



# **Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018**

**Report No. 12, 56<sup>th</sup> Parliament**  
**Education, Employment and Small Business Committee**  
**February 2019**

## **Education, Employment and Small Business Committee**

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### **Acknowledgements**

The committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

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## Abbreviations

BCS	Blue Card Services, Department of Justice and Attorney-General
Blue card	Under the current Act, a blue card results from a positive notice or a positive outcome of a working with children check
Blue Card Review	QFCC, <i>Keeping Queensland's children more than safe: Review of the Blue Card system – Blue Card and Foster Care Systems Review</i> , 2017
LSA	<i>Legislative Standards Act 1992</i>
Private Member's Bill	Working With Children Legislation (Indigenous Communities) Amendment Bill 2018
Positive notice	Under the current Act, a positive outcome which results in the issue of a 'blue card' following a working with children check
QFCC	Queensland Family and Child Commission
Regulated business	Defined in section 156 and Schedule 1 of the WWC Act; includes businesses such as health, counselling and support services, education and care services, child care services and accommodation services and others.
Regulated employment	Defined in section 156 and Schedule 1 of the WWC Act; includes employment in places such as residential facilities, schools, child care and child accommodation, health counselling and support services, education programs outside school, school crossing supervisors, and sport and recreation directed at or mainly involving children, and others.
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Abuse
WWC Act	<i>Working with Children (Risk Management and Screening) Act 2000</i>
WWCC	Working with children check

## Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018.

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 Bill represents the first stage of a series of legislative reforms that the Attorney-General and Minister for Justice proposes to introduce into the Parliament. The Bill implements recommendations of the Queensland and Family Commission Blue Card Review, and measures to strengthen working with children checks.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the department, the committee recommends that the Bill be passed.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and appeared at the committee's public hearing. I also thank Parliamentary Service staff and staff of the Department of Justice and Attorney-General.

I commend this report to the House.

A handwritten signature in black ink, reading "Leanne Linard". The signature is written in a cursive, flowing style.

Leanne Linard MP  
**Chair**

## Recommendations

### Recommendation 1

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The committee recommends the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 be passed.





## 1 Introduction

### 1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility include:

- education
- industrial relations
- employment and small business
- training and skills development.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

### 1.2 Inquiry process

The Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly on 13 November 2018 and initially referred to the Legal Affairs and Community Safety Committee (LACSC). The Committee of the Legislative Assembly determined that the Bill would be considered by this committee; the Bill was transferred to the committee on 15 November 2018. The committee was required to report to the Legislative Assembly by 14 February 2019.

Concurrent with its inquiry into the Bill, the committee inquired into a Private Member's Bill, the Working with Children Legislation (Indigenous Communities) Amendment Bill 2018. The committee has reported separately on that Private Member's Bill. Both Bills propose amendments to the issuing of blue cards, although the Private Member's Bill relates only to blue cards in discrete Aboriginal and Torres Strait Islander communities.

On 20 November 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. Ten submissions were received on the Bill, including one which commented on both the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018, and the Working with Children Legislation (Indigenous Communities) Amendment Bill 2018.

On 16 January 2019 the committee held a public briefing with the department, and a public hearing about this and the Private Member's Bill, to hear from invited witnesses. Witnesses at the public hearing were invited to provide any further comments as answers to questions on notice following publication of the department's response to issues raised in submissions. Transcripts are published on the committee's web page.

The committee received written and oral briefings about the Bill from the Department of Justice and Attorney General (the department) and written advice in response to matters raised in submissions. After the public briefing and public hearing, the department was also invited to provide any further commentary.

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

See Appendix B for a list of officials who briefed the committee, and Appendix C for a list of witnesses relevant to this Bill.

The submissions, the department's written briefing, response to submissions and further comments, and transcripts of the public briefing and hearing are available on the committee's webpage.<sup>2</sup>

### 1.3 Policy objectives of the Bill

The explanatory notes state the policy objectives of the Bill are to:

- give effect to the Government's election commitment to amend the *Working with Children (Risk Management and Screening) Act 2000* (the WWC Act) and introduce automated blue card application processes to prevent people commencing paid work while a blue card application is pending. This is referred to as the 'No Card, No Start' election commitment, and
- implement recommendations from the Queensland Family and Child Commission (QFCC) reports *Keeping Queensland's children more than safe: Review of the blue card system* (Blue Card Review Report) and *Recommendation 28 Supplementary Review: A report on information sharing to enhance the safety of children in regulated home-based services* (the Supplementary Review).

When introducing the Bill the Attorney-General and Minister for Justice said the government has broadly supported the intent of the QFCC recommendations, and the Bill is the first stage in a series of legislative reforms that will be brought before the House.<sup>3</sup> A summary of key findings of the Blue Card Review are outlined in chapter 2 of this report.

### 1.4 Government Consultation on the Bill

The explanatory notes state that two consultations were held on the proposed amendments. One consultation session was with the Blue Card System Review Implementation Reference Group, and the non-government attendees included: Queensland Catholic Education Commission; Surf Life Saving Queensland; Aboriginal and Torres Strait Islander Legal Service; and Junkuri Laka. A second consultation session was attended by representatives of 31 non-government stakeholders.

Stakeholders at the consultation sessions were provided with an overview of the current position under the WWC Act, the rationale for change and the proposed amendments. Attendees were provided with guides, including a summary of the proposed amendments, and were invited to provide feedback. The explanatory notes state that there was general support for the Bill and its objectives.

### 1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the department, the committee recommends that the Bill be passed.

#### **Recommendation 1**

The committee recommends the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 be passed.

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<sup>2</sup> See [www.parliament.qld.gov.au/EESBC](http://www.parliament.qld.gov.au/EESBC).

<sup>3</sup> Queensland Parliament, Record of Proceedings, 13 November 2018, pp 3384 – 3385.

## 2 Current Act and Blue Card Review

### 2.1 Current *Working with Children (Risk Management and Screening) Act 2000*

#### 2.1.1 Principles for administration of the Act

The WWC Act provides the framework for working with children checks, commonly referred to as blue cards. Section 6 of the WWC Act states that it is to be administered under two principles:

- the welfare and best interests of a child are paramount
- every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing.

#### 2.1.2 Current blue card screening

A briefing by the department provided an overview of the current blue card system, part of which stated:

*The 'blue card' check assesses:*

- *a person's national criminal history information—this captures all charges or convictions for offences in Australia, regardless of when or where the offending occurred (this includes spent convictions and pending and non-conviction charges as well as situations where no conviction was recorded);*
- *child protection offender prohibition orders (whether a person is a respondent or subject to an application);*
- *disqualification orders imposed by a court;*
- *whether a person is subject to reporting obligations under the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 or Dangerous Prisoners (Sexual Offenders) Act 2003;*
- *disciplinary information held by certain professional organisations including teachers, child care licensees and foster carers; and*
- *investigative information (which is information that the police commissioner may provide in relation to police investigations into allegations of serious child-related sexual offences, even if no charges were laid – this can only occur in very discrete circumstances as defined under section 305 of the WWC Act).*

*The blue card system disqualifies certain people upfront and prevents people from working with children whose past behaviour indicates they are not eligible to enter regulated employment or carry on a regulated business.*

*Blue card screening is not required for every environment where a child may be present. Rather, screening occurs in environments where children are receiving services that are:*

- *mandatory (that is, required by law)—for example, schools, foster and kinship care and youth detention;*
- *essential (that is, services regulated by law)—for example, education and care services; and*
- *developmentally focused (that is, areas which support and foster children's development)—for example, sporting, cultural and recreational activities.*

*There are 15 categories of regulated employment and 11 categories of regulated business. These are set out in Schedule 1 of the WWC Act.*

*Currently, people can only apply for a blue card where they have an agreement to undertake regulated employment with an organisation (either on a paid or voluntary basis) or where they are proposing to carry on a regulated business. A person's employer is considered a 'notifiable person' under the WWC Act. This means the employer will be given notifications from BCS [Blue*

*Card Services] about changes to the blue card status of the employee (for example, if the person's application has been withdrawn or blue card suspended). The onus is on the employer to 'link' the employee to the organisation to ensure they receive these notifications.<sup>4</sup>*

### 2.1.3 Key terms and concepts

Some of the important terms and concepts in the WWC Act are:

- *disqualified person*: a person convicted of a disqualifying offence, such as a child-related sex offence, child pornography offence or child murder; or who is subject to a child protection offender prohibition order, sexual offender order, or disqualification order made by a court; or a reportable offender with current reporting obligations
- *relevant disqualified person*: a person convicted of a disqualifying offence and a term of imprisonment was imposed, or a person subject to a prohibition order, sexual offender order or disqualification order
- *eligibility declaration*: a disqualified person (other than a 'relevant disqualified person') may apply for an eligibility declaration, which enables the person to apply for a blue card
- *serious offence*: offences are set out in schedules to the WWC Act, including for example: offences of a sexual or violent nature; child pornography offences; kidnapping; cruelty to children; burglary and drug offences
- *exceptional case*: if a negative decision is proposed where there is police information or disciplinary information, whether or not there is an exceptional case must be considered (see 2.1.4.1 below for a summary of what the decision maker must have regard to).

