jurisdictions, the National Standards and the Royal Commission recommendations.⁴⁹
- A new complementary 'reasonable person' test so that the chief executive would consider whether a reasonable person would allow their child to have direct contact with the applicant while engaged in child-related work. This is consistent with similar legislation in New South Wales and Victoria.⁵⁰

⁴⁸ Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, Queensland Parliament, Record of Proceedings, 12 June 2024, p 2076.

⁴⁹ Explanatory notes, pp 3-4.

⁵⁰ Explanatory notes, p 5.

- A new provision to enable the chief executive to assess specialist advice in relation to the complexities of a particular case and to establish advisory committees (e.g. small groups able to advise about First Nations applicants in a particular area).⁵¹
- A new risk assessment process for undertaking Blue Card assessments where a person returns information of concern, based on criteria outlined in the National Standards, Royal Commission and QFCC Review report.⁵²
- A statutory requirement to consider the effect of systemic disadvantage and intergenerational trauma when First Nations individuals apply for a Blue Card.⁵³

Under the proposed decision-making framework, the Bill provides that where an applicant:

- presents with no assessable information – the chief executive must approve the application
- is a disqualified person – the chief executive must refuse the application
- has been convicted of a serious offence – a Blue Card may only be issued if the chief executive is satisfied it is an exceptional case in which the applicant would not pose a risk to the safety of children
- presents with any other type of assessable information – the chief executive must approve the application unless the chief executive is satisfied the person poses a risk to the safety of children.⁵⁴

The Bill proposes to adopt a set of statutory factors that a decision-maker must have regard to in undertaking a Blue Card assessment when a person returns assessable information. The proposed criteria were outlined by the Royal Commission and reinforced by the QFCC, and were reflected in the National Standards.⁵⁵

The proposed statutory factors include:

- the nature, gravity and circumstances of the conduct
- how the person’s conduct is relevant to engaging in regulated employment or the carrying on of a regulated business
- how long ago the person’s conduct occurred
- if the person’s conduct involved the commission of an offence or another act against another person (the victim):
 - the victim’s vulnerability at the time of the conduct
 - the age difference between the person and the victim at the time of the conduct and
 - the person’s relationship to, or position of authority over, the victim at the time of the conduct
- whether the person’s conduct indicates a pattern of concerning behaviour
- the person’s conduct since the conduct in relation to which there is assessable information of which the chief executive is aware

⁵¹ Explanatory notes, pp 3-4.

⁵² Explanatory notes, p 4.

⁵³ Explanatory notes, p 4.

⁵⁴ DJAG, correspondence dated 26 June 2024, pp 4-5.

⁵⁵ DJAG, correspondence dated 26 June 2024, p 5.

- any information given by the person in, or in relation to, the application
- any other circumstances relevant to the person's conduct (for example, a report given to the chief executive about the person's mental health)
- any other matters the chief executive considers relevant.⁵⁶

2.2.1.1 Submitter comments

There was broad support amongst stakeholders for a new decision-making framework for Blue Card assessments.⁵⁷ In particular, there was strong support amongst organisations which advocate for First Nations communities in relation to the requirement for the decision-maker to consider the effect of systemic disadvantage and intergenerational trauma and the historical context in applications made by Aboriginal and Torres Strait Islander peoples.⁵⁸

However, submitters raised a number of concerns with the proposed decision-making framework, including that:

- The 'reasonable person test':
 - creates a higher bar than if the test referred to hypothetical 'other children' because people are typically more cautious and concerned about their own children. Therefore, the inclusion of the 'reasonable person test' has the potential to lead to an overly cautious approach to Blue Card risk assessments – an issue the Bill seeks to address.⁵⁹
 - may not take into account different community values and expectations and encourage a subjective character assessment based on an individual decision-maker's perception of their own or majority community values.⁶⁰
- Possible impact on peer workforces: a new decision-making framework, including the use of the 'reasonable person test', may have unintended consequences for the mental health, alcohol and other drugs and suicide prevention peer workforces without robust, evidence-based and fair assessment of suitability and safety.⁶¹
 - To address possible issues facing peer workforces, the Queensland Mental Health Commission (QMHC) recommended consideration of the nature of employment, Blue Cards with conditional requirements and how to reduce stigmatisation in the decision-making process.⁶²
- Considering the effect of systemic disadvantage and intergenerational trauma: for Aboriginal and Torres Strait Islander applicants may have unintended consequences, for example, applying a greater level of scrutiny to Aboriginal and Torres Strait Islander applicants compared to non-Indigenous applicants.⁶³
- First Nations decision-making processes should be supported by:

⁵⁶ DJAG, correspondence dated 26 June 2024, p 5.

⁵⁷ See for example, submissions 6, 8, 11, and 15.

⁵⁸ See for example, submissions 5, 11, 15, and 17.

⁵⁹ Queensland Human Rights Commission, submission 18, pp 5-6.

⁶⁰ Queensland Mental Health Commission, submission 14, p 14.

⁶¹ Queensland Mental Health Commission, submission 14, pp 2-4.

⁶² Queensland Mental Health Commission, submission 14, p 5.

⁶³ ATSILS, submission 17, pp 4-5.

