



## **Examination of the Working with Children (Indigenous Communities) Amendment Bill 2021**

**Report No. 38, 57th Parliament  
Legal Affairs and Safety Committee  
October 2022**

## **Legal Affairs and Safety Committee**

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### **Acknowledgements**

The committee acknowledges the assistance provided by Mr Robbie Katter, MP.

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

## Contents

<b>Abbreviations</b>	<b>3</b>
<b>Chair’s foreword</b>	<b>5</b>
<b>Recommendations</b>	<b>6</b>
<b>Executive summary</b>	<b>7</b>
<b>1 Introduction</b>	<b>8</b>
1.1 Policy objectives of the Bill	8
1.2 Background	9
1.2.1 Timeline	9
1.2.2 Current Working with Children (Risk Management and Screening) Act 2000	10
1.2.3 Royal Commission into Institutional Responses to Child Sexual Abuse (Working with Children Checks Report)	10
1.2.4 Queensland Family and Child Commission review of the blue card system	11
1.2.5 Previous related bills introduced by Mr Katter	11
1.2.6 Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2019	12
1.2.7 Child Protection Reform and Other Legislation Amendment Act 2022	13
1.3 Government response	13
1.4 Should the Bill be passed?	14
<b>2 Examination of the Bill</b>	<b>15</b>
2.1 Impact of non-serious and historical convictions on employment opportunities	15
2.1.1 Outline of issue	15
2.1.2 Stakeholder comment	15
2.1.3 Committee comment	17
2.2 Current ‘one size fits all’ blue card system vs restricted working with children clearance determined by local CJG	17
2.2.1 Outline of issue	17
2.2.2 Proposal under the Bill	17
2.2.3 Stakeholder comment	18
2.2.4 Committee comment	20
2.3 Lengthy processing and appeal timeframes	20
2.3.1 Outline of issue	20
2.3.2 Proposal under the Bill	20
2.3.3 Stakeholder comment	21
2.3.4 Committee comment	22
2.4 Limited geographical application of proposed restricted working with children clearance	23
2.4.1 Outline of issue	23
2.4.2 Proposal under the Bill	23
2.4.3 Stakeholder comment	23
2.4.4 Committee comment	24

2.5	Broadening scope of the Bill	24
2.5.1	Impact of blue card system on kinship care households	24
2.5.2	Member for Traeger’s response	26
2.5.3	Committee comment	26
2.6	Other jurisdictions	27
2.6.1	Committee comment	27
2.7	Overall committee comment and additional recommendations	27
<b>3</b>	<b>Compliance with the <i>Legislative Standards Act 1992</i></b>	<b>29</b>
3.1	Fundamental legislative principles	29
3.1.1	Rights and liberties of individuals	29
3.1.2	Institution of Parliament	32
3.2	Explanatory notes	32
<b>4</b>	<b>Compliance with the <i>Human Rights Act 2019</i></b>	<b>33</b>
4.1	Human rights compatibility	33
4.1.1	Child protection matters	34
4.1.2	Privacy	35
4.1.3	Cultural rights – Aboriginal peoples and Torres Strait Islander peoples	35
4.2	Statement of compatibility	36
	<b>Appendix A – Submitters</b>	<b>37</b>
	<b>Appendix B – Witnesses at public hearings</b>	<b>38</b>

## Abbreviations

2017 Bill	Working with Children Legislation (Indigenous Communities) Amendment Bill 2017
2018 Bill	Working with Children Legislation (Indigenous Communities) Amendment Bill 2018
2018 Bill Report	Report tabled on 14 February 2019 by the former EESBC titled Report No. 13, 56th Parliament, Working with Children Legislation (Indigenous Communities) Amendment Bill 2018
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Queensland)
ATSICPP	Aboriginal and Torres Strait Islander Child Placement Principle
Attorney-General	The Hon Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence
BCS	Blue Card Services
Bill	Working with Children (Indigenous Communities) Amendment Bill 2021
Blue Card Review report	The Queensland Family and Child Commission's <i>Keeping Queensland's children more than safe: Review of the blue card system</i> dated July 2017.
Caxton Legal Centre	Caxton Legal Centre Inc.
CJG	Community Justice Group
CSBC	Community Support and Services Committee
committee	Legal Affairs and Safety Committee
CREATE	CREATE Foundation
DCYJMA	Department of Children, Youth Justice and Multicultural Affairs
DJAG or department	Department of Justice and Attorney-General
Former 2017 LACSC	the former 2017 Legal Affairs and Community Safety Committee
Former 2018 LACSC	the former 2018 Legal Affairs and Community Safety Committee
Former EESBC	the former 2018 Education, Employment and Small Business Committee
Government 2018 WWC Bill	Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018
HRA	<i>Human Rights Act 2019</i> (Qld)
LSA	<i>Legislative Standards Act 1992</i> (Qld)
Member for Traeger	Mr Robbie Katter, MP, Member for Traeger
OQPC	Office of the Queensland Parliamentary Counsel
PeakCare	PeakCare Queensland Inc

QATSICPP	Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited
QCAT	Queensland Civil and Administrative Tribunal
QCOSS	Queensland Council of Social Service
QFCC	Queensland Family and Child Commission
QHRC	Queensland Human Rights Commission
QMHC	Queensland Mental Health Commission
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Abuse
Sisters Inside	Sisters Inside Inc
WWC Act or WWCA	<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 Legal Affairs and Safety Committee's examination of the Working with Children (Indigenous Communities) Amendment Bill 2021.

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

As part of our inquiry, we travelled to Mount Isa, Palm Island and Yarrabah to speak with community members and organisations about how the Blue Card system was operating within these communities. We also spoke with stakeholders from Mornington Island, Normanton, Doomadgee, Townsville and Brisbane. As we move towards self-determination and autonomy, treaty and truth-telling in Queensland, I heard many compelling stories which were each a reminder of how extremely important each of these goals are.

The committee also heard that the process of applying for a Blue Card in these remote communities can be exhausting and re-traumatising to Indigenous people due to a number of factors, including intergenerational trauma, language barriers and complexities around formal documentation as to identity. Added to that is the fact that Blue Card applicants in Indigenous communities, and particularly in remote communities, face significant disadvantage when it comes to online applications. For example, a lack of facilities and issues with internet access and Wi-Fi on Palm Island severely limit applicants' ability to communicate with Blue Card Services, thus contributing to delay and inequity.