### 2.1.4 Assessment and decisions about a blue cards

As noted above, the WWC Act is to be administered according to the principle that the best interests of a child are paramount. The information that is assessed and the process under the WWC Act is summarised in the guidelines issued by the department:

Type of information assessed	Assessment process
<ul style="list-style-type: none"> <li>• Conviction for a 'serious offence'</li> <li>• Person was previously a 'relevant disqualified person' but is no longer</li> </ul>	Blue card <b><i>not issued unless</i></b> the decision maker is satisfied there is an exceptional case in which it would not harm the best interests of children to issue a blue card
<ul style="list-style-type: none"> <li>• Investigative information</li> <li>• Disciplinary information</li> <li>• Charge for offence (other than current charge for a disqualifying offence, where application will be withdrawn)</li> <li>• Conviction for an offence, other than a serious offence</li> </ul>	Blue card <b><i>must be issued unless</i></b> the decision maker is satisfied there is an exceptional case in which it would not be in the best interests of children to issue a blue card
<ul style="list-style-type: none"> <li>• No police information or disciplinary information</li> </ul>	A blue card must be issued

Source: Department of Justice and Attorney-General, Blue Card Services, *Guidelines for dealing with information obtained under Chapter 8 of the Working with Children (Risk Management and Screening) Act 2000*, p 8.

#### 2.1.4.1 Exceptional case

As the above table indicates, where there is a conviction, charge, investigative information or disciplinary information about a person, a decision maker under the WWC Act must be satisfied that

<sup>4</sup> Department of Justice and Attorney General, correspondence dated 4 December 2018, pp 2-3.

there is an exceptional case, considering the best interests of children, before a blue card could be issued.

In considering whether or not there is an exceptional case where a person has been convicted or charged with an offence, section 226 of the WWC Act requires a decision maker to have regard to:

- whether it is a conviction or charge
- whether the offence is a serious offence and, if it is, whether it is a disqualifying offence
- when the offence was committed or is alleged to have been committed
- the nature of the offence and its relevance to employment, or carrying on a business that involves or may involve children
- in the case of a conviction – the penalty imposed by the court and, if the court decided not to impose an imprisonment order for the offence or not to make a disqualification order, the court's reasons for its decision
- any information about the person obtained from the Director of Public Prosecutions or given to the chief executive of Corrective Services under sections 318 and 319 of the WWC Act
- any report about the person's mental health given to the chief executive by a registered health practitioner with the person's consent under section 335; information from the Mental Health Court under section 337, or from the Mental Health Tribunal under section 338
- anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the person.<sup>5</sup>

If a decision maker is considering whether or not there is an exceptional case where there is investigatory or disciplinary information about a person, sections 227 and 228 set out the matters to which the decision maker must have regard.

A person about whom a negative decision is proposed must be invited, under section 229 of the WWC Act, to make a submission about whether there is an exceptional case, or why the chief executive should issue a positive notice, or not issue a negative notice.

## **2.2 Queensland Family and Child Commission - Blue Card Review**

### **2.2.1 Introduction**

The QFCC commenced a review of the WWC Act and its operation in 2016, and reported in 2017. The review included consideration of other reports and recommendations, including those of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and the 2013 Queensland Child Protection Commission of Inquiry report.

The QFCC report, *Keeping Queensland's children more than safe: Review of the blue card system* (the Blue Card Review Report) contains 81 recommendations. The QFCC also undertook a Supplementary Review<sup>6</sup> which arose from a recommendation in an earlier QFCC report into children missing from out-

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<sup>5</sup> Working with Children (Risk Management and Screening) Act 2000.

<sup>6</sup> QFCC, *Keeping Queensland's children more than safe: Review of the Blue Card system - Blue Card and Foster Care Systems Review*, 2017, Attachment 1, pp 244-245  
[https://www.qfcc.qld.gov.au/sites/default/files/final\\_report\\_BC\\_review.pdf](https://www.qfcc.qld.gov.au/sites/default/files/final_report_BC_review.pdf)  
Queensland Family and Child Commission, *Recommendation 28: Supplementary Review – A report on information sharing to enhance the safety of children in regulated home-based services*, December 2016, <https://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/when-a-child-is-missing-report.pdf>

of-home care.<sup>7</sup> The focus of the Supplementary Review was the assessment, approval, monitoring and responding to risks in home-based care services (e.g. foster care, family day care).

As noted above, some of the amendments in the Bill arose from recommendations in the QFCC Blue Card Review Report and the Supplementary Review, and further legislative amendments are anticipated.

### **2.2.2 Recommendations of the QFCC reviews**

The Blue Card Review report recommended significant reforms to the blue card system. They included:

- overarching reforms including changes to legislation and review of whether all similar screening processes could be streamlined or consolidated
- strengthening the system, including moving toward national consistency
- streamlining the blue card system, including online applications and appropriate proof of identity to improve efficiency
- an online organisational portal to help regulated organisations meet their obligations electronically
- automating risk assessment, file management and information-sharing processes
- improving support and maintaining public confidence in the system including an education and community awareness strategy for parents, carers and the community, a specific recommendation about support to Aboriginal and Torres Strait Islander communities and applicants.<sup>8</sup>

In summary, the Supplementary Review recommended:

- establishment of a centralised register for recording and reporting on all child-related employment or businesses conducted from the home
- expanded functions for BCS to classify and analyse blue card data to identify trends relevant to risks to children
- legislative amendments about matters including provision of information from police to BCS, notification of changes in blue card status to the Department of Education
- improved policies and procedures
- that all adult household members of stand-alone care services are required to hold a blue card, along with regular visitors to all regulated home-based services
- work between agencies relating to: international criminal history information; a consistent definition of regular visitor for home-based services; a model to make family care and stand-alone carers subject to the same level of suitability screening as foster and kinship carers.

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<sup>7</sup> QFCC, *When a child is missing: Remembering Tiahleigh – A report into Queensland's children missing from out-of-home care*, July 2016, <https://www.qfcc.qld.gov.au/kids/monitoring-reviewing-systems/when-child-missing>

<sup>8</sup> QFCC, *Review of the Blue Card System*, pp 6 - 8

### 3 Examination of the Bill

#### 3.1 Introduction

The Bill proposes to amend the WWC Act to implement a Government election commitment to introduce a ‘No card, No start’ policy so that people are prevented from commencing paid work while a blue card is pending, and to implement recommendations of the QFCC Blue Card Review.

When introducing the Bill the Attorney-General and Minister for Justice said the Bill is the first stage of legislative reforms that will be introduced. It will ‘implement the bulk of the QFCC recommendations from its final report. It also lays the foundations for other reforms to be progressively implemented over a period of time ...’<sup>9</sup>

The Bill is proposed to commence by proclamation, and the department advised the committee that work is underway to plan implementation of the proposed amendments. A Blue Card Review Implementation Reference Group was established by BCS in March 2018:

*to ensure that the views of key organisations that regularly engage with the blue card system are considered in the implementation of recommendations arising from recent system reviews. ... it includes representatives from Bravehearts, Aboriginal and Torres Strait Islander Legal Services, Junkuri Laka (a community legal service based in Mornington Island), PeakCare Queensland, QSPORT, Independent Schools Queensland, Surf Life Saving Queensland, Kummara Association and the Queensland Catholic Education Commission.*<sup>10</sup>

#### 3.2 Support for the Bill

All submitters, except Sisters Inside, supported the Bill.<sup>11</sup>

The Queensland Catholic Education Commission (QCEC) broadly supported the changes to the blue card system. The QCEC said the changes ‘will improve and enhance the rigour of the blue card system, including such things as photographs on blue cards, the expansion of the disqualifying offences and the stay of overturning a negative notice pending an appeal.’<sup>12</sup>

The QFCC supported the intention of the Bill to implement recommendations from the reviews it undertook into the blue card and home-based care services. The submission from the Queensland Teachers Union (QTU) and Independent Education Union of Australia (Queensland and Northern Territory) (IEUA) ‘unequivocally’ supported the ‘No card, No start’ policy, and proposed changes to the Bill. The Non-State Schools Accreditation Board supported the changes in the Bill and raised a potential drafting issue which the department advised would be considered further.<sup>13</sup>

Sisters Inside, however, did not support the ‘No card, No start’ policy. Sisters Inside acknowledged the policy was an election commitment, but described it as a ‘punitive legislative shift that does not appear to be justified by the available information about cases involving ‘high risk’ individuals’. Sisters Inside noted that the Royal Commission recommended that applicants ought to be allowed to commence employment while their application is processed, with safeguards in place.<sup>14</sup>

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<sup>9</sup> Introductory speech, Hansard, 13 November 2018, p 3385.

<sup>10</sup> Department of Justice and Attorney-General, *Annual Report 2017-18*, p 28.

<sup>11</sup> Submissions 8, 9, 10, 11, 12, 13, 14.

<sup>12</sup> Public hearing transcript, p 17.

<sup>13</sup> Submission 8 and Department of Justice and Attorney-General, correspondence dated 10 January 2019.

<sup>14</sup> Sisters Inside, correspondence dated, 21 January 2019.

### 3.3 Terminology simplified

The QFCC Blue Card Review noted that the WWC Act is complex, and recommended the Government undertake an overarching review of the Act to implement its recommendations and to ‘simplify the laws and make it easier for stakeholders to understand their obligations.’<sup>15</sup>

The Bill proposes amendments to key terminology that is used throughout the WWC Act. The explanatory notes state the changes to terminology are consistent with how other jurisdictions refer to their checks and outcomes.<sup>16</sup> Most of the proposed amendments to terminology are in Schedule 1 of the Bill. The table below summarises the changes for applications for a blue card.