- targeted and ongoing strategies to increase the number of Aboriginal and Torres Strait Islander individuals in decision-making roles within BCS, especially where the applicant is an Aboriginal and/or Torres Strait Islander person.⁶⁴
- enshrining a role for First Nations people in the administration of the Blue Card system to support a regulatory framework which protects children whilst ensuring the cultural rights of children and families are upheld, and that systemic barriers (such as structural racism) are accounted for.⁶⁵
- Training for decision-makers: is imperative to the operationalisation of a new decision-making framework. Decision-makers will need to make well informed decisions that can acknowledge that despite a person's historical offending behaviour, there remains an opportunity for rehabilitation and growth; an acknowledgement that people change over time.⁶⁶

With respect to the application of the 'reasonable person test', the Queensland Human Rights Commission submitted that the risk assessment guidelines prepared by the chief executive under new section 246E must assist decision-makers to properly apply the reasonable person test and avoid an unnecessarily cautious approach, having regard to existing case law of other jurisdictions. In accordance with the seminal case for this threshold⁶⁷, this would include that the test is to be objectively applied, gives the applicant an opportunity to be heard, and has regard to all the relevant facts before the decision-maker.⁶⁸

QFCC Principal Commissioner Luke Twyford argued that the proposed decision-making framework is far better than an arbitrary test that excludes the ability of a decision-maker take into account certain factors. Mr Twyford acknowledged that 'with any frontline worker making human services related decisions, there is always the risk of subconscious bias entering their decision-making.' However, this can be mitigated to some degree through training, appropriate qualification and professionalisation of Blue Card decision-makers.⁶⁹

It was also acknowledged that the advisory committees provided for in the Bill provide a strong safeguard for decision-making. The QFCC stated that advisory committees will provide an opportunity to introduce expertise into assessment processes for all people who are marginalised, or have been disproportionality disadvantaged by the structural system, including people with lived-living experience and those from First Nations communities.⁷⁰

2.2.1.2 Departmental response

'Reasonable person test'

The Bill provides for the development of risk assessment guidelines for the decision-making framework, of which the reasonable person test is a component. The test was first implemented in Victoria, and later introduced to New South Wales, to better reflect community expectations and apply community standards. In line with the seminal case for this threshold:

...the reasonable person test will 'require the application of an objective standard based upon the views of a reasonable person.' In reference to assessing an individual's eligibility for a blue card, a 'reasonable person [should] not approach the task with a closed mind, thinking that once a person has offended, he

⁶⁴ ATSILS, submission 17, pp 4-5.

⁶⁵ QATSICPP, submission 22, pp 4-5.

⁶⁶ Tom Allsop, CEO, PeakCare Queensland Inc, public hearing transcript, Brisbane, 17 July 2024, p 12.

⁶⁷ *VQB v The Secretary to the Department of Justice (Review and Regulation)* [2013] VCAT 789 at [36]

⁶⁸ Submission 18, pp 5-6.

⁶⁹ Public hearing transcript, Brisbane, 17 July 2024, p 9.

⁷⁰ Public hearing transcript, Brisbane, 17 July 2024, p 8.

or she can never be redeemed. The reasonable person, however, [should] not put aside all scepticism and reasonable caution in this most difficult area in some over-optimistic attempt to facilitate rehabilitation'.⁷¹

Peer support workforces

To support peer workforces, the QMHC recommended consideration of Blue Cards with conditional requirements. In response, the departmental response advised that:

- the Royal Commission recommended that there be no conditional or different types of clearances. A WWCC clearance is issued, or it is not.
- the Royal Commission stated that a WWCC should be connected only to the individual seeking the clearance and not to their employer or the role or organisation in which they are seeking to work.⁷²

While acknowledging the value of peer support and the sharing of lived experiences, the department advised that in the context of this Bill, the welfare and best interests of children are paramount.⁷³ Therefore, the proposed decision-making framework establishes:

...a more refined and focused threshold of 'risk to the safety of children' (rather than best interests of children). At its core, shifting to a risk-based statutory threshold would be a targeted refinement of the decision-making requirements under the WWC Act, which more specifically requires a decision to issue a negative notice to demonstrate the nexus between a person's conduct, or alleged conduct, and the risk of harm to children.⁷⁴

The department considers that the proposed risk-based threshold and accompanying risk criteria to be established by the Bill will effectively structure risk assessments by necessitating a more evidence-based and transparent approach to decision-making.⁷⁵

Providing cultural context in decision-making

The departmental response stated that over the past several years, BCS has implemented a significant number of initiatives to:

- improve engagement and outcomes for First Nations people who engage with the Blue Card system
- improve the cultural capability and competency of its workforce
- create a culturally safe workplace to better support staff to deliver services safely and effectively to First Nations applicants.⁷⁶

According to the department, an important initiative is the creation of a dedicated group of officers, including identified liaison officers (male and female) to specifically support applicants who identify as Aboriginal or Torres Strait Islander with the application and assessment processes. These officers provide a cultural lens to assist in the decision-making process.⁷⁷

⁷¹ DJAG, correspondence dated 22 July 2024, pp 7-8.

⁷² DJAG, correspondence dated 22 July 2024, p 5.

⁷³ DJAG, correspondence dated 22 July 2024, p 5.

⁷⁴ DJAG, correspondence dated 22 July 2024, p 5.

⁷⁵ DJAG, correspondence dated 22 July 2024, p 6.