We also heard how the chronic housing shortage in these remote communities and negative Blue Card notices are contributing to social displacement and impeding kinship care arrangements. Our inquiries revealed manifest disadvantage, including that negative notices impact not only individual families but the wider community by disconnecting young people from family, country, language and culture. This disconnect is a modern day injustice, with a haunting reminder of other times in our history when First Nations people were separated from family and country against their wishes. We have to do better.

Additionally, we heard evidence that some employers were imposing a Blue Card requirement even where the work role involved no direct contact with children. This overly prescriptive approach by employers restrains, unnecessarily in my view, several employment opportunities for local Indigenous people in these remote communities, and operates as a bias, whether it be conscious or unconscious, against First Nations people.

At its heart, this Bill recommends the creation of a two tiered system. That is directly contrary to the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Bill, if passed, would create more problems than it seeks to solve.

I was moved by much of the evidence given during the public hearings and feel privileged to have heard the experiences of those who shared their stories with us.

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

I commend this report to the House.



Peter Russo MP

Chair

## Recommendations

<b>Recommendation 1</b>	<b>14</b>
The committee recommends the Bill not be passed.	14
<b>Recommendation 2</b>	<b>28</b>
The committee recommends that the Queensland Government trials a program of dedicated persons available within Indigenous communities to assist with Blue Card applications and processes, in collaboration with local Community Justice Groups and councils.	28
<b>Recommendation 3</b>	<b>28</b>
The committee recommends that the Queensland Government issues clear guidance to large employers, including Queensland Government departments and authorities, and the construction industry about their requirements under the <i>Working with Children Suitability (Risk Management and Screening) Act 2000</i> . This guidance should be towards supporting organisations to develop child-safe policies, which do not unnecessarily rely on the positive issue of blue cards.	28
<b>Recommendation 4</b>	<b>28</b>
The committee recommends that the Queensland Government considers legislative amendments to allow for the disclosure of information between government departments to streamline and facilitate the timeliness of blue card and kinship care approvals.	28
<b>Recommendation 5</b>	<b>28</b>
The committee recommends that the Queensland Government considers reviewing family-related definitions under the <i>Working with Children Suitability (Risk Management and Screening) Act 2000</i> and their application in Indigenous communities.	28
<b>Recommendation 6</b>	<b>28</b>
The committee recommends that the Queensland Government accelerates implementation of the Queensland Family and Child Commission’s Report, <i>Keeping Queensland’s Children More Than Safe: Review of the blue card system</i> . In particular, government should urgently progress work on recommendations 41, 43, 46 and 54.	28
<b>Recommendation 7</b>	<b>28</b>
The committee recommends that the Queensland Government reports back on its progress on the implementation of the committee’s recommendations within 12 months.	28



## Executive summary

The Working with Children (Indigenous Communities) Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly by Mr Robbie Katter MP, Member for Traeger, and referred to the Legal Affairs and Safety Committee (committee) on 1 September 2021.

### Summary of the Bill

The Bill proposes to amend the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) to enable a local Community Justice Group (as defined in the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*) to make a binding recommendation to the chief executive to issue a new 'class' of blue card (*a restricted working with children clearance*) for an individual for work within that specific community.<sup>1</sup>

### Background considered

In examining the Bill, the committee considered the policy objectives of the Bill and the background to the Bill, which included the previous related bills introduced by the Member for Traeger, other related legislation and various reviews involving the blue card system. In particular, the committee considered the Queensland Family and Child Commission (QFCC) review of the blue card system titled *Keeping Queensland's children more than safe: Review of the blue card system* (Blue Card Review report) and the progress made by the Queensland Government in implementing the 81 recommendations of the review.

### Key issues examined

The key issues raised during the committee's examination of the Bill included:

- the impact of non-serious and historical convictions on employment opportunities for individuals in Indigenous communities
- the current 'one size fits all' blue card system compared with the proposal under the Bill for a restricted working with children clearance determined by the local Community Justice Group
- the lengthy processing and appeal timeframes of blue cards generally and the impact this has on Indigenous people within Indigenous communities
- the limited geographical application of the proposed restricted working with children clearance
- the impact of the blue card system on kinship care households in Indigenous communities
- compliance of the Bill with the *Legislative Standards Act 1992*
- compliance of the Bill with the *Human Rights Act 2019*.

### Key findings

The committee has recommended that the Bill not be passed.

The committee has also made 6 other recommendations in relation to the Bill. These recommendations include the full implementation of the QFCC Blue Card Review report, especially recommendations 41, 43, 46 and 54, and that the Queensland Government trial a program of dedicated persons available within Indigenous communities to assist with Blue Card applications and processes, in collaboration with local Community Justice Groups and councils.

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<sup>1</sup> Explanatory notes, pp 2-3.

## 1 Introduction

### 1.1 Policy objectives of the Bill

The Working with Children (Indigenous Communities) Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly by Mr Robbie Katter, MP (Member for Traeger) and referred to the Legal Affairs and Safety Committee (committee) on 1 September 2021. The main objective of the Bill is to provide a new blue card framework that empowers Indigenous communities to make decisions which best serve their interests in relation to child protection and employment of community members.<sup>2</sup>

According to the explanatory notes, this Bill proposes to amend the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) to enable the local Community Justice Group (as defined in the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*) (CJG) to make a binding recommendation to the chief executive to issue a new 'class' of blue card (*a restricted working with children clearance*) for an individual for work within that specific community.<sup>3</sup>

The new framework would enable a CJG to use its judgement, based on the knowledge of the specific circumstances and individual involved, to allow the issuing of a *restricted working with children clearance* (previously known as a restricted positive notice), in circumstances where the chief executive would normally issue a negative notice due to previous serious offences being committed by the applicant.<sup>4</sup>

Additionally, the Bill allows for an *interim restricted working with children clearance* to be issued, at the request of the CJG, while the general restricted working with children clearance is being considered. This *interim restricted working with children clearance* enables the applicant to undertake the regulated employment immediately, provided they do not have any recorded sexually-based or serious offences outside the scope of this Bill and they have been deemed suitable by the CJG.<sup>5</sup>

The type of serious offences that can be considered under the proposed new framework are limited to the following:

- Criminal Code offences - Sections 409, 419 and 427, which relate to stealing with violence, burglary and unlawful entry of a vehicle;
- Drugs Misuse Act offences - Sections 5, 6, 8 and 9D, which relate to trafficking dangerous drugs, supplying dangerous drugs, producing dangerous drugs and trafficking in relevant substances or things.<sup>6</sup>

No other offences currently classified as serious offences or disqualifying offences can be considered by the CJG under the new framework proposed by the Bill.<sup>7</sup> Additionally, under the Bill, none of the offences which can be assessed by the CJG in making a recommendation to issue a restricted working with children clearance can be sexually-based offences.<sup>8</sup>

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<sup>2</sup> Explanatory notes, p 1.