Steps in application for a blue card	Terminology in current WWC Act	Amendments proposed in the Bill
Application for a blue card	‘Prescribed notice’	Application for a working with children check
Approval of application for a blue card	‘Positive notice’	Working with children clearance
Application refused	‘Negative notice’	Negative notice
Blue card	‘Positive notice blue card’	Working with children card

Terminology relating to applications by police officers and registered teachers to undertake regulated employment or run a regulated business will be simplified and aligned with the amendments summarised above. For example, a ‘positive exemption notice’ will become a ‘working with children exemption’ and a ‘negative exemption notice’ will become a ‘negative notice’.<sup>17</sup>

The explanatory notes also state that amended collective terms will reduce duplication in the WWC Act and in other Acts:

- an application for a working with children check or a working with children check for an exemption will be a ‘working with children check application’, and
- a working with children clearance or working with children exemption will be a ‘working with children authority’.<sup>18</sup>

### 3.4 Requirements for working with children check

#### 3.4.1 Blue card required before starting employment – ‘No card, No start’ policy

##### 3.4.1.1 Current arrangements

Currently under the WWC Act a person must have an agreement to work or volunteer with a regulated organisation before applying for a working with children check. A person is able to commence regulated employment while their application for a blue card is pending; an application cannot be obtained independently, but is linked to an agreement to work for an employer. The employer is required to check the person’s identification documents before an application is lodged.

Ten weeks before a blue card expires, BCS provides 10 weeks’ notice of renewal. Some stakeholders have expressed concern that renewal notices have not been received, for example through postal delays to remote locations.

<sup>15</sup> QFCC, *Review of the Blue Card System*, p 29.

<sup>16</sup> Explanatory notes, p 6.

<sup>17</sup> Under the WWC Act registered teachers and police who engage in other work with children obtain an exemption notice; police checks for their professional roles are undertaken under other legislation.

<sup>18</sup> Explanatory notes, p 6.



#### 3.4.1.2 Amendments

The Bill uncouples an employee's blue card from an employer, and removes the requirement for an agreement to work before the person applies for a card. People who intend to work in child-related regulated work will be able to apply for a working with children card independent of employment. A blue card application for a volunteer remains linked to the regulated organisation.

Clause 17 of the Bill inserts amendments to screening requirements. Under proposed section 173 an employer must give notice to the chief executive about employing a person in regulated employment and must take reasonable steps to verify the person's identity, for example by viewing the person's working with children card that includes their photograph.

It would be an offence for a person to start or continue in regulated employment without a working with children clearance under proposed section 176A. The maximum penalty is 100 penalty units, or if it is an aggravating circumstance, it is 500 penalty units or five years imprisonment.

It would also be an offence for an employer to employ or continue to employ a person in regulated employment unless the employee holds a working with children clearance, and the employer has notified the chief executive about employing the person (proposed section 175). The penalty is increased from the equivalent provision in the WWC Act; and if it is an aggravating circumstance for the offence (for example, the employer knows the employee holds a negative notice) the penalty is higher, and includes up to two years imprisonment. The explanatory notes state the increased penalty 'signifies the importance of this employer obligation'.<sup>19</sup>

Under the 'No card, No start' policy, people who propose to work in regulated employment will in future apply for a working with children clearance before an offer of employment. This should address concerns about a person who commences work pending assessment for a blue card and then receives a negative notice, making them unable to continue regulated employment.

#### 3.4.1.3 Concerns about current and potential future timeframes

The QFCC Blue Card Review reported a range of concerns about delays in application and assessment processes which had an impact on a person's employment in a regulated organisation. Some of those concerns will be addressed by potential employees obtaining a working with children clearance before the offer of employment, as an applicant will no longer require an offer of employment for an application to be made.

The department advised that average processing times in 2017-18 were 15.6 business days where there was no assessable information about the applicant, 37.6 business days where there was assessable information that was less complex.

Education stakeholders emphasised that schools often need to employ staff at short notice, and it would be difficult for schools to function if processing times are not significantly reduced. Dr Perry said QCEC:

*.. strongly endorses the planned improvements to processing time lines, supported by the implementation of a new online portal system that we have been advised will likely reduce processing times to approximately five working days. Therefore, provided the no card, no start policy is adequately supported by improved processing time frames, the QCE supports the introduction of the new policy as it will provide a greater level of coverage of blue cards from the start of child related employment.*<sup>20</sup>

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<sup>19</sup> Explanatory notes, p 4.

<sup>20</sup> Public hearing transcript, 16 January 2019, p 16

Mr Robertson, ISQ, also acknowledged the proposed improvements to efficiency and suggested that processing times should be reported and reviewed after 12 months of the 'No card, No start' policy.<sup>21</sup>

#### 3.4.1.4 Offence and penalty for employer to 'continue to employ'

Proposed section 175, inserted by clause 17, creates an offence if an employer employs, or continues to employ a person in regulated employment unless they hold a working with children clearance and the employer has notified the chief executive they propose to employ the person. The maximum penalty for an employer is a fine of 100 penalty units (\$13,055), or if there is an aggravating circumstance, up to two years imprisonment (penalties in the Bill are considered in chapter 4 of this report).

Stakeholders raised concerns about the offence and increased penalty for an employer to continue to employ a person without a current working with children card. The concerns focused on the importance of the success of reforms to streamline processes and reduce timeframes, the renewal of working with children cards and the potential for administrative issues to result in criminal charges in relation to school staff.

The QTU and IEUA submission argued that errors in paperwork by school staff should not be criminalised; and said while it may be justifiable to impose a significant penalty including a jail term for employing a person without a working with children card, they argued such a penalty should not apply to an employer who 'continues to employ'.<sup>22</sup>

Ms Drew, legal adviser to the QTU said the 'No card, No start' policy 'helps enormously because no longer do we have the difficulty of managing when Blue Card Services is going to make a decision on the application.' However, QTU remained concerned about receipt of information about renewal of working with children cards, or that a staff member has committed an offence, and there is an obligation for the employer to act immediately to not continue to employ the person. Improved notification times with the proposed online portal were acknowledged, however QTU suggested a notification may not be picked up on the same day, or if received during a school holiday period, the person would technically continue to be employed.<sup>23</sup>

Independent Schools Queensland (ISQ) expressed concern that if an employee is suspended, it may be difficult for a school to know what to do between the suspension, review and appeal.<sup>24</sup>

#### 3.4.1.5 Department's advice

The department advised that employers have an important role as gatekeepers of regulated employment. It noted that generally the maximum penalty for an employer is 100 penalty units for employing or continuing to employ a person who does not have a working with children clearance.

The offence for 'continuing to employ' would not apply to an employer in relation to an employee who has applied to renew their working with children clearance before it expires. New section 191(2), inserted by clause 28, provides that a working with children authority continues in force pending a decision. The current authority will remain in force from the day it would otherwise end until the earliest of the following:

- the application is decided or withdrawn
- the current clearance is cancelled.

The department advised that employers will be notified of forthcoming expiry of a clearance through the organisational portal. Blue card holders are currently contacted approximately 10 weeks before

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<sup>21</sup> Independent Schools Queensland, correspondence dated 21 January 2019.

<sup>22</sup> Submission 11.

<sup>23</sup> Ms Drew, Public hearing transcript, 16 January 2019, p 6.

<sup>24</sup> ISQ, Public hearing transcript, 16 January 2019, p 13.

their card expires, by letter or text message and the department advised it will consider other types of notification during development of online service changes. The onus will be on employees to apply for a renewal before expiry of their working with children clearance in order to continue in regulated employment.

The maximum penalty for an employer who employs or continues to employ a person without a clearance is up to two years imprisonment. That penalty applies only in an aggravating circumstance, including:

- the employee holds a negative notice and the employer knows or ought reasonably to know (employers will be notified of this via the organisational portal or written correspondence once they have established a link to the employee)
- the chief executive has given the employer a notice that states the employee's working with children authority has been cancelled, or
- the chief executive has given the employer a withdrawal notice for a working with children application made by the employee because they have been charged with a disqualifying offence.<sup>25</sup>

### **3.4.2 Disqualifying offences expanded**

The Royal Commission recommended expansion of the range of offences that would result in an automatic negative notice to include kidnapping of a child and bestiality. The Blue Card Review agreed, but noted:

*However, it will be important to make sure the system does not disqualify people with convictions for kidnapping offences that arise in a family law context. There is a range of complex circumstances that could give rise to a charge or conviction in these circumstances, and it is appropriate that they are fully considered as part of a WWCC.<sup>26</sup>*

Clause 70 amends Schedule 4 (Current disqualifying offences) to expand the offences which prevent a person holding a working with children clearance. The additional offences are:

- bestiality
- kidnapping (if the offence was committed against a child and the context in which the offence was committed was not familial)
- kidnapping for ransom (if the offence was committed against a child)
- child-stealing (if the context in which the offence was committed was not familial)
- abduction of a child under 16 (if the context in which the offence was committed was not familial)

Also, the offences of unlawful homicide and rape are currently disqualifying offences if committed against a child; the amendment in clause 70 will make them disqualifying offences irrespective of the age of the victim.