⁷⁶ DJAG, correspondence dated 22 July 2024, p 3.

⁷⁷ DJAG, correspondence dated 22 July 2024, p 3.

The departmental response stated that advice can be sought at many points through the assessment process to provide cultural context in relation to an applicant's information, circumstances, and behaviour of concern, including:

- any cultural factors that exist and the impact these may have had on the applicant to provide context around their behaviour of concern (such as trauma, both intergenerational and domestic violence, violence resistance and the overrepresentation in the criminal justice system)
- cultural protective factors (e.g. strong connection and reconnection to culture and community, cultural and community leadership and ongoing support networks, such as involvement in men's and women's groups, church and family support)
- other cultural reasons that may have influenced offending behaviour (e.g. the applicant was a victim of domestic violence, violent resistance, grief and loss, mental health and substance misuse).⁷⁸

Committee comment

The committee supports the proposed decision-making framework and acknowledges it is a progressive step away from an arbitrary test that excludes the ability of a decision-maker take into account a range of factors relevant to whether a person may or may not pose a risk to the safety of children.

In accordance with the Royal Commission, the committee does not consider it appropriate to contemplate conditional requirements or role-specific considerations when it comes to WWCC clearance. The committee agrees that WWCC clearance should only be connected to the individual seeking clearance, who is either granted clearance, or is not.

The committee acknowledges concerns about systemic and historical discrimination or bias in decision-making, particularly for marginalised groups. However, the committee considers the proposed shift to a risk-based statutory threshold and increased discretion afforded by new section 234 will support a more nuanced decision-making framework and improve recognition of rehabilitation and reintegration in decision-making.

The committee is particularly supportive of the requirement for a decision to issue a negative notice to demonstrate the nexus between a person's conduct, or alleged conduct, and the risk of harm to children. This should go some way to making the reasoning for decisions clearer for applicants (see also section 2.2.3).

2.2.2 New disqualification framework

Currently in Queensland individuals can undertake paid work while their Blue Card is being processed. As a result, there is a process to disqualify some people from applying for a Blue Card (i.e. where imprisoned for a disqualifying offence) and another process to allow people to declare themselves as eligible to apply.⁷⁹ The Bill proposes to largely do away with this framework by:

- removing the offence related to a disqualified person applying for a Blue Card
- removing (generally) imprisonment as a requirement for an offence to permanently exclude a person from working with children

⁷⁸ DJAG, correspondence dated 22 July 2024, p 4.

⁷⁹ QFCC Blue Card Review, pp 65-6.

- incorporating the discretionary elements of the previous disqualification framework into the standard Blue Card application process – notably around juvenile offences to recognise the possibility of rehabilitation and that offences may have been caused by ‘immaturity’.⁸⁰

2.2.2.1 *Submitter comments*

A number of stakeholders submitted their support for the new disqualification framework.⁸¹ For example, PeakCare Queensland Inc (PeakCare) supported the inclusion of an age qualifier, providing that an offender must be 18 years or older at the time of committing the offence for it to be treated as a ‘serious’ or ‘disqualifying’ offence. PeakCare submitted that this supports the possibility for rehabilitation and healing for young people involved in the criminal justice system.⁸²

The QFCC supported the removal of an eligibility declaration process and imprisonment as a requirement for an offence to permanently exclude a person from working with children. The QFCC submitted that it welcomes reforms such as this that will bring key components of discretion afforded in the disqualification process into the standard Blue Card decision-making framework.⁸³

2.2.3 **Notice inviting submissions**

Proposed section 235 (Requirements before deciding person poses risk to safety of children) provides that, if the chief executive is proposing to decide that a person poses a risk to the safety of children, before deciding the person’s application, the chief executive must give written notice of the matters set out in section 236 and consider any submissions made by the person about the matters set out in new section 236(1)(c).⁸⁴

Proposed new section 236 proposes that a notice given to a person under new section 235 must:

- include assessable information about the person of which the chief executive is aware; and
- state that the chief executive proposes to refuse the application and issue a negative notice to the person unless the chief executive is satisfied that:
 - the person does not pose a risk to the safety of children; and
 - the section 229 applies in relation to the person—there is an exceptional case for the person; and
- invite the person to make submissions to the chief executive about the following:
 - why the person does not pose a risk to the safety of children;
 - why the chief executive should issue a WWC authority to the person;
 - if section 229 applies in relation to the person—why there is an exceptional case for the person; and
- state the period within which the person may make the submissions, which must be a period of at least 7 days after the chief executive gives the person the notice.⁸⁵

⁸⁰ Explanatory notes, pp 6-7.

⁸¹ See for example submissions 6, 10 and 11.

⁸² Submission 6, p 5.

⁸³ Submission 11, p 9.

⁸⁴ Explanatory notes, pp 40-41.

⁸⁵ Explanatory notes, pp 40-41.