<sup>3</sup> Explanatory notes, pp 2-3.

<sup>4</sup> Explanatory notes, p 3.

<sup>5</sup> Explanatory notes, p 3.

<sup>6</sup> Explanatory notes, p 2.

<sup>7</sup> Explanatory notes, p 2.

<sup>8</sup> Explanatory notes, p 2.

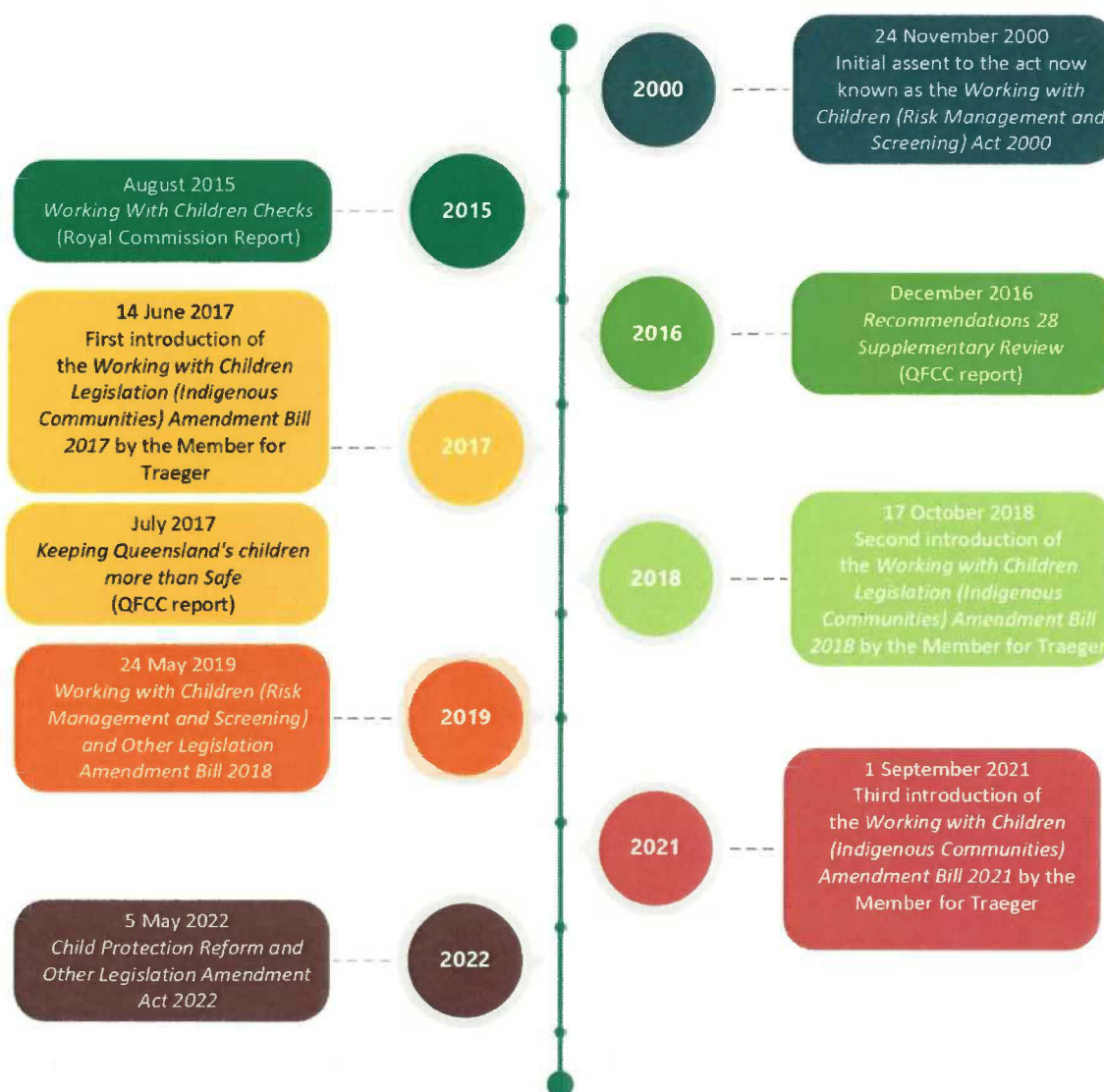
## 1.2 Background

In his explanatory speech, the Member for Traeger stated the following reasons for introducing the Bill (its third introduction in the House):

This bill is about providing a pathway of prosperity for these communities. It certainly involves the safety and security of the children. With the benefit of hindsight and looking back on the impact of this, I think we are really talking just as much about the prosperity of people in these communities. By that I mean that the unintended consequence of this has been an overreach so that too many people are getting captured in this net and it is raising the bar too high for fragile people with a fragile demeanour who are trying to re-engage.<sup>9</sup>

### 1.2.1 Timeline

Below is a timeline applicable to the *Working with Children (Risk Management and Screening) Act 2000*:



<sup>9</sup> Queensland Parliament, Record of Proceedings, 1 September 2021, p 2356.

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

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.