There was broad support from stakeholders to expand the disqualifying offences.

### **3.4.3 Assessment and screening – decisions whether or not there is an 'exceptional case'**

Section 2.1.4 summarises the assessment and screening process for a blue card application. Where there is police information (about charges and convictions) about an applicant, a decision is made by BCS whether or not there is an exceptional case in which it would be in the best interests of children to issue a blue card.

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<sup>25</sup> Department of Justice and Attorney-General, correspondence dated, 10 January 2019.

<sup>26</sup> QFCC, Blue Card Review, p 66.

The department advised the committee that in 2017-18 BCS:

- processed 266,761 applications and 96,005 authorisation forms (which link an applicant or cardholder to a new organisation) – a total of 362,766
- identified 2,946 cases where individuals represented a high risk and were prohibited from working with children.<sup>27</sup>

LawRight advised it had 34 clients with blue card matters in 2017-18, and has 33 matters to date for 2018-19. At the public hearing LawRight said the onus is on BCS to ensure that those cases where a person should not be working with children are determined promptly and given priority.<sup>28</sup>

LawRight described the following case study to highlight concerns about the assessment process:

Kay commenced work in the disability support sector and applied for a blue card. The compulsory police check raised no concerns. Six months into her employment, Kay was advised by Blue Card Services (BCS) that her application for a blue card was being assessed as an exceptional case and she was invited to make a submission.

Fourteen months into her employment, Kay was issued with a negative notice and consequently was out of work. The negative notice was based on a series of minor charges over a two-month period, three years earlier. The charges resulted in no conviction and a small fine. She had no other criminal history.

At the time of the charges, Kay was dealing with the collapse of an abusive marriage, and for the first time, she briefly fell into a pattern of drug abuse. Kay successfully engaged in rehabilitation and she has not since used drugs. Kay's submission to BCS advised of this, and provided personal and professional references to support her position. She was still unsuccessful in getting a blue card.

Kay applied for a review by QCAT which overturned the BCS decision and a positive notice was ordered, 22 months after her original application. At that stage she was out of a job.<sup>29</sup>

It is important to note that the changes proposed by the Bill would not allow a person to commence employment without a working with children clearance.

The Blue Card website reports the following information about the processing times it aims for, and the December and year-to-date times:

	Target	Dec 2018	6 mths to Dec 2018
Application with no police information	85% within 28 business days	5 business days	9 business days
Application with police or disciplinary information	90% within 4 months	92.7%	93.6%

#### 3.4.3.1 *Departmental advice*

The department advised that the online automated systems aim to significantly reduce processing timeframes, and in line with the Royal Commission report it is proposed that processing will be reduced to an average of five business days if a person has no assessable police or disciplinary information. Card holders are contacted approximately 10 weeks before expiry of their blue card; the department

<sup>27</sup> Department of Justice and Attorney-General, Briefing, 4 December 2018, p 1.

<sup>28</sup> LawRight, Public hearing transcript, 16 January 2019, p 4.

<sup>29</sup> Drawn from evidence of Ms Anderson, LawRight, Public hearing transcript, 16 January 2019.

advised it will consider expanding the types of notifications and reminders to applicants and cardholders as part of the online service changes.<sup>30</sup>

#### Committee comment

The committee notes that the provisions of the Bill which implement the 'No card, No start' policy will address the concerns raised by LawRight and other stakeholders about people who commence employment and are later assessed as ineligible for a working with children card. As an employee will no longer be able to commence regulated employment without a working with children card, disruption to employment will not occur.

The committee notes that the QFCC made recommendations for policy and procedural changes to improve assessment processes and times, to address the potential for delays in complex assessments. The committee also notes the reforms in this Bill which are intended to improve processing times.

### **3.4.4 'High risk' person cannot rely on an exemption**

#### 3.4.4.1 Current situation and Blue Card Review

Currently, certain people may undertake child-related work without a blue card if they fall under one of the exemptions in the WWC Act. They include a volunteer parent in certain circumstances, a volunteer aged under 18, or a person whose employment does not meet the minimum frequency for regulated employment.

The QFCC Blue Card Review reported that stakeholders considered it unacceptable for a person with a negative notice (i.e. a blue card had been declined) to rely on an exemption to work with children as a parent volunteer or short term employee.

#### 3.4.4.2 Amendment

The Bill proposes to amend section 156 (Regulated employment) and Schedule 1 of the Act so that a working with children check is not required for:

- unpaid employment of a child (under 18) unless they are a trainee student of an education provider and the unpaid employment is part of a course
- a person who is employed to work and works for not more than seven days in a calendar year
- volunteer parents in schools, education and care services, child care, churches, clubs and associations and sport and active recreation.<sup>31</sup>

#### 3.4.4.3 Stakeholder views

##### *Volunteers who are restricted persons*

Dr Perry told the public hearing the QCEC supported the amendment, and raised the practical implementation for organisations of identifying that a volunteer may be a restricted person. In light of the offence for an employer to continue to engage a person who does not have a working with children card, it may be challenge for schools to be aware of the status of a volunteer.<sup>32</sup> In response to a question Dr Perry clarified that schools would want reminders and information provided in relation to volunteers. An issue for Catholic schools is the differing arrangements between 'stand-alone' schools, and large diocesan systems where information would be centrally managed, so that notifications are directed appropriately.<sup>33</sup>

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<sup>30</sup> Department of Justice and Attorney-General, correspondence dated 10 January 2019.

<sup>31</sup> Clause 10 (new section 156) and explanatory notes, p 11.

<sup>32</sup> Public hearing transcript, p 18.

<sup>33</sup> Public hearing transcript, p 20.

The department advised that resources will be developed in consultation with stakeholders to support organisations and employers to better identify and risk manage a restricted person. Preliminary consultation has been undertaken and stakeholders indicated that an employer's guide including induction materials would assist employers with managing the process.<sup>34</sup>

#### *Volunteer parents who billet students*

ISQ's submission sought clarification of the impact of amended section 156 on schools where families billet students for sport and other events, and the WWC Regulation which provides for volunteer activities of 10 days or less in a year, not more than twice a year.<sup>35</sup>

The department advised that, to give effect to the simplified frequency test, before commencement of new section 156, it is proposed to remove the exceptions in Schedule 3 of the WWC Regulation which exempt certain types of child-related service if they occur not more than twice in the same year and the periods are for 10 days or less.<sup>36</sup>

The committee notes that the concerns raised relate only to exempted parent volunteers and employees who work no more than seven days a year. Other volunteers will apply for a working with children check and be linked to a regulated organisation. Information, for example, that a volunteer has become a restricted person, or their card has been suspended, would be provided via the proposed online organisational portal. The committee notes that key stakeholders are being consulted about implementation arrangements for the organisational portal.

#### **3.4.5 Online organisational portal**

The Bill provides for establishment of online applications and an online organisational portal. Proposed section 398A(1) (inserted by clause 53) enables the chief executive to approve an information system for:

- generating, sending, receiving, storing or otherwise processing electronic communications between the chief executive and another person or
- generating a decision of the chief executive, other than a decision about whether or not there an exceptional case for a person; or another decision prescribed by regulation.

The department advised that consultation with organisations will continue through 2019 as the portal is further developed to ensure that it is responsive to stakeholders' expectations and needs. A series of change management activities will be undertaken to ensure organisations are supported to navigate the changes.<sup>37</sup>

The explanatory notes state that all of the current interactions between organisations and the chief executive are authorised by the WWC Act, and:

*The Bill will provide sufficient flexibility so that notifications can continue to be made manually in the approved form or through the online organisational portal. .... New section 344A formalises that the chief executive may give a range of authorised entities information electronically through the portal (this includes information about a working with children check application, a working with children authority or negative notice held by a person as well as other notifications given to an entity under the WSC Act).*<sup>38</sup>

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<sup>34</sup> Department of Justice and Attorney-General, correspondence dated 21 January 2019, p 9.

<sup>35</sup> Submission 11, p 4.

<sup>36</sup> Department of Justice and Attorney-General, correspondence dated 10 January 2019.

<sup>37</sup> Department of Justice and Attorney-General, correspondence dated 21 January 2019.

<sup>38</sup> Explanatory notes, p 8.

Proposed section 344B provides for the use of information obtained under section 344A about a person. The explanatory notes state new section 344B:

*..provides for the confidentiality of information given or accessed by an authorised entity under section 34A. It provides that the person must not use the information, or disclose or give access to the information to anyone else, unless it is permitted under section 344B(3).<sup>39</sup>*

#### 3.4.5.1 Drafting issue

Proposed subsection 344B(3) sets out the circumstances in which information may be used, disclosed or another person given access, and 344(4) and (5) refer to the *Information Privacy Act 2009* and the information privacy principles.

The Information Commissioner's submission suggested:

*.. the inclusion of subsections 344B (3)(e), (4) and (5) leads to a lack of certainty and clarity about the circumstances in which the person receiving information under section 344A may use, disclose or give access to this information and the interaction of s344B with Commonwealth and state privacy legislation.<sup>40</sup>*

In its comments on submissions the department said the intent of section 344B is to provide maximum flexibility to entities with respect to the circumstances in which they may use or disclose information under section 344A while still safeguarding the confidentiality of information. The department advised section 344B(3)(e) provides that a person may use, disclose or give access to the information if the person is required by a privacy law to comply with the information privacy principles. The department also noted the drafting is consistent with a provision in other legislation, and advised it would further consider the feedback from a drafting perspective.<sup>41</sup>

#### Committee comment

The committee invites the Attorney-General and Minister for Justice to advise the House during the second reading debate whether any amendment is required to proposed section 334 in relation to privacy legislation and privacy principles.