2.2.3.1 *Submitter comments*

Some submitters raised concerns with the proposed operation of new section 236. These include that the proposed requirements for a notice:

- would not require the chief executive to explain why they are proposing to decide that a person poses a risk to the safety of children, nor would it require the chief executive to demonstrate the link between the assessable information and the relevant concern that they have.⁸⁶
 - LawRight noted that the explanatory speech for the Bill's introduction explicitly stated the new framework will require a decision-maker to issue a negative notice that demonstrates 'a clear nexus between a person's conduct, or alleged conduct, and the risk of harm to children'.⁸⁷
- should require the chief executive to include provisional reasons of why BCS considers a person poses a risk to the safety of children.⁸⁸

2.2.3.2 *Departmental response*

In response to these issues, the department stated that BCS has already commenced a pilot of a new invitation for submissions process where, in addition to being provided with all material being considered in the assessment process, applicants are provided with a summary of the factors of most concern to the decision-maker.⁸⁹

The department also advised that BCS has commenced the development of a new question and answer proforma document which will be sent to applicants as part of the invitation for submissions process and will offer applicants an alternative method to engage in the process. This is being developed as part of BCS' current correspondence review project (as part of implementing recommendation 46 of the QFCC Blue Card Review) and will be based on feedback from recent usability testing with a range of diverse stakeholders, including people from culturally and linguistically diverse communities, people with low literacy abilities and Aboriginal and Torres Strait Islander peoples.⁹⁰

2.3 Expanding the scope of regulated employment and regulated businesses

The Bill proposes a number of amendments to the scope of regulated employment and regulated businesses, broadening or clarifying the application of the Blue Card requirement to a range of work settings including:

- explicitly stating that gyms and play facilities are captured under the existing sport and active recreation category⁹¹
- adding a new category of commercial services delivered to children (entertainment or party services, beauty or talent competitions, photography services)⁹²
- removing the exemption for workers at amusement parks⁹³

⁸⁶ LawRight, submission 10, p 19.

⁸⁷ LawRight, submission 10, p 19.

⁸⁸ Queensland Human Rights Commission, submission 18, pp 7-8.

⁸⁹ DJAG, correspondence dated 22 July 2024, p 16.

⁹⁰ DJAG, correspondence dated 22 July 2024, p 16.

⁹¹ Explanatory notes, p 7.

⁹² Explanatory notes, p 7.

⁹³ Explanatory notes, pp 7-8.

- removing the exemption for Australian lawyers who provide child-related services⁹⁴
- establishing justice or detention services as a category of regulated businesses⁹⁵
- clarifying that a person engaged in decision-making in relation to children as a member of an executive committee of a church, club, or association is required to hold a Blue Card⁹⁶
- capturing overnight camps and excursions within the existing child accommodation service category⁹⁷
- providing a consistent exemption for parent volunteers⁹⁸
- reframing regulated employment in schools so that an individual requires a Blue Card if their work takes place in an area where children are being taught, cared for, or is accessible to children and occurs at a time when children are ordinarily present (i.e. groundskeepers but not visiting tradesmen).⁹⁹

2.3.1 Removal of the exemption for lawyers to obtain a Blue Card

At present, Australian lawyers who engage in legal practice in Queensland under the *Legal Profession Act 2007* are exempt from requiring a Blue Card to the extent they are providing legal services. The Bill proposes to remove this exemption and to include ‘legal support services’ within the categories of regulated businesses.¹⁰⁰

2.3.1.1 Submitter comments

In response, submitters highlighted that:

- Barristers and solicitors are already subject to strict ethical and professional obligations including a ‘fit and proper person test’ and an ongoing obligation to disclose relevant ‘suitability matters’.¹⁰¹
- The requirement to hold a Blue Card will increase the administrative burden on already heavily regulated lawyers.¹⁰²
- The proposed 12-month transitional period provided for in the Bill only applies to existing lawyers, newly qualified lawyers will therefore be forced to immediately apply for a Blue Card with any delay potentially impacting on access to justice.¹⁰³
- The definition of those employed in ‘support services’ and ‘legal support’ used in the Bill is sufficiently broad that the requirement to hold a Blue Card might capture an unreasonably large cohort.¹⁰⁴

⁹⁴ Explanatory notes, p 10.

⁹⁵ Explanatory notes, p 8.

⁹⁶ Explanatory notes, p 9.

⁹⁷ Explanatory notes, p 8.

⁹⁸ Explanatory notes, pp 8-9.

⁹⁹ Explanatory notes, p 10.

¹⁰⁰ Explanatory notes, p 10.

¹⁰¹ ATSILS, submission 17, p 9.

¹⁰² QLS, submission 23, p 2.

¹⁰³ ATSILS, submission 17, p 9.

¹⁰⁴ QLS, submission

- The classification of ‘legal support’ as a regulated business would also apply to under-resourced community legal centres with the cost of Blue Card applications potentially impacting the provision of community and pro-bono legal services.¹⁰⁵

In response, ATSILS recommended that a lawyer be allowed to practice once an application for a Blue Card is logged.¹⁰⁶ Relatedly, QLS recommended that the 12-month transition period be applied to all lawyers regardless of their current status and that the department monitor the application processing times for lawyers during the transition period.¹⁰⁷

2.3.1.2 *Departmental response*

In response to the concerns raised by submitters the department advised that:

- Blue Card checks are more extensive than those required under the *Legal Profession Act 2007* and include all interstate criminal history, charges and non-conviction charges, spent and unspent convictions and juvenile history as well as whether there is any domestic violence or child protection information in relation to the person.¹⁰⁸
- The ongoing disclosure requirements for lawyers is not comparable to the ongoing continuous monitoring of changes in Queensland criminal history undertaken by BCS.¹⁰⁹
- Blue Cards are valid for 3 years and currently cost \$101.30 and are free for volunteers with 95.6 per cent of applicants screened in 5 days. As such ‘these costs and timeframes are not considered to be a significant impediment on lawyers who are seeking to provide services to children on an ongoing basis.’¹¹⁰

Committee comment

The committee supports the proposal to remove the exemption for Australian lawyers to hold a Blue Card, in line with the recommendation of the QFCC Blue Card Review. As the department noted in its response, Blue Card checks are significantly more robust than those provided for in the *Legal Profession Act 2007*. This is appropriate given the often-close contact lawyers can have with children, many of them in vulnerable positions, in their work.