Under the WWC Act, a blue card is required if the person's paid work, volunteer or business activities fall within the scope of the regulated employment or business categories. A person requiring a blue card must undergo a blue card check that will look for:

- a charge or conviction for any offence in Australia, even if no conviction was recorded
- a charge for an offence or, in the case of a disqualifying offence, a charge that has been dealt with other than by conviction
- child protection prohibition orders
- disqualification orders
- reporting obligations under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* or *Dangerous Prisoners (Sexual Offenders) Act 2003*
- disciplinary information from certain organisations
- domestic violence information
- other information about the person that is relevant to deciding whether it would be in the best interests of children to issue a blue card
- police investigative information relating to allegations of serious child-related sexual offences, even if no charges were laid.<sup>10</sup>

Further details of current requirements under the WWC Act are available on the Queensland Government's Blue Card Services website and also set out in correspondence with the Department of Justice and Attorney-General (DJAG) dated 30 September 2022. A copy of this correspondence is available on the committee's webpage.

### 1.2.3 Royal Commission into Institutional Responses to Child Sexual Abuse (Working with Children Checks Report)

The Royal Commission into Institutional Responses to Child Sexual Abuse published an interim report on working with children checks in 2015.<sup>11</sup> It made over 30 recommendations, many of which focused on working toward national consistency, including the facilitation towards a national model for working with children checks.<sup>12</sup> Some of those recommendations are subject to other factors such as commencement of continuous monitoring of national criminal history records, and development and implementation of the Royal Commission's recommendations about 'child safe standards'.

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<sup>10</sup> Queensland Government Blue Card Services website.

<sup>11</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Working with Children Checks Report, Commonwealth of Australia, 2015.

<sup>12</sup> See in particular Recommendation 3(a) of the Royal Commission into Institutional Responses to Child Sexual Abuse, Working with Children Checks Report, Commonwealth of Australia, 2015, p 13.

One of the Royal Commission's recommendations was that all state and territory governments should amend their working with children check laws so that there would be no conditional or different types of working with children clearances.<sup>13</sup>

The Royal Commission recommended that 'the outcome of a [working with children check] is either that a clearance is issued or it is not; there should be no conditional or different types of clearances'. The Royal Commission was concerned that conditions placed upon working with children clearances:

- rely on the conditions and situational and organisational factors being static and applied consistently
- create challenges for monitoring and enforcing compliance, as it can be difficult to know whether the conditions are being adhered to or if the situational or organisational factors have changed
- create barriers to portability across child-related roles and employers.<sup>14</sup>

#### **1.2.4 Queensland Family and Child Commission review of the blue card system**

The QFCC commenced a review of the WWC Act and its operation in 2016, and reported in 2017. The *Keeping Queensland's children more than safe: Review of the blue card system* (Blue Card Review report) considered feedback from stakeholders about the impact of the blue card system on Aboriginal and Torres Strait Islander peoples. Those consulted included Aboriginal and Torres Strait Islander communities, non-government organisations and Mr Robbie Katter MP. The Blue Card Review report included consideration of the reports and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and the 2013 Queensland Child Protection Commission of Inquiry.

Concerns raised during the QFCC Blue Card review included the system as a barrier to employment and kinship care arrangements, limited support in communities to assist in the working with children process, some of which are not culturally appropriate, and a lack of appropriate community education.<sup>15</sup>

The QFCC Blue Card Review report made 81 recommendations about legislative, policy and operational issues. The recommendations were in four areas: overarching reforms; streamlining the system; strengthening the system; and improving support and maintaining public confidence.<sup>16</sup> The Blue Card Review report recommended significant reforms to the blue card system including specific recommendations on how Aboriginal and Torres Strait Islander communities and applicants are supported. The QFCC Blue Card review did not support conditional working with children clearances, in line with the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse.

#### **1.2.5 Previous related bills introduced by Mr Katter**

This Bill is the third time that Mr Katter has introduced similar legislation. A summary of the other two previous bills is set out below.

##### **The Working with Children Legislation (Indigenous Communities) Amendment Bill 2017**

On 14 June 2017, Mr Katter, introduced the Working with Children Legislation (Indigenous Communities) Amendment Bill 2017 (2017 Bill).

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<sup>13</sup> Recommendation 28 (b) of the Royal Commission into Institutional Responses to Child Sexual Abuse, Working with Children Checks Report, Commonwealth of Australia, 2015, p 6.

<sup>14</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Working with Children Checks Report, Commonwealth of Australia, 2015, p 102.

<sup>15</sup> QFCC, *Keeping Queensland's children more than safe: Review of the blue card system*, p 127.

<sup>16</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.

The Legal Affairs and Community Safety Committee of the 55th Parliament (the former 2017 LACSC) was required to report by 14 December 2017 but the inquiry lapsed when the 55th Parliament was dissolved.

The former 2017 LACSC received five submissions on the 2017 Bill. The submissions are available on the former 2017 LACSC's website

The former 2017 LACSC held round table meetings in Yarrabah, Hopevale and Doomadgee as well as a public briefing and a public hearing in Brisbane.

### **The Working with Children Legislation (Indigenous Communities) Amendment Bill 2018**

On 17 October 2018, Mr Katter introduced the Working with Children Legislation (Indigenous Communities) Amendment Bill 2018 (2018 Bill). The 2018 Bill was essentially the same as the 2017 Bill.

The 2018 Bill was referred to the former Legal Affairs and Community Safety Committee (the former 2018 LACSC) for detailed consideration. The former 2018 LACSC held a public briefing with Mr Katter on 14 November 2018. On 15 November 2018 the Committee of the Legislative Assembly resolved that the former Education, Employment and Small Business Committee (former EESBC) would examine and report on the Bill as well as the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 (see below).

On 14 February 2019, the former EESBC tabled its report.<sup>17</sup> On 19 May 2020, the 2018 Bill was considered by the Legislative Assembly but failed to be passed at the second reading stage.

#### **1.2.6 Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2019**

The Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 (Government 2018 WWC Bill) was introduced into the Legislative Assembly on 13 November 2018 and initially referred to the former 2018 LACSC.

When introducing the Government 2018 WWC Bill, the Attorney-General said the government has broadly supported the intent of the QFCC recommendations from the Blue Card Review report, and that this bill was the first stage in a series of legislative reforms that will be brought before the House.<sup>18</sup>

The explanatory notes state the policy objectives of the Government 2018 WWC Bill are to:

- give effect to the Government's election commitment to amend 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 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*.<sup>19</sup>

On 14 February 2019, the former EESBC tabled its report<sup>20</sup> and on 15 May 2019, the Government 2018 WWC Bill was passed with amendment, receiving assent on 24 May 2019.