#### **3.4.6 Finality of QCAT decisions – automatic stay**

The explanatory notes describe the current situation and the policy implemented by the Bill:

*Currently, a person who has been issued with a negative notice who is not a disqualified person, may apply to QCAT for a review of the decision within 28 days of the notice being given.*

*The chief executive may appeal QCAT's decision if it decides to revoke a person's negative notice and issue the person with a blue card. At this time, the chief executive may seek a 'stay' of QCAT's decision which would stop the applicant from starting regulated employment until the appeal is finalised. QCAT may also order a 'stay' on its own initiative. However, if the request for a 'stay' is unsuccessful, the person may begin performing regulated employment, despite an appeal having commenced.*

*The Bill provides that where QCAT overturns a decision by the chief executive to issue a negative notice, the order of QCAT is automatically 'stayed' until one of the following happens: the period in which the chief executive had to appeal QCAT's decision expires; or, if an appeal is lodged, the appeal is finally decided. This is a further safeguard to complement the 'No Card, No Start'*

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<sup>39</sup> Explanatory notes, p 40.

<sup>40</sup> Information Commissioner, submission 6.

<sup>41</sup> Department of Justice and Attorney-General, correspondence dated 10 January 2019.

*requirement and is consistent with the principles of the WWC Act that the welfare and best interests of a child are paramount.*<sup>42</sup>

LawRight's submission supported the current arrangements that allow a person to start work where QCAT sets aside a decision of the chief executive to issue a negative notice, pending an appeal.<sup>43</sup> At the public hearing LawRight suggested the stay provisions in the Bill are unnecessary and will disadvantage clients, many of whom are already from marginalised and vulnerable backgrounds:

*The impact of this amendment on our clients will be that, after navigating a lengthy and stressful QCAT process, they will be further prevented from commencing regulated employment for up to 87 days, which is the maximum amount of time that the appeal period can go for. Of course if Blue Card Services do appeal the decision then that period of time is most likely going to be longer.*

....

*Once QCAT has made a decision, if a party wishes to appeal, they have 14 days to request reasons. QCAT then have 45 days to provide those reasons and once those reasons have been provided the party has 28 days to appeal.*<sup>44</sup>

The department advised the amendment arose from a recent review of the *Queensland Civil and Administrative Tribunal Act 2009*. That review:

*.. identified the current situation in which a person may be entitled to work with children, even if the decision maker intends to appeal QCAT's decision is inconsistent with the child protection focussed policy intend of section 354 of the WWC Act. Section 354 provides that, when a person applies to have a decision of the chief executive reviewed, QCAT may not stay the operation of the decision or grant an injunction in the proceeding for the review.*<sup>45</sup>

The amendment, inserting new section 354A, is a further safeguard to complement the 'No card, No start' policy and is consistent with the principle that the welfare and best interests of a child are paramount.<sup>46</sup>

### **3.4.7 Other issues**

#### **3.4.7.1 Period for renewal of working with children card**

The QTU and IEUA submitted that the three year renewal period for a working with children card exemption for registered teachers is not necessary. The department's comments on submissions stated the three year renewal was not considered overly onerous, and it does not seek to override or diminish the obligations imposed on registered teachers under the *Education (Queensland College of Teachers) Act 2005*.<sup>47</sup>

At the public hearing the QTU argued that the teacher registration is complex and imposes high standards and to 'impose a second parallel process of every three years renewing a card is a paperwork burden', and suggested that the renewal process does not create any additional safety for children.<sup>48</sup>

Independent Schools Queensland also suggested the renewal period for a working with children card should be extended to five years. Mr Robertson explained that because daily checks on criminal

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<sup>42</sup> Explanatory notes, pp 11 – 12.

<sup>43</sup> Submission 7.

<sup>44</sup> Public hearing transcript, 16 January 2019, p 3.

<sup>45</sup> Department of Justice and Attorney-General, correspondence dated 10 January 2019, p 5.

<sup>46</sup> Department of Justice and Attorney-General, correspondence dated 10 January 2019, p 5.

<sup>47</sup> Department of Justice and Attorney General, correspondence dated 10 January 2019, p 14.

<sup>48</sup> Mr Bates, QTU, Public hearing transcript, 16 January 2019, p 8.



charges and convictions occurs, the system seems comprehensive, and five year renewals would reduce the administrative workload, including for BCS.<sup>49</sup>

In response to a question about addressing the administrative work for schools in managing working with children checks, QTU said the crucial issue is the extent to which schools can rely on centralised clear advice and information without having to locally determine whether or not a person meets the required standard under the legislation.<sup>50</sup>

The QCEC ‘does not have an objection’ to the three year renewal period for a registered teachers’ exemption card, and advocated for adequate publicity and communications about the proposed change to renewals:

*Typically the child related activities undertaken by teachers beyond their school roles for which they would require the exemption card, such as volunteering for sporting groups or parish functions, are of a socially beneficial nature and therefore are to be encouraged. While we recognise there is a three-year grace period for current exemption card holders, the new requirement for teachers to make reapplication for exemption cards will need to be widely publicised to avoid any inadvertent noncompliance, given that it is a change to existing practice. We would note that this publicity will be particularly important for registered teachers who may not currently be engaged in the workforce. Therefore, it needs to be noted that not all registered teachers are actually actively engaged in the school workforce.<sup>51</sup>*

#### Committee comment

The committee notes that the improvements proposed to the blue card system should improve timeframes and information management, and address the concerns raised by stakeholders about employing staff at short notice, and timely advice about changes to a card holder’s status, such as suspension of their working with children card.

Implementation of the proposed online applications and organisational portal for employers in regulated employment has the potential to provide centralised advice and information about employees’ blue card status and reduce the administrative workload experienced to date.

The committee recognises that implementation of complex systems such as that proposed take time to develop, and notes that a reference group of stakeholders is being consulted on implementation. The initiatives proposed and underway to improve application, assessment and related processes have the potential to address the concerns raised by stakeholders about issues with the current blue card processes.

### **3.5 Home-based services for children**

The QFCC *Supplementary Review* report examined information sharing to enhance the safety of regulated home based services.

There are five categories of regulated home based services in Queensland: foster care, kinship care, provisionally approved care, family day care, and stand-alone care services. Child Safety Services has regulatory responsibility for three categories, family day care is regulated by and monitored under the National Quality Framework (NQF) by the Department of Education, and stand-alone services are similar to family day care but are not connected to the NQF.<sup>52</sup>

The QFCC recommended policy and legislative changes to improve the safety of children in home-based services.

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<sup>49</sup> Public hearing transcript, 16 January 2019, p 15.

<sup>50</sup> Mr Bates, QTU, Public hearing transcript, 16 January 2019, p 9.

<sup>51</sup> Public hearing transcript, p 17.

<sup>52</sup> QFCC, *Supplementary Review*, pp 11 – 12.

### **3.5.1 Register of people who provide home-based services for children**

One of the QFCC recommendations was to implement a register of home-based services for children. The QFCC reported that it is possible for a single household to provide both foster or kinship care and family day care or stand-alone care services.

*It is important for the [Queensland Police Service], Child Safety Services and the [Department of Education] to be aware of all child-related services provide from a home. This will to improve information sharing and co-ordination of responses should issues arise with the quality of care, including alleged criminality.<sup>53</sup>*

Clause 60 inserts a new Chapter 8A (Register of regulated persons who provide home-based care services). Proposed sections 357A to 357I provide for creation of a register for the creation and use of a register of ‘regulated persons’ and ‘associated adults’ of a regulated person.

Access to use of the register will be limited under proposed section 357E to specified people in the Queensland Police Service, Department of Education, Department of Child Safety, Youth and Women, and the Office of the Public Guardian. Proposed section 357G specifies the contents of the register, including information about a working with children check on a person, and section 357I provides for the purposes for which information may be used, and creates an offence for unauthorised use of information on the register.

### **3.5.2 Adult household members of home-based stand-alone care services**

In line with a QFCC recommendation, the Bill requires all adult household members of stand-alone care services to hold a working with children card. The explanatory notes state this will bring stand-alone care into alignment with requirements for foster and kinship care and family day care services.<sup>54</sup>

To ensure the Department of Education receives information about the status of working with children checks of family day care educators and adult household members, the department will become a ‘notifiable person’ under the WWC Act.

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<sup>53</sup> QFCC, *Supplementary Review*, p 15.

<sup>54</sup> Explanatory notes, p 13.

## 4 Compliance with the *Legislative Standards Act 1992*

### 4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

### 4.2 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

#### 4.2.1 Preventing an individual from obtaining and keeping employment

Clause 17 inserts proposed sections 175 and 176A in the WWC Act, to implement the ‘No Card, No Start’ requirement. The provisions prevent a person from starting or continuing in regulated employment without first obtaining a working with children clearance and so require an employer to ensure an employee does not start or continue in regulated employment without such a clearance.