The committee is reassured that the cost and timeframes involved in securing a Blue Card are such that they will not impede the important work undertaken by lawyers providing services to children.

The committee notes concerns regarding the definition of ‘legal services’ and ‘support services’ in the Bill which were not addressed in the department’s response to submissions. We encourage the department to liaise closely with stakeholders, including the QLS, to ensure appropriate guidance is provided.

2.3.2 Overnight camps and excursions

Currently parents involved in organised overnight camps and excursions may rely on a ‘parent volunteer exemption’, whereby they are not required to obtain a Blue Card. Both the QFCC Blue Card Review and Royal Commission recommended that this exemption no longer apply. Accordingly, the

¹⁰⁵ QLS, submission 23, p 3.

¹⁰⁶ ATSILS, submission 17, p 9.

¹⁰⁷ QLS, submission 23, p 3.

¹⁰⁸ DJAG, correspondence dated 22 July 2024, p 14.

¹⁰⁹ DJAG, correspondence dated 22 July 2024, p 14.

¹¹⁰ DJAG, correspondence dated 22 July 2024, p 15.

Bill proposes to expand the existing child accommodation service category to specifically capture overnight camps or excursions.¹¹¹

The amendment is intended to distinguish between an organised event, such as a school camp, and a child staying at a friend's house overnight (i.e. an informal arrangement). This is in accordance with the Royal Commission recommendation that work undertaken for a personal or domestic purpose should not be captured.¹¹²

2.3.2.1 Submitter comments

Independent Schools Queensland (ISQ), while supporting the rationale for change, noted that given the potential for emergencies and contingencies – where students may end up staying temporarily with other parents – the temptation will be for schools to over-prepare and request an overly large pool of parents hold a Blue Card.¹¹³

Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) argued that this amendment to the Bill has the potential to impact negatively on access to on country camps for Elders – who may not be able or willing to secure a Blue Card – hence denying Elders the right to take on a critical role in Aboriginal and Torres Strait Islander culture.¹¹⁴ A similar concern was raised by QATSICPP regarding family reconnection camps operated by Community Controlled Organisations.¹¹⁵

2.3.2.2 Departmental response

In their response the department noted that:

- the parental volunteer would not apply in instances where children needed emergency overnight accommodation and as such school's would require volunteers to hold a blue card in these instances¹¹⁶
- it is not anticipated that a person attending a family camp or 'on country' camp would be required to hold a Blue Card if they are merely attended the event as a participant (rather than as an employee or volunteer).¹¹⁷

2.3.3 Providing a consistent exemption for parent volunteers

The Bill proposes a new overarching approach to providing exemptions for parent volunteers in line with the National Standards and the recommendations of the Royal Commission. A parent volunteer who provides a child-related service or activity to children that usually includes their own child would not need a Blue Card, *except* when:

- volunteering on overnight excursions or camps
- volunteering to provide services to children with disabilities, where the services involve close, personal contact (e.g. bathing).¹¹⁸

¹¹¹ Explanatory notes, p 8.

¹¹² Explanatory notes, p 8.

¹¹³ Submission 7, p 5.

¹¹⁴ Submission 22, p 4.

¹¹⁵ Submission 22, p 4.

¹¹⁶ DJAG, correspondence dated 22 July 2024, p 12.

¹¹⁷ DJAG, correspondence dated 22 July 2024, p 12.

¹¹⁸ Explanatory notes, p 9.

2.3.3.1 *Submitter comments*

While the QFCC welcomed the introduction of a consistent exemption, other submitters highlighted a number of concerns.¹¹⁹ These included that:

- organisations may not be able to rely on the parental exemption without voiding their insurance cover¹²⁰
- schools may engage in ‘over-compliance’ to ensure that all parental volunteers have a Blue Card rather than undertake the process of determining if a volunteer’s particular child is engaged in the activity (i.e. in the particular sports team)¹²¹
- the number of available parental volunteers may be reduced if they are unwilling to participate in the Blue Card process given the perceived level of risk involved.¹²²

2.3.3.2 *Departmental response*

In response to submissions the department highlighted that:

- the proposed parent volunteer exemption is based on the recommendations made by the Royal Commission and the QFCC¹²³
- the proposed parent volunteer exemption applies consistently to all categories of regulated employment and is intended to assist schools with their Blue Card obligations¹²⁴
- should the Bill be passed the feedback of ISQ around how to implement the provision will be factored into decisions regarding commencement.¹²⁵

2.3.4 **Regulated employment in schools**

The Bill proposes to reframe regulated employment in schools so that an individual requires a Blue Card if their work takes place in an area where children are being taught, cared for, or is accessible to children and occurs at a time when children are ordinarily present (i.e. groundskeepers but not visiting tradesmen).¹²⁶

2.3.4.1 *Submitter comments*

ISQ argued that the language related to regulated employment in schools is ‘unclear and provides significant room for discretionary decision-making’.¹²⁷ The ISQ suggested that its member schools would prefer an environment-based approach in which all those working in schools require a Blue Card, in line with community expectations.¹²⁸

2.3.4.2 *Departmental response*

In its response, the department noted that evidence provided to the former Legal Affairs and Safety Committee, as part of its inquiry into the Working with Children (Indigenous Communities) Amendment Bill 2021, highlighted that overcompliance with the Blue Card system contributes to the

¹¹⁹ Submission 11, p 2.