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<sup>17</sup> Report No. 13, 56th Parliament, Working with Children Legislation (Indigenous Communities) Amendment Bill 2018.

<sup>18</sup> Queensland Parliament, Record of Proceedings, 13 November 2018, p 3385.

<sup>19</sup> Explanatory notes, p 1.

<sup>20</sup> Report No. 12, 56th Parliament, Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018.

### 1.2.7 Child Protection Reform and Other Legislation Amendment Act 2022

The *Child Protection Reform and Other Legislation Amendment Act 2022* was passed on 5 May 2022. This legislation, among other things, amends the WWC Act to include a new head of power to enable the chief executive (working with children) to request domestic violence information from the police commissioner. The police commissioner may provide the chief executive (working with children) with a brief description of the circumstances of a domestic violence order mentioned in the domestic violence information.

This amendment stems from recommendation 39 from the QFCC's Blue Card Review report to allow Blue Card Services (BCS) to obtain domestic violence information about blue card applicants. The QFCC acknowledged that considering civil domestic and family violence information as part of a blue card assessment is complex but that accessing this information where there is other criminal history will strengthen the blue card system by enabling a holistic risk assessment.

In its report on the legislation, the Community Support and Services Committee (CSBC) noted 'the concerns expressed by stakeholders that the provisions in the Bill relating to domestic violence information may exasperate the barriers facing First Nations peoples and women in particular', but acknowledged that the 'safety of children in care is paramount'.<sup>21</sup>

Relevantly, the CSBC recommended in its report that:

The Committee encourages the Department of Justice and Attorney-General to investigate the nuances and the barriers regarding First Nations persons obtaining Blue Cards so as to improve access to employment.<sup>22</sup>

## 1.3 Government response

### 31 July 2020 Progress Report

On 31 July 2020, in line with recommendation 2 of the 2018 Bill Report, the Attorney-General and Minister for Justice (Attorney-General) provided the committee with a progress report about the implementation of the QFCC's recommendation 73 about how Aboriginal and Torres Strait Islander applicants for blue cards are supported. Relevantly, regarding implementation of the QFCC's recommendation 73, the DJAG had developed a strategy to address the recommendation including establishing a reference group of government senior representatives and Aboriginal and Torres Strait Islander peak bodies to undertake a co-design process, stating:

The intention of this process is to ultimately produce a strategy and action plan for Aboriginal and Torres Strait Islander people and organisations accessing the blue card system.

...

It is anticipated that the strategy, once implemented, will facilitate improved outcomes for Aboriginal and Torres Strait Islander people engaging with the blue card system; increase the number of available kinship carers to safely care for Aboriginal and Torres Strait Islander children; and increase the number of Aboriginal and Torres Strait Islander peoples securing employment and participation in child-related services.<sup>23</sup>

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<sup>21</sup> Community Support and Services Committee, Report No. 12, 57<sup>th</sup> Parliament, Child Protection Reform and Other Legislation Amendment Bill 2021, p 17.

<sup>22</sup> Community Support and Services Committee, Report No. 12, 57<sup>th</sup> Parliament, Child Protection Reform and Other Legislation Amendment Bill 2021, p 17.

<sup>23</sup> Correspondence dated 31 July 2020 from the Attorney-General and Minister for Justice to the former Education, Employment and Small Business Committee, pp 1-2.

### 13 April 2022 Progress Report

The Attorney-General provided the committee with a further update dated 13 April 2022 regarding the implementation of recommendations from the QFCC's Blue Card Review report, including the following attachments:

- a summary of the progress of a number of the key recommendations from the Blue Card Review report
- a copy of the *Safe children and strong communities: A strategy and action plan for Aboriginal and Torres Strait Islander peoples and organisations accessing the blue card system* which was launched in June 2021 and aligns with recommendation 73 of the Blue Card Review report.

A copy of this letter and its attachments are available on the committee's webpage.

The Attorney-General advised that as at 4 April 2022, work had progressed on 76 out of 81 recommendations and, of these, 16 recommendations have been completed in full with 6 further recommendations proposed for completion.

### 10 October 2022 Public Hearing

The committee heard evidence at the public hearing on 10 October 2022 that some recommendations of the Blue Card Review report were still yet to be implemented including recommendations 41, 43 and 54.<sup>24</sup>

#### 1.4 Should the Bill be passed?

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

#### **Recommendation 1**

The committee recommends the Bill not be passed.

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<sup>24</sup> Public hearing transcript, Brisbane, 10 October 2022, pp 7, 8, 18 and 19.



## 2 Examination of the Bill

The committee invited stakeholders and subscribers to make written submissions on the Bill. Fifteen submissions were received (see Appendix A for a list of submitters).

As part of its inquiries, the committee travelled to Mount Isa, Palm Island and Yarrabah to speak with communities and organisations, and heard from many other stakeholders including people from Mornington Island, Doomadgee and Brisbane (see Appendix B for a list of witnesses).

The committee received a public briefing about the Bill from the Member for Traeger on 25 October 2021 and received written advice responding to the submissions from the Member for Traeger on 10 March 2022.

The submissions, correspondence from the Member for Traeger and transcripts of the briefing and hearings are available on the committee's webpage.

In its examination of the Bill, the committee considered all the material before it. This section discusses a number of the key issues raised during the committee's examination of the Bill.

### 2.1 Impact of non-serious and historical convictions on employment opportunities

#### 2.1.1 Outline of issue

One of the issues raised under the current blue card system in Queensland is that '[n]o mechanism exists that recognises behavioural improvements and the positive impact employment of an individual may have on the community'.<sup>25</sup>

The Member for Traeger also discussed in his explanatory speech about the unintended consequences of the current situation and that there 'has been an overreach so that too many people are getting captured in this net and it is raising the bar too high for fragile people with a fragile demeanour who are trying to re-engage'.<sup>26</sup>

The Member for Traeger further explained how non-serious and historical convictions were preventing individuals from obtaining blue cards under the current system to allow them to be employed:

At the outset, we need to acknowledge that the first thought about this is that it is about child sex offenders, but the blue card's reach gets anyone with a drink-driving fine, a home-brew offence in Mornington Island, DVs and assault charges. That makes it much more complex when considering the impact of this bill.