#### Issue of fundamental legislative principle

Legislation should not, without sufficient justification, unduly restrict ordinary activities,<sup>55</sup> such as obtaining and keeping employment and conducting a business without interference.

The explanatory notes state:

*The ‘No Card, No Start’ approach reduces risks to the safety and wellbeing of children by preventing persons with concerning histories from being able to work with children for periods of time while their application is being assessed.*<sup>56</sup>

...

*The ‘No Card, No Start’ policy is also consistent with the principles for administering the WWC Act, that the welfare and best interests of the child are paramount and that every child is entitled to be cared for in a way that protects the child from harm and promotes the child’s wellbeing (section 6).*<sup>57</sup>

#### Committee comment

The committee considers that while the introduction of the ‘No Card, No Start’ policy may have an adverse effect on some individuals seeking employment, given the overall objective of protecting children, the committee is satisfied that any potential breach of fundamental legislative principle is justified.

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<sup>55</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 129.

<sup>56</sup> Explanatory notes, p 14.

<sup>57</sup> Explanatory notes, p 14.

#### **4.2.2 Expanded list of disqualifying offences**

Clause 70 expands the range of disqualifying offences listed in Schedule 4 of the WWC Act to include:

- bestiality
- kidnapping of a child
- kidnapping for ransom of a child
- child stealing
- abduction of a child under 16.

The murder of an adult and the rape of an adult would also be treated as disqualifying offences.

##### 4.2.2.1 Issue of fundamental legislative principle

The additional disqualifying offences would automatically exclude more individuals from holding a working with children authority. Generally, a person's ordinary activities should not be restricted. The expansion of disqualifying offences might be seen to impact on a person's right to obtain or hold employment in a role that requires a working with children authority.

The explanatory notes state:

*The inclusion of bestiality, kidnapping or abduction of a child and child stealing as disqualifying offences is specifically supported by both the Royal Commission and the QFCC. All of the amendments with respect to disqualifying offences are considered justified for the protection of children from harm, as it prevents individuals with convictions for specified offences from making a working with children check application or entering or continuing in regulated child-related service environments.*<sup>58</sup>

##### Committee comment

The committee is satisfied that this provision has sufficient regard to an individual's rights to obtain employment, given the overall policy aim of increasing protection for children.

#### **4.2.3 New offences**

The Bill creates a number of new offences. It also reframes and consolidates a number of existing offences. These are set out in Appendix D.

The maximum penalties range from 10 penalty units (\$1,305.50) to 500 penalty units (\$65,275) or 5 years imprisonment (where an aggravating circumstance applies to the offence). They include for example the following proposed sections:

- 175 - employer must not employ another person in regulated employment unless they hold a working with children clearance - 100 penalty units (\$13,055)
- 176B - clearance required to carry on regulated business - 500 penalty units (\$65,275) or five years imprisonment
- 176J - restricted person prohibited from starting or continuing in restricted employment - 500 penalty units (\$65,275) or five years imprisonment
- 176K - application by disqualified person prohibited - 500 penalty units (\$65,275) or five years imprisonment
- 176L - application by negative notice holder prohibited - 500 penalty units (\$65,275) or five years imprisonment.
- 351 - false or misleading disclosure - 100 penalty units (\$13,055) or two years imprisonment.

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<sup>58</sup> Explanatory notes, p 17.

#### 4.2.3.1 Issue of fundamental legislative principle

##### *Proportionality and relevance*

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied:

*The desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.*<sup>59</sup>

A penalty should be proportionate to the offence:

*Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*<sup>60</sup>

The explanatory notes give this justification for the new offences and penalties:

*The creation of new offences potentially breaches the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals in so far as they impose a penalty upon the person for a breach of the provision. However, all of these penalties are considered to be reasonable as they provide stronger safeguards for children and represent a strong deterrent for persons who breach key requirements under the WWC Act.*<sup>61</sup>

##### Committee comment

The committee considers, on balance, the offences and associated penalties in the Bill are proportionate and relevant to the policy objective of increasing protection for children.

#### **4.2.4 Right to privacy and confidentiality of personal information**

Clause 60 introduces a register of regulated persons who provide home-based care services to children. The register contains a significant amount of personal information, including:

- information used to identify and contact the person
- information about a working with children check application made by the person
- information about a working with children authority the person holds or previously held.

The chief executive can allow 'authorised users' to access information in the register. Authorised users include:

- the chief executives for child safety and for education and care
- the police commissioner and police officers
- the public guardian
- persons appointed as community visitors or child advocacy officers under the *Public Guardian Act 2014*
- public servants authorised to access the register by the chief executives mentioned above, by the public guardian, or by the police commissioner.

The explanatory notes state that the amendments will expand the current information sharing arrangements between relevant government agencies.<sup>62</sup>

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<sup>59</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>60</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>61</sup> Explanatory notes, p 18.

<sup>62</sup> Explanatory notes, p 15.

Clause 53 introduces new section 344A to allow the chief executive to give to a range of authorised entities information electronically through an online organisational portal. The information able to be disclosed includes:

- a working with children check application made by the person
- a working with children authority or negative notice held by the person
- a working with children notice about the person given, or required to be given, to the authorised entity under this Act.

An authorised entity includes:

- a person's employer or an authorised representative of the employer
- other notifiable persons under the WWC Act
- an entity to whom the chief executive provides notices under the Act.

Clauses 37 and 48 authorise the chief executive to notify potential employers of persons in regulated employment if the person has been issued with a negative notice or has had their working with children authority suspended or cancelled.

#### 4.2.4.1 Issues of fundamental legislative principle

The right to privacy and issues regarding the disclosure of private or confidential information are relevant to considering whether legislation has sufficient regard to the rights and liberties of individuals.

In relation to the creation of the register of home-based services, the explanatory notes state:

*The creation of the register is necessary as it will improve the ability of regulatory agencies to quickly identify co-located home-based care services, inform decision making and subsequently share information about any risks in these environments.*<sup>63</sup>

The explanatory notes state that home-based care services bring increased opportunities for harm to occur to children and:

*... it is important responsible regulatory agencies are able to monitor individuals working and residing in home-based care services on an ongoing basis.*<sup>64</sup>

In relation to the confidentiality of information on the register:

*... information on the register will be further protected by the inclusion of a specific penalty of 100 penalty units for the inappropriate use or disclosure of information.*<sup>65</sup>

#### Committee comment– creation of the register

The committee notes the purpose of the register is to enable information sharing between regulatory agencies responsible for home-based services for children to protect children. Noting the protections surrounding the use and disclosure of information on the register, and the penalty for inappropriate use, the committee is satisfied that the authorised disclosure and use of information is justified, to reduce the opportunity for harm to occur to children in home-based care services.

#### Online organisational portal for information sharing

The explanatory notes justify the provision for the sharing of information through an online portal:

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<sup>63</sup> Explanatory notes, p 15.

<sup>64</sup> Explanatory notes, p 16.

<sup>65</sup> Explanatory notes, p 16.

*The sharing of this information is critical to the effective operation of the blue card system as it enable employers and other entities to risk manage their service environments and take corrective action, where appropriate.*<sup>66</sup>

...

*Section 344B appropriately balances privacy considerations with the protection of children by recognising that persons may use, give access or disclose information to identify, access or monitor a risk, or potential risk, to the safety or welfare of a child, to establish whether or not a person has made a working with children check application or holds a working with children authority and to comply with an obligation under the WWC Act.*<sup>67</sup>

#### Committee comment

The committee is satisfied that sufficient regard has been given to the rights of individuals and that, on balance, the departure from fundamental legislative principle is justified by the principle of protecting the welfare and best interests of children.

#### Notification of a negative notice

In relation to notifying potential employers of a person's negative notice, the explanatory notes state:

*The threshold of 'reasonably believes' provide an appropriate safeguard to ensure the chief executive will only disclose information about a person to a potential employer if there is enough information to suggest the person is being employed by the potential employer but the employer has not notified the chief executive. For example, information might be brought to light through a compliance activity undertaken by BCS or the QPS.*

*It is important that the information about the suspension or cancellation of a person's authority is provided to a potential employer so that the employer can appropriately risk manage the situation.*<sup>68</sup>

#### Committee comment

The committee is satisfied that sufficient justification has been provided for this breach of fundamental legislative principle.

### **4.2.5 Administrative power**

Section 4(3)(a) *Legislative Standards Act 1992* provides, in part, that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 70 expands the range of disqualifying offences to include the rape and murder of an adult, bestiality and kidnapping or abduction of a child and child stealing.

Under section 354 of the WWC Act, a person who is convicted of a disqualifying offence is afforded no review rights for an automatic negative notice.

#### 4.2.5.1 Issues of fundamental legislative principle

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review:

*Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process.*

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<sup>66</sup> Explanatory notes, p 17.

<sup>67</sup> Explanatory notes, p 17.

<sup>68</sup> Explanatory notes, p 21.

*If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*<sup>69</sup>

Section 354 currently operates to deny review rights to a person convicted of a disqualifying offence. The operation of this provision will impact on a further number of individuals, with the definition of 'disqualifying offence' being expanded to include additional crimes.