¹²⁰ Name withheld, submission 1, p 3.

¹²¹ ISQ, submission 7, p 5.

¹²² Sisters Inside Inc, submission 15, p 5.

¹²³ DJAG, correspondence dated 22 July 2024, p 14.

¹²⁴ DJAG, correspondence dated 22 July 2024, p 14.

¹²⁵ DJAG, correspondence dated 22 July 2024, p 14.

¹²⁶ Explanatory notes, p 10.

¹²⁷ Submission 7, p 6.

¹²⁸ Submission 7, p 7.

barriers faced by First Nations communities.¹²⁹ The department also noted that the Royal Commission report highlighted that systems like Blue Cards were never intended for those who may be in a place where there are children but who do not work *with* children.¹³⁰ With respect to the issues raised by ISQ, the department stated:

The amendments are considered to provide a workable balance between protecting children at a school while reducing overcompliance on the blue card, including by, for example, the construction industries when it is undertaking working in a school.¹³¹

2.3.5 Transitional provisions

The Bill includes transitional provisions in respect of new categories of individuals who would be required to hold a Blue Card. This provides a grace period varying between 6 and 12 months depending upon the particular category of business/employment in which the individual is engaged.

Regulated employment/business	Grace period
Legal support	12 months
Child accommodation services (overnight camps and excursions)	6 months
Gyms and play facilities	6 months
Amusement parks	12 months
Entertaining, beauty and photography services	6 months
Educational services conducted at school	6 months

Source: Explanatory notes, pp 56-57.

2.3.5.1 Submitter comments

In their submission LawRight argued that:

6 months is a wholly inadequate period of time for employers/employees to find out about the relevant changes, seek advice about the impact of the changes on their position, apply for a Blue Card and then ultimately have it assessed by Blue Card services. This is especially the case for more complex cases or for cases involving clients with additional levels of vulnerability.¹³²

Similarly, ISQ highlighted that a 6-month grace period may not be sufficient for the child accommodation services category. This is because schools often organise, pay for and seek consent for organised overnight trips over a year in advance.¹³³ Schools will also need at least a 6-month period to implement the changes to the parental volunteer exemption to ensure the smooth running of regular services and activities.¹³⁴

2.3.5.2 Departmental response

The department responded to submitter’s concerns by stating that:

- the grace periods between 6 and 12 months have been tailored to have particular regard for the impacted sector¹³⁵

¹²⁹ DJAG, correspondence dated 22 July 2024, p 13.

¹³⁰ DJAG, correspondence dated 22 July 2024, p 13.

¹³¹ DJAG, correspondence dated 22 July 2024, p 13.

¹³² Submission 10, p 34.

¹³³ Submission 7, p 7.

¹³⁴ Submission 7, p 7.

¹³⁵ DJAG, correspondence dated 22 July 2024, p 20.

- a person must only have *applied* for a blue card within the grace period in order to receive the protection of the transitional arrangements and, as such, the timeframes are considered reasonable.¹³⁶

2.4 Information sharing

The Bill supports the sharing of information by:

- enabling the chief executive to enter into information sharing agreements with prescribed entities that have information about a person who poses a risk to the safety of a child¹³⁷
- enabling the chief executive to share information about a person with the Queensland College of Teachers¹³⁸
- enabling the chief executive to share information with Blue Card Liaison Officers in First Nations' communities (individuals who are not employed by the department but who provide WWCC advice and support)¹³⁹
- introducing provisions to allow genuine researchers to access de-identified data about the WWCC system.¹⁴⁰

2.4.1.1 *Submitter comments*

PeakCare welcomed the proposal to improve and promote information sharing, noting it did not 'foresee any unintended consequences with the proposed amendments'.¹⁴¹ The QFCC were particularly supportive of amendments proposing to allow 'genuine researchers' access to data about the Blue Card system. The QFCC submitted that this will improve the evidence base about the Blue Card system and 'enable the system to build and maintain its integrity and community confidence.'¹⁴²

However, QLS raised a number of concerns regarding the Bill's proposal to allow the chief executive to share information with the Queensland College of Teachers (QCT), noting that:

- QLS has previously submitted its view on the potential harm caused by providing untested information (i.e. without a finding or admission) to decision-makers in another jurisdiction
- QCT already has powers to obtain police information
- the Bill does not amend the *Education (Queensland College of Teachers) Act 2005* and thus it is unclear whether the QCT could receive this information under its statute.¹⁴³

As a result, QLS stated that:

...we query whether the provision would be better left unchanged and instead, a provision inserted to allow [the] Chief Executive to provide additional information upon request by QCT, so that QCT is able to determine what information it reasonably believes may be relevant to its determination of suitability.¹⁴⁴

¹³⁶ DJAG, correspondence dated 22 July 2024, p 20.