...

I have had three mayors say they have had problems with blue cards. They have had councillors who cannot get blue cards. There are so many people in those communities who cannot get blue cards but the majority of the jobs in those areas are government jobs that require a blue card.<sup>27</sup>

#### 2.1.2 Stakeholder comment

In its submission, ATSILS outlined the impact of non-serious and historical convictions on employment opportunities for Aboriginal and Torres Strait islanders and explained what 'prompted the Bill':

- In communities where job prospects are very limited, a huge proportion of jobs in the community require a blue card;
- Lower-level convictions are standing in the way of some potentially very good young people and older people getting jobs;

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<sup>25</sup> Explanatory notes, p 2.

<sup>26</sup> Explanatory speech, p 2356.

<sup>27</sup> Explanatory speech, pp 2356-7.

- A settled and responsible person in their mid-thirties or forties, well respected and trusted in the community, may never get a blue card because of convictions from their late teens and early twenties;
- Many young persons ignore legal advice to challenge charges that are not correct and elect to plead guilty to 'get it over and done with' without realising the impact these offences will have on their future work prospects.<sup>28</sup>

In this regard, the Caxton Legal Centre submission further explained:

As the Blue Card System currently stands, there is no specification that offences must be committed in relation to children and allows a wider scope of crimes to be considered when screening.

The Bill seeks to address this, to some extent, by dealing with a very limited sub-section of serious offences, namely sections 409, 419 and 427 of the Criminal Code and sections 5, 6, 8 and 9D of the Drugs Misuse Act.

This is a workable, specific and realistic initial framework, which could potentially be expanded in the future. In particular, our clients are often denied blue cards for a range of less serious offences and other circumstances. We are particularly concerned about the lack of cultural considerations and relevant historical/contextual knowledge in the decisions about those less serious matters.<sup>29</sup>

PeakCare Queensland Inc (PeakCare) submitted that the current system did not appropriately account for the situation where 'individuals can and do change their behaviour'.<sup>30</sup>

Recovery Mission Townsville also noted that:

Not only has the current WWCC [Working with Children Check] system been shown to be detrimental to many Indigenous Queenslanders but it has also caused anyone with a criminal history applying for a Blue Card to be severely marginalised.<sup>31</sup>

Ms Meg Martin, Human Rights Lead for the Queensland Council of Social Services, also gave evidence to the detrimental affect on applicants 'where the historical offence was unrelated to children'.<sup>32</sup>

### **Recommendations regarding 'exceptional case'**

LawRight<sup>33</sup> and Sisters Inside Inc (Sisters Inside) both made submissions regarding the decision-making process for determining an 'exceptional case'. Sisters Inside submitted that where the applicant has a non-serious offence conviction, the finding of an 'exceptional case' by the chief executive as grounds to issue a negative notice should have to meet a higher threshold stating:

... we recommend amendment s 221(2) of the Act to state that if the chief executive is "satisfied it is an exceptional case in which there is a real and not remote chance it would threaten the safety, interests, or wellbeing of children for the chief executive to issue a working with children clearance, the chief executive must issue a negative notice to the person". We consider this would lower the discretion the chief executive has to issue Negative Notices in circumstances where an applicant has very dated, minor, and/or non-violent criminal history.<sup>34</sup>

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<sup>28</sup> Submission 15, p 2.

<sup>29</sup> Submission 9, p 2.

<sup>30</sup> Submission 6, p 4.

<sup>31</sup> Submission 14, p 1.

<sup>32</sup> Public hearing transcript, Brisbane, 10 October 2022, p 27.

<sup>33</sup> Submission 4, p 2.

<sup>34</sup> Submission 3, p 7.

### 2.1.3 Committee comment

We consider that the blue card framework should be reviewed so historical offences of a non-serious nature and not involving children are not taken into account. The criminal justice system is premised on rehabilitation, yet blue cards have the potential to impose 'life sentences' on individuals who have already been punished for their prior crimes.

## 2.2 Current 'one size fits all' blue card system vs restricted working with children clearance determined by local CJG

### 2.2.1 Outline of issue

The explanatory notes state that 'the 'one size fits all' approach to the blue card system is having a negative impact on Indigenous communities within Queensland where unemployment is chronically high and work opportunities are statistically low'.<sup>35</sup>

The explanatory notes also provide:

It is imperative that the legislative framework in Queensland recognises the different circumstances of remote Indigenous communities and supports the process for job seekers in Indigenous communities whilst protecting the interests of children.

The existing system, whilst well-meaning in its intention, is not practical in its application to remote Indigenous communities. Numerous examples exist where individuals who have made significant progress reforming their behaviour are faced with no hope of accessing employment due to the Blue Card system.<sup>36</sup>

The following limitations of the current blue card system are also highlighted in the explanatory notes:

- There is no mechanism to allow the local community to have input into the issuing of Blue Cards for employment in that community;
- No mechanism exists that recognises behavioural improvements and the positive impact employment of an individual may have on the community.<sup>37</sup>

### 2.2.2 Proposal under the Bill

The proposal under the Bill to alleviate the impact of the current blue card system on Indigenous communities is summarised in the explanatory notes:

This Bill creates a framework that overcomes these limitations by enabling the local Community Justice Group (as defined in the Aboriginal and Torres Strait Islander Communities [Justice, Land and Other Matters] Act 1984) to make a binding recommendation to the chief executive to issue a restricted working with children clearance to an individual for work within that community even if the individual would be issued a negative notice by the chief executive due to previous criminal offences.

A Community Justice Group typically includes Elders, Traditional Owners, respected persons and community members of 'good standing'. There are currently close to 50 Community Justice Groups operating across Queensland.

It is vitally important to note that none of the offences which can be assessed by the Community Justice Group in making a recommendation to issue a restricted working with children clearance, are sexually-based offences. If an applicant has sexually-based offences they are considered through the standard Blue Card process and if these offences are classified as serious offences or disqualifying offences a Blue Card will not be issued.<sup>38</sup>

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<sup>35</sup> Explanatory notes, p 1.