The explanatory notes provide this justification:

*The inclusion of bestiality, kidnapping or abduction of a child and child stealing as disqualifying offences is specifically supported by both the Royal Commission and the QFCC. All of the amendments with respect to disqualifying offences are considered justified for the protection of children from harm, as it prevents individuals with convictions for specified offences from making a working with children check application or entering or continuing in regulated child-related service environments.*<sup>70</sup>

#### Committee comment

The lack of review rights for people with a disqualifying offence is already provided for under the WWC Act. The committee considers any breach of fundamental legislative principle involved in the extension of this provision (by the inclusion of additional crimes as disqualifying offences) is justified in the circumstances.

#### **4.2.6 Retrospectivity of information in register of home-based care services**

Clause 66 introduces provisions which apply to information about persons contained in their working with children applications, processed prior to the commencement of the amendments. The identifying information regarding these applicants is proposed to be included in the register of home-based services.

##### 4.2.6.1 Issue of fundamental legislative principle

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The explanatory notes provide the following justification:

*The retrospective application is considered necessary to enable the register to be an effective and useful safeguard for children in home-base care services from the commencement of the amendments. It would not be feasible to rely upon the consent of applicants for their identifying information to be included in the register as they apply for a working with children check or working with children check for an exemption or seek renewal of their working with children authority.*<sup>71</sup>

#### Committee comment

The retrospective operation is limited and relatively minor. The committee is satisfied that any breach of fundamental legislative principle involved in the retrospective operation of these provisions is justified given the overall objective of protecting children.

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<sup>69</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

<sup>70</sup> Explanatory notes, p 17.

<sup>71</sup> Explanatory notes, p 16.



### 4.3 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the institution of parliament.

Section 4(4)(a) of the *Legislative Standards Act 1992* provides that whether legislation Bill has sufficient regard to the institution of Parliament depends on whether, for example, it allows the delegation of legislative power only in appropriate cases and to appropriate persons.

#### 4.3.1 Delegation of legislative power

##### The ‘approved way’ for making of applications and giving notice

The Bill includes a number of amendments which will require applications to be made or notices to be given to the chief executive in the ‘approved way’.

Clause 71 inserts this definition of ‘approved way’ into the dictionary in Schedule 7 of the WWC Act:

***approved way**, for making an application or giving a notice, means a way for making the application, or giving the notice, approved by the chief executive and notified on a Queensland Government website.*

##### 4.3.1.1 Issue of fundamental legislative principle

The provision for the ‘approved way’ to be prescribed in this manner is a delegation of legislative power which involves a potential departure from the fundamental legislative principle that legislation should have sufficient regard be given to the institution of Parliament.

The explanatory notes record that currently all applications and notices under the WWC Act must be in the approved form. The department utilises paper forms as well as digital channels.<sup>72</sup>

Applications will still be required to be in the approved form, but will now also be required to be in the ‘approved way’, which will facilitate the use of online methods.

The Queensland Legislation Handbook states:

*If forms are required for an Act, current legislative drafting practice is generally to provide for the forms to be administratively approved, rather than prescribed by the Act or subordinate legislation.<sup>73</sup>*

Approved forms are an accepted manner of practice. It could be seen that the ‘approved way’ is merely an extension of the approved form, which allows the department to operate in a more contemporary and efficient manner.

##### Committee comment

The committee considers this to be a minor departure from the fundamental legislative principle.

##### Transitional regulation-making power

Clause 66 provides for a regulation-making power for the purposes of transitional arrangements. The proposed section 589 sets out the transitional regulation-making power in the following terms:

- (1) A regulation (a transitional regulation) may make provision about a matter –
  - (a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition –
    - (i) from the operation of this Act as in force before the commencement of a relevant amendment; and

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<sup>72</sup> Explanatory notes, p 15.

<sup>73</sup> Department of the Premier and Cabinet, *The Queensland Legislation Handbook*, p 10.

(ii) *to the operation of this Act as in force after the commencement of the relevant amendment; and*

(b) *for which this Act does not provide or sufficiently provide.*

#### 4.3.1.2 Issue of fundamental legislative principle

Is this an appropriate delegation of legislative power?

Section 4(4)(a) of the *Legislative Standards Act 1992* provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons.

The Office of the Queensland Parliamentary Counsel's notebook regarding fundamental legislative principles states:

*This matter is concerned with the level at which delegated legislative power is used.*

*The greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.*<sup>74</sup>

Parliamentary committees have on occasion regarded it as an inappropriate delegation to provide that a regulation may be made about any matter of a savings, transitional or validating nature 'for which this part does not make provision or enough provision' because this anticipates that the Bill may be inadequate and that a matter which otherwise would have been of sufficient importance to be dealt with in the Act will now be dealt with by regulation.

The form of transitional regulation-making power most objectionable has the following aspects:

- (a) it is expressed to allow for a regulation that can override an Act
- (b) it is so general as to allow for a provision about any subject matter, including those that should be dealt with by an act as opposed to subordinate legislation
- (c) it is not subject to any other control, for example, a sunset clause.<sup>75</sup>

The explanatory notes provided this justification for the transitional regulation-making power:

*... the inclusion of the regulation-making power is considered justified to resolve any complex transitional issues that are unforeseeable at the time of introduction.*<sup>76</sup>

The explanatory notes further state:

*The regulation-making power will ensure the effective implementation of the changes to the disqualifying offences as well as the 'No Card, No Start' requirement and new working with children check application process. The inclusion of this power will mean that the safety and protection of Queensland's children is not compromised as these important changes commence. To ensure parliamentary oversight, the regulation making power, along with any regulation made under it, will expire 18 months after commencement of the Bill.*<sup>77</sup>

The provision is broad in scope, and is expressed to have retrospective effect to include the operation of the Act before the commencement of a relevant amendment. The regulation-making power, along with the regulation made under it, will expire 18 months after commencement of the Bill.

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<sup>74</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

<sup>75</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 160.

<sup>76</sup> Explanatory notes, p 21.

<sup>77</sup> Explanatory notes, p 22.

Committee comment

The committee considers the delegation of administrative power in clause 66 has sufficient regard to the institution of Parliament, noting the purpose of the Bill the protection of children, that the provision includes a sunset clause and the disallowance powers under section 50 of the *Statutory Instruments Act 1992*.

**4.4 Explanatory notes**

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

## Appendix A – Submitters

Sub #	Submitter
006	Information Commissioner
007	LawRight
008	Non-State Schools Accreditation Board
009	Queensland Catholic Education Commission
010	Queensland Family and Child Commission
011	Queensland Teachers' Union and the Independent Education Union of Australia
012	yourtown
013	Bravehearts
014	Independent Schools Queensland
015	Sisters Inside – addressed the Government and Private Members Bill

Submission 1 to 5 relate to the Working with Children (Indigenous Communities) Amendment Bill 2019 that was considered by the committee at the same time

## **Appendix B – Officials at public departmental briefing**

### **Department of Justice and Attorney-General**

- Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Mr Gregory Bourke, Project Director, Strategic Policy and Legal Services
- Ms Fiona Fraser, Director, Blue Card Projects Team, Justice Services

## **Appendix C – Witnesses at public hearing**

### **LawRight**

- Ms Julia Anderson, Senior Lawyer, QCAT Self Representation Service

### **Queensland Teachers' Union and Independent Education Union of Australia**

- Mr Kevin Bates, President
- Ms Rachel Drew, Holding Redlich, Partner (Workplace Relations and Safety)

### **Independent Schools Queensland**

- Mr David Robertson, Executive Director
- Ms Judy Young, Assistant Director (School Services)

### **Queensland Catholic Education Commission**

- Dr Lee-Anne Perry AM, Executive Director
- Mr Patrick MacDermott, Senior Policy Officer, Governance and Strategy

### **Sisters Inside**

- Ms Debbie Kilroy, Chief Executive Officer
- Ms Marissa Dooris, Policy Officer

Other witnesses who appeared at the public hearing provided evidence about the Private Member's Bill which the committee considered at the same time as this Bill.

## Appendix D – Proposed new or amended offence provisions

**Note: One penalty unit = \$130.55**

Clause	Offence	Proposed maximum penalty
17	<b>Replacement of s 175 Clearance required to employ person in regulated employment</b> Section 175(1) Maximum penalty – (a) if an aggravating circumstance applies to the offence—200 penalty units or 2 years imprisonment; or (b) otherwise—100 penalty units.	\$26,110 or 2 years imprisonment \$13,055
17	<b>Replacement of s 176 Employing person with suspended clearance prohibited</b> Section 176 Maximum penalty – 200 penalty units or 2 years imprisonment.	\$26,110 or 2 years imprisonment
17	<b>Replacement of s 176A Person prohibited from regulated employment without clearance</b> Section 176A Maximum penalty – (a) if an aggravating circumstance applies to the offence—500 penalty units or 5 years imprisonment; or (b) otherwise—100 penalty units.	\$65,275 or 5 years imprisonment \$13,055
17	<b>Replacement of s 176B Clearance required to carry on regulated business</b> Section 176B Maximum penalty – 500 penalty units or 5 years imprisonment	\$65,275 or 5 years imprisonment
17	<b>Replacement of s 176C Exemption required to employ police officer or registered teacher in regulated employment</b> Section 176C(1) Maximum penalty – (a) if an aggravating circumstance applies to the offence—200 penalty units or 2 years imprisonment; or (b) otherwise—100 penalty units.	\$26,110 or 2 years imprisonment \$13,055
17	<b>Replacement of s 176D Employing police officer or registered teacher with suspended authority prohibited</b> Section 176D Maximum penalty – 200 penalty units or 2 years imprisonment.	\$26,110 or 2 years imprisonment
17	<b>Replacement of s 176E Police officer or registered teacher prohibited from regulated employment without exemption</b> Section 176E(1) Maximum penalty— (a) if an aggravating circumstance applies to the offence—500 penalty units or 5 years imprisonment; or (b) otherwise—100 penalty units.—	\$65,275 or 5 years imprisonment \$13,055
17	<b>Replacement of 176F Exemption required for regulated employment if previous application withdrawn</b> Section 176F(2) Maximum penalty— (a) if the withdrawal notice is given because section 199 applies—500 penalty units or 5 years imprisonment; or	\$65,275 or 5 years imprisonment \$13,055 or 1 year's imprisonment