¹³⁷ Explanatory notes, p 10.

¹³⁸ Explanatory notes, p 10.

¹³⁹ Explanatory notes, p 10.

¹⁴⁰ Explanatory notes, p 10.

¹⁴¹ Submission 6, p 7.

¹⁴² Submission 11, p 13.

¹⁴³ Submission 23, p 3.

¹⁴⁴ Submission 23, p 3.

2.4.1.2 Departmental response

The QLS submission was received after submissions closed and therefore was not captured in the department's response to submissions.

2.5 Auditing and monitoring compliance

The Bill proposes a range of amendments to allow the chief executive to more effectively monitor compliance of the Blue Card system. The Bill includes the following measures to support auditing and monitoring of compliance:

- allowing the chief executive to request information they reasonably believe is needed to audit and monitor compliance with the Act and the creation of a related offence regarding the failure to share such information¹⁴⁵
- requiring employers to keep a register of those they employ, including: Blue Card applications, Blue Card holders, those employed in restricted employment and those not required to apply for a Blue Card.¹⁴⁶

2.5.1.1 Submitter comments

PeakCare supports the intent of the proposed amendments to support auditing and monitoring of compliance. However, PeakCare noted that statutory penalties for failure to provide information to a government agency should be considered with caution and supported by public awareness strategies.¹⁴⁷

2.5.1.2 Departmental response

The department responded to submitter comments by highlighting that:

- the offence of failing to comply with a request in a notice issued by BCS contains a maximum penalty of 50 penalty units¹⁴⁸
- the offence is appropriate because it is necessary to support BCS's auditing and monitoring function and provides a way to require the provision of information¹⁴⁹
- the impact of the offence is mitigated to the extent that offence will not apply if the person has a reasonable excuse.¹⁵⁰

2.6 Self-disclosure requirements

The Bill proposes to require applicants and cardholders to self-disclose the existence of a 'disclosable matter' and includes penalties for failure to do so. Disclosable matters include:

- a domestic violence order (DVO) or police protection notice (PPN)
- an adverse interstate WWCC decision
- an allegation of harm substantiated by the chief executive (child safety) in Queensland or in another state or territory

¹⁴⁵ Explanatory notes, p 11.

¹⁴⁶ Explanatory notes, p 11.

¹⁴⁷ Submission 6, p 7.

¹⁴⁸ DJAG, correspondence dated 22 July 2024, p 17.

¹⁴⁹ DJAG, correspondence dated 22 July 2024, p 17.

¹⁵⁰ DJAG, correspondence dated 22 July 2024, p 17.

- disciplinary action taken against a person and other matters relevant to whether the person poses a risk to the safety of children to be prescribed by regulation.¹⁵¹

The Bill also seeks to clarify that the approved form for a Blue Card application may provide for the applicant to disclose whether particular police information exists in relation to the applicant.¹⁵²

2.6.1.1 *Submitter comments*

While there was broad support for the proposed self-disclosure requirements submitters raised concerns about how the requirement would operate in practice. This included concerns that:

- the tests for applications for DVOs and PPNs are lower than for criminal charges and should not be treated in an equivalent manner¹⁵³
- DVOs and PPNs do not require an admission of guilt and can be withdrawn¹⁵⁴
- victim-survivors may have previously consented to receiving a DVO in order to avoid the prospect of a hearing¹⁵⁵
- perpetrators of domestic violence may abuse the self-disclosure system by maliciously taking out DVOs against victim-survivors¹⁵⁶
- applicants may be genuinely unaware of information about themselves that requires disclosure (i.e. historical convictions)¹⁵⁷
- applicants may be unaware of what information requires disclosure, especially if that information has only been prescribed in regulation¹⁵⁸
- the level of fines for the proposed offence of failing to self-disclose (up to 100 penalty units) are excessive given the avowed intent of the measure not being to 'punish' and the number of Blue Card applicants who may be living at or below the poverty line.¹⁵⁹

Submitters thus recommended that:

- the information contained in DVOs and PPNs not be used as part of the risk assessment of the applicant with BCS instead obtaining domestic violence information in the first instance and then following up with QPS if required¹⁶⁰
- that the list of disclosable matters be prescriptive enough that a person will know if a matter requires self-disclosure¹⁶¹

¹⁵¹ Explanatory notes, p 13

¹⁵² Explanatory notes, p 13.

¹⁵³ QLS, submission, pp 7-8.

¹⁵⁴ QLS, submission, pp 7-8.

¹⁵⁵ QLS, submission, pp 7-8.

¹⁵⁶ LawRight, submission 10, p 36.

¹⁵⁷ ATSILS, submission

¹⁵⁸ Professor Tamara Walsh, submission 3, p 4.

¹⁵⁹ QATSICPP, submission 22, p 9.

¹⁶⁰ QLS, submission 23, p 8.

¹⁶¹ Professor Tamara Walsh, submission 3, p 4.