<sup>36</sup> Explanatory notes, p 1.

<sup>37</sup> Explanatory notes, pp 1-2.

<sup>38</sup> Explanatory notes, p 2.

### 2.2.3 Stakeholder comment

The proposal outlined above raises the threshold issue of whether there should be a separate approach to the blue card system for Indigenous communities rather than the current ‘one size fits all’ approach.

#### Support for a separate approach for Indigenous communities

There were a number of stakeholders who agreed that the current ‘one size fits all’ approach to the blue card system was not the ideal approach for Aboriginal and Torres Strait Islander people. For example, PeakCare submitted:

We concur with much of the sentiment expressed by Mr Katter MP in the Bill’s Explanatory Notes, in particular and consistent with our previous submissions:

- the notion that a “one size fits all” approach is not working effectively, particularly for Aboriginal and Torres Strait Islander peoples in remote or discrete communities
- acknowledging that circumstances are different in remote communities in terms of how community functions, responsibilities of community members, cultural authority within community, and employment prospects, and
- that the current regime does not allow community to have input into decision making processes about an applicant’s suitability to work with children.<sup>39</sup>

QATSICPP also agreed that:

... the current Blue Card system and its “one size fits all” approach contains significant limitations in upholding the rights of Aboriginal and Torres Strait Islander peoples and is having a negative impact on Aboriginal and Torres Strait Islander communities in Queensland.<sup>40</sup>

ATSILS submitted that it:

... supports in general terms the approach that seeks to empower Aboriginal and Torres Strait Islander communities to be involved in decisions relating to them and their communities.<sup>41</sup>

#### Opposition to a conditional card or restricted working with children clearance system

However, the QFCC did not support the use of conditional cards or different clearance types and noted that:

... the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) did not support the use of conditional cards or different types of clearances. The Royal Commission held that conditional cards create challenges for monitoring and compliance, create barriers to the transferability of a clearance across different child related services and activities, and would allow people to work with children in circumstances where they might otherwise not be issued a blue card.<sup>42</sup>

Although the CREATE Foundation (CREATE) advocated for changes in the system to allow Aboriginal and Torres Strait Islander people to be involved,<sup>43</sup> it was opposed to a restricted working with children clearance:

CREATE does not support legislative change to include a restricted working with children clearance, as described in the Amendment Bill. A restricted working with children clearance suggests that those working with Indigenous children and young people in remote communities would not be safe to work with children and young people in other communities, and that the standards are lower for children in

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<sup>39</sup> Submission 6, p 4.

<sup>40</sup> Submission 7, p 4.

<sup>41</sup> Submission 15, p 5.

<sup>42</sup> Submission 12, p 6.

<sup>43</sup> Submission 5, p 2.

remote communities than for those children in other communities. Rather than attempting to implement a restricted working with children clearance for specific remote communities, CREATE advocates a broader systemic change supporting increased self-determination practices in legislation, which are augmented by strong policy and governance frameworks that ensure Aboriginal and Torres Strait Islander people are included in, and have increased control over, decision-making that affects their communities and their children.<sup>44</sup>

### **Expansion of role of CJGs**

In its submission, the Queensland Human Rights Commission (QHRC) describes the nature of CJGs:

CJGs are statutory bodies that are located in around 40 different communities throughout Queensland. CJGs deliver a number of core court related activities and services aiming to reduce crime, address recidivism, provide crisis support and promote community wellbeing and healing.<sup>45</sup>

Wugu Nyambil, a Yarrabah based Indigenous employment service, was also supportive of the proposal to have the local CJG be involved in blue card approvals adding that:

The process also needs to take into consideration the maturation of an individual, their current standing within community as a citizen, supports that can be provided by an employer, references, whether a guarantor could be used etc to help mitigate any risk to a child.<sup>46</sup>

ATSILS noted support for the proposal to use CJGs highlighted the following strengths of the model proposed under the Bill:

The strengths of the proposed model are that community assessment of the currency and relevance of past criminal or other history to a community member and assessment of their current and likely future conduct would result in the granting or continuation of a blue card rather than a negative assessment. Such a positive assessment would be confined to work in the approving community.<sup>47</sup>

However, ATSILS also pointed to some limitations of the proposed model:

In the particular circumstances of Blue Card Assessments, there are limitations to such a model, some of which were raised in the consultation rounds and some of which arise around issues of confidentiality, avoiding conflicts of interest, and having a relatively small pool of people to draw from when those issues are taken into account.<sup>48</sup>

Ms Cynthia O'Loughlin, Coordinator of the Doomadgee Community Justice Group, recommended that both the council and the CJG should be involved in making decisions concerning blue card applications:

I think the community justice group as well as the council should be involved in making those decisions—just to take the pressure off. Being in a community environment as such, we could be ostracised for making a particular decision about someone who may feel that they are entitled to that card but when we have looked into their situation the justice group may say, 'We will not be able to say yes to that particular person.' Therefore, in order to take the pressure off the community justice group, I believe that the Doomadgee council should also be involved in that decision-making.<sup>49</sup>

Ms Rose Iles, an Elder from the Waanyi Tribal PBC, also pointed to some difficulties which might arise if CJGs were given the role in relation to blue cards as contemplated by the Bill:

Again this will be just my opinion but also from previous experience that our people can tend to get very envious of those who are trying to make their lives better and they can be quite destructive. I am hoping that the elders that sit on that community justice panel will be strong enough. This is where we have to

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<sup>44</sup> Submission 5, p 3.

<sup>45</sup> Submission 10, p 4.

<sup>46</sup> Submission 13, p 1.

<sup>47</sup> Submission 15, p 5.

<sup>48</sup> Submission 15, p 6.