Clause	Offence	Proposed maximum penalty
	(b) otherwise—100 penalty units or 1 year's imprisonment.	
17	<b>Replacement of 176G Exemption required for police officer or registered teacher to carry on regulated business</b> Section 176G(2) Maximum penalty—500 penalty units or 5 years imprisonment.	\$65,275 or 5 years imprisonment
17	<b>Replacement of 176I Employing restricted person in restricted employment prohibited</b> Section 176I Maximum penalty—200 penalty units or 2 years imprisonment.	\$26,110 or 2 years imprisonment
17	<b>Replacement of 176J Restricted person prohibited from starting or continuing in restricted employment</b> Section 176J(1) Maximum penalty—500 penalty units or 5 years imprisonment.	\$65,275 or 5 years imprisonment
19	<b>New s 176K Application by disqualified person prohibited</b> Section 176K Maximum penalty—500 penalty units or 5 years imprisonment.	\$65,275 or 5 years imprisonment
19	<b>New 176L Application by negative notice holder prohibited</b> Section 176L(1) Maximum penalty—500 penalty units or 5 years imprisonment.	\$65,275 or 5 years imprisonment
34	<b>Replacement of s 230 Chief executive to be notified of change in particular information</b> Section 230(2) Maximum penalty—10 penalty units.	\$1,305.50
44	<b>Replacement of s 288 Chief executive to be notified of change in particular information</b> Section 288(2) Maximum penalty—10 penalty units.	\$1,305.50
48	<b>New s 298 Effect of suspension of working with children authority</b> Section 298(2) Maximum penalty—500 penalty units or 5 years imprisonment.	\$65,275 or 5 years imprisonment
48	<b>New s 298 Effect of suspension of working with children authority</b> Section 298(3) Maximum penalty—200 penalty units or 2 years imprisonment.	\$26,110 or 2 years imprisonment
48	<b>New s 304O Requirement to return suspended card</b> Section 304O(2) Maximum penalty—100 penalty units.	\$13,055
48	<b>New s 304P Requirement to return cancelled card</b> Section 304P(2) Maximum penalty—100 penalty units.	\$13,055
50	<b>Replacement of s 323 Notice of change in police information</b> Section 323(2) Maximum penalty—100 penalty units.	\$13,055



Clause	Offence	Proposed maximum penalty
52	<b>Amendment of s 339 (Chief executive to give notice to particular entities about a change in police information)</b> Section 339(4A) Maximum penalty—200 penalty units or 2 years imprisonment.	\$26,110 or 2 years imprisonment
53	<b>New s 344B Use of information obtained under s 344A about a person</b> Section 344B(2) Maximum penalty—100 penalty units	\$13,055
55	<b>Replacement of s 347 Replacement of lost or stolen card</b> Section 347(1) Maximum penalty—10 penalty units.	\$1,305.50
55	<b>Replacement of s 348 Replacement card for change of name or contact details</b> Section 348(2) Maximum penalty—10 penalty units.	\$1,305.50
55	<b>Replacement of s 348A Requirement to return replaced card</b> Section 348A(2) Maximum penalty—10 penalty units.	\$1,305.50
55	<b>Replacement of s 349 Holder must notify change of regulated employment or regulated business</b> Section 349(2) Maximum penalty—10 penalty units.	\$1,305.50
55	<b>Replacement of s 350 Holder must notify change and pay prescribed application fee—volunteer or business carried on other than for financial reward</b> Section 350(2) Maximum penalty—10 penalty units.	\$1,305.50
55	<b>Replacement of s 350A Holder and notifiable persons notified about expiry of working with children exemption</b> Section 350A(3) Maximum penalty—10 penalty units.	\$1,305.50
56	<b>Replacement of s 351 False or misleading disclosure</b> Section 351 <i>omit, insert —</i> Maximum penalty—100 penalty units or 2 years imprisonment.	\$13,055 or 2 years imprisonment
60	<b>Replacement of s 357I Use, disclosure and giving of access to confidential information</b> Section 357I(2) Maximum penalty—100 penalty units.	\$13,055
62	<b>Amendment of s 377 (Indictable and summary offences)</b> Section 377(1) An offence against this Act is an indictable offence, and a crime, if the maximum penalty for the offence is— (a) 500 penalty units or more; or (b) 5 years imprisonment or more.	\$65,275 5 years imprisonment

Clause	Offence	Proposed maximum penalty
63	<b>Amendment of s 378 (Proceedings for indictable offences)</b> Section 378(2) 100 penalty units or 3 years imprisonment.	\$13,055 or 3 years imprisonment
64	<b>Replacement of s 384 (Confidentiality of information about criminal history or related information)</b> Section 384(3) Maximum penalty—100 penalty units or 2 years imprisonment.	\$13,055 or 2 years imprisonment
66	<b>New s 573 Expiry of transitioned positive exemption notice</b> Section 573(3) Maximum penalty—100 penalty units	\$13,055

## **Statement of Reservation**

# **Statement of Reservation**

## **Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018**

The LNP fully supports measures that will provide greater protection to vulnerable children in Queensland.

Wherever possible, government needs to be proactive in ensuring that policy settings keep pace with modern technology and different societal challenges. The protection of our kids should always be a strong motivation to ensure that our legislative framework is strong and contemporary.

Unfortunately, this Bill is playing catch up with children's safety, as it is in direct response to certain incidents, media campaigns and political pressure that exposed critical failures in Queensland's blue card system.

The tragic death of Tiahleigh Palmer in October 2015 lead to a review by the Queensland Family and Child Commission (QFCC report), "Review of the blue card system", which was finalised in July 2017 and released in September 2017 with 81 recommendations for change.

While we are supportive of the changes proposed in this Bill, the LNP believes they don't go far enough, and it is taking too long for important changes to be implemented.

Of major concern is the fact that key recommendations of the QFCC report have been amended or disregarded.

At the last state election, the Palaszczuk Labor Government promised to implement a 'no card, no start' policy in response to an incident in Townsville.

Despite continued efforts from the LNP to fast-track these reforms, the policy won't start until 2020 – three years after it was promised. In the meantime thousands of people are working with children without the relevant blue card screen processing being finalised.

The QFCC report made 81 recommendations with the intent to create significant changes and a much needed overhaul of an antiquated blue card system.

A number of the 81 recommendations are being implemented. As at 13 November 2018, 4 recommendations have been completed, 52 recommendations are being progressed, 10 recommendations are dependent on Commonwealth matters regarding the implementation of the response to the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse, 7 recommendations are subject to the outcomes of legislation before the House and 8 recommendations are unable to be progressed until the implementation of the above recommendations.

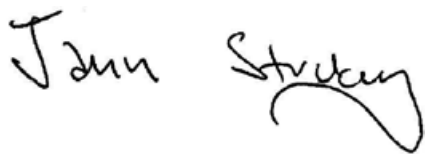
There is concern about the recommendations which are not being implemented, especially those that relate to disqualifying offences.

The report recommended that the eligibility declaration relating to disqualifying offences be repealed (see recommendation 29). This provision gives the chief executive the discretion to grant a disqualified person the ability to apply for a blue card. A person who has committed a disqualifying offence should be disqualified indefinitely with no avenue to obtain a blue card, as recommend by QFCC.

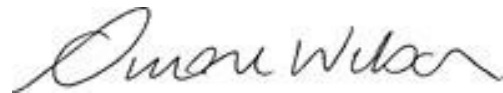
It is alarming to learn that a person who has a significant international criminal history is entitled to work with children. Currently, Blue Card Services does not consider applicants' international criminal histories as part of the working with children check. Applicants do not have to disclose whether they have a criminal history overseas. In light of this, the report recommended that applicants should be required to disclose if they have been convicted of crime or any other offence, or charged with any offence in a country other than Australia (recommendation 31).

It is disappointing that two serious child related offences, including manslaughter of a child and cruelty to a child still remain prescribed serious offences as opposed to disqualifying offences after such an extensive review of the blue card system.

As previously discussed, while the overhaul of the blue card system is supported, there are still loopholes with the proposed changes that must be addressed.

A handwritten signature in black ink, reading "Jann Stuckey". The signature is written in a cursive style, with the first name "Jann" and the last name "Stuckey" clearly legible.

Jann Stuckey

A handwritten signature in black ink, reading "Simone Wilson". The signature is written in a cursive style, with the first name "Simone" and the last name "Wilson" clearly legible.

Simone Wilson