- that financial penalties for applicants failing to disclose their complete criminal history are discretionary, and will not be applied to those who omitted to disclose information in good faith¹⁶²
- decision-makers be given appropriate information and education to ensure that any penalties relating to a failure to self-disclose are applied consistently.¹⁶³

2.6.1.2 *Departmental response*

In response to concerns regarding the Bill's proposed self-disclosure requirements the department stated that:

- The WWC Act was amended by the *Child Protection Reform and Other Legislation Amendment Act 2022* to provide a legislative basis for BCS to request domestic violence information from the Queensland Police Commissioner for the purposes of Blue Card assessments. Extensive justifications were provided during the development of these amendments (including at committee stage). The Bill does not alter these policy settings.¹⁶⁴
- The list of disclosable matters is considered to be sufficiently precise (e.g. requiring a person to disclose whether a domestic violence order was made against them rather than a general requirement to self-disclose information relating to domestic violence).¹⁶⁵
- While the Bill lists the matters which *may* be disclosable, applicants will only be *required* to disclose the specific matters stated in the application form.¹⁶⁶
- BCS has engaged an external consultant to assist in simplifying correspondence and explanatory information provided to applicants (in accordance with the QFCC Review Report).¹⁶⁷
- The definition of 'disclosable matter' does not include police information (which is dealt with separately in the WWC Act).¹⁶⁸

2.7 Other amendments to the WWC Act

2.7.1 Further assessment of persons issued with working with children authority

The Bill proposes to replicate existing sections 235 and 293 of the WWC Act, with some minor consequential changes to reflect the amendments made by the Bill to the decision-making framework.¹⁶⁹

In essence, the proposed new section 246J would empower the chief executive to advise the chief executive of another public sector entity that they may need to undertake a further assessment of the person under the *Public Sector Act 2022*, Chapter 3, Part 3, Division 4 (Further assessment of persons issued with working with children authority).¹⁷⁰

The proposed section would only apply in circumstances where:

¹⁶² QATSCIPP, submission 22, p 8.

¹⁶³ PeakCare, submission 6, p 8.

¹⁶⁴ DJAG, correspondence dated 22 July 2024, p 10.

¹⁶⁵ DJAG, correspondence dated 22 July 2024, p 9.

¹⁶⁶ DJAG, correspondence dated 22 July 2024, p 9.

¹⁶⁷ DJAG, correspondence dated 22 July 2024, p 9.

¹⁶⁸ DJAG, correspondence dated 22 July 2024, p 10.

¹⁶⁹ DJAG, correspondence dated 22 July 2024, p 19.

¹⁷⁰ Explanatory notes, p 44.

- BCS has issued a Blue Card to a person; and
- the chief executive of a public sector entity is making an assessment about whether that person is suitable to be engaged in the public sector in a duty relating to regulated employment; and
- the chief executive asks BCS for advice under this section.¹⁷¹

2.7.1.1 Submitter comments

ATSILS expressed concerns regarding the proposed power of the chief executive to share information, including criminal history, with public sector entities who either propose to employ or continue employing a person in regulated employment. ATSILS suggested that provision of such information—even when the criminal record history does not demonstrate a risk to children – could be prejudicial to an individual’s employment prospects.¹⁷²

2.7.1.2 Departmental response

In response, the department advised that the proposed section is designed to provide additional safeguards and oversight of employees who undertake a child-related duty within a public sector entity. The provision of advice from BCS would only be intended to serve as a trigger to the chief executive that they may need to undertake further screening of the person under the *Public Sector Act 2022*. Under the proposed section, it is still ultimately a decision for the chief executive as to whether any further screening is conducted.¹⁷³

¹⁷¹ DJAG, correspondence dated 22 July 2024, p 21.

¹⁷² Submission 17, p 10.

¹⁷³ DJAG, correspondence dated 22 July 2024, p 19.

Appendix A – Submitters

Sub #	Submitter
1	Name Withheld
2	Kenneth Thorpe
3	Professor Tamara Walsh
4	Legal Aid Queensland
5	Justice Reform Initiative
6	PeakCare Queensland Inc
7	Independent Schools Queensland
8	Queensland Injectors Voice for Advocacy and Action
9	United Workers Union
10	LawRight
11	Queensland Family and Child Commission
12	Confidential
13	First Nations Women’s Legal Services Qld Ltd
14	Queensland Mental Health Commission
15	Sisters Inside Inc
16	Children’s Health Queensland
17	Aboriginal and Torres Strait Islander Legal Service
18	Queensland Human Rights Commission
19	Live Performance Australia
20	Local Government Association of Queensland
21	Non-State Schools Accreditation Board
22	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
23	Queensland Law Society

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Greg Bourke, A/Executive Director, Strategy Policy and Legislation
- Sally McCone, A/Director, Strategy Policy and Legislation
- Michael Coccetti, Principal Legal Officer, Strategy Policy and Legislation

Appendix C – Witnesses at public hearing

Queensland Mental Health Commission

- Ivan Frkovic, Commissioner
- Tegan Nuckey, Senior Project Officer, Lived-Living Experience
- Ebony-Lee Corbyn, Senior Policy Officer, Promotion, Prevention and Early Intervention and Suicide Prevention

Queensland Family and Child Commission

- Luke Twyford, Principal Commissioner
- Natalie Lewis, Commissioner

PeakCare Queensland Inc

- Tom Allsop, CEO

LawRight

- Ben Tuckett, Director, Court and Tribunal Services
- Nikki Hancock, Assistant Director, Court and Tribunal Services