<sup>49</sup> Public hearing transcript, Brisbane, 12 September 2022, p 9.

make sure we get strong people on there who will apply the letter of the law that they are responsible for. We have to deal with the jealousy and the envy and the aggro of somebody getting better than me. That is the case and we know it exists, but we have to address it.<sup>50</sup>

### **Appropriate resourcing of CJGs**

A number of submitters noted that for the proposal under the Bill to be successful, it was essential that CJGs are resourced appropriately so that they are able to manage the increase in responsibilities.<sup>51</sup> LawRight highlighted a number of issues that need to be addressed in relation to the involvement of CJGs in the blue card approvals process and recommended the provision of 'further resourcing and guidance to CJGs, so that they can appropriately advise community members and engage effectively with the blue card system'.<sup>52</sup>

The QHRC also noted that further consultation was required with the CJGs to address 'their obligations, resourcing and capacity'.<sup>53</sup>

#### **2.2.4 Committee comment**

We recognise that CJGs play an important role in the community, and it is vital the government provide even greater support to CJGs so they can assist, advise and support applicants throughout the blue card process. However, we did not receive overwhelming evidence that CJGs were the answer to blue card issues in Indigenous communities. Based on this, we do not feel that we can recommend the CJG model as the way forward to solve the blue card issues in Indigenous communities.

Despite this, based on evidence from witnesses and stakeholders, we still consider it beneficial for CJGs to be involved in the blue card decision-making process. As such, we suggest further examination of the blue card assessment process to determine if community-specific information provided by CJGs can be incorporated into the blue card assessment process to assist in expediting the decision-making process.

### **2.3 Lengthy processing and appeal timeframes**

#### **2.3.1 Outline of issue**

The explanatory notes outline the following limitations of the current blue card system:

- The current application process has no set timeframe for the issuing of a Blue Card for individuals in Indigenous communities, which creates a significant barrier to accessing employment;
- The current application process does not allow an applicant to undertake work during the application process, even if it can be determined that the individual poses no risk to the safety of children. This can often result in the loss of long-term employment opportunities.<sup>54</sup>

#### **2.3.2 Proposal under the Bill**

Under the new blue card framework proposed under the Bill, clear time frames are provided for the review of an application. Examples of these timeframes are set out in the explanatory notes:

- Once a community area application is made, the chief executive has 21 days to decide whether to issue a positive or negative notice to the applicant.<sup>55</sup>

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<sup>50</sup> Public hearing transcript, Mt Isa, 6 September 2022, p 2.

<sup>51</sup> See, for example, submission 3, p 1, submission 9, p 2 and submission 4, p 11.

<sup>52</sup> Submission 4, p 11 (recommendation 9).

<sup>53</sup> Submission 10, pp 2-3.

<sup>54</sup> Explanatory notes, pp 1-2.

<sup>55</sup> Explanatory notes, p 3.

- If the chief executive intends to issue a negative notice to the applicant, and the applicant is not subject to any non-assessable serious offences or disqualifying offences, the chief executive must notify the Community Justice Group prior to issuing the negative notice to the applicant.<sup>56</sup>
- Prior to a negative notice being issued to the applicant, the Community Justice Group may make a recommendation for the chief executive to issue a restricted working with children clearance, enabling the person to undertake regulated employment in the community area. The chief executive must issue a restricted working with children clearance, if that recommendation is made by the Community Justice Group.<sup>57</sup>

### 2.3.3 Stakeholder comment

Issues under the current system regarding the delays for the processing of blue cards under the WWC Act and the Queensland Civil and Administrative Tribunal (QCAT) appeal timeframes were raised by a number of stakeholders during the inquiry process.

In its submission, the QFCC acknowledged 'the need for streamlined blue card system processes which allow Aboriginal and Torres Strait Islander people to engage in employment and kinship carer duties at the earliest time possible'.<sup>58</sup>

The Caxton Legal Centre noted that:

The Bill proposes to establish a time limit framework which will lift a significant barrier to accessing employment in remote communities.<sup>59</sup>

The Caxton Legal Centre also submitted that the review process for a blue card through QCAT can take 'at least 12 months'<sup>60</sup> with other submitters also noted lengthy time frames of 15 months<sup>61</sup> and almost 2 years.<sup>62</sup>

The QFCC stated:

Queensland has been identified as having a higher rate of negative notices than other jurisdictions, which may be the result of the broad legislative test applied during the assessment in comparison with other states and territories.<sup>63</sup>

ATSILS submission notes that QATSICPP has identified the following issues relating to processing timing under the current situation:

Lack of information or updates to the applicant during the assessment period (which, in addition to lengthy processing times, often leads to employment opportunities expiring prior to obtaining an assessment result).<sup>64</sup>

QATSICPP linked resourcing limitation to the processing time delays:

We are concerned that the resourcing limitations of the Blue Card team, including limited number of First Nations staff, are negatively impacting on the processing time of Aboriginal and Torres Strait Islander applications.<sup>65</sup>

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<sup>56</sup> Explanatory notes, p 3.

<sup>57</sup> Explanatory notes, p 3.

<sup>58</sup> Submission 12, p 5.

<sup>59</sup> Submission 9, p 4.

<sup>60</sup> Submission 9, pp 2-3.

<sup>61</sup> Submission 15, p 4.

<sup>62</sup> Submission 13, p 2.

<sup>63</sup> Submission 12, p 7.

<sup>64</sup> Submission 15, p 4.

<sup>65</sup> Submission 7, P 3.

LawRight provided a detailed submission referring to a ‘first delay’ of approximately 12 months when the Chief Executive of Blue Card Services decides to issue a positive or negative notice:

Our more detailed review of ten recent client files showed that the wait time between the date of the request for s229 submissions until the date the applicant was issued a negative notice was on average 240 days, with the shortest delay being 92 days and the longest being 437 days. All ten of those clients went on to have that decision reviewed in QCAT and ultimately had the negative notice set aside.<sup>66</sup>

The LawRight submission also referred to a ‘second delay’ of approximately 12 to 18 months that can occur when the applicant issued with a negative notice decides to apply to QCAT to review the decision.<sup>67</sup> LawRight submitted:

This is particularly concerning when a significant proportion of Blue Card decisions are set aside by QCAT. Our data shows that two thirds of our clients’ Blue Card decisions that went to hearing were eventually overturned.<sup>68</sup>

LawRight summarises the impacts of these delays as follows:

Given that an application for a Blue Card is generally motivated by an opportunity to pursue employment, training or volunteering, a two-year wait will almost always prevent that opportunity from being realised. ... LawRight’s survey of 83 current and former clients found that every client surveyed lost employment opportunities, could not advance their tertiary education, or could otherwise not fully participate in their communities due to this delay. A significant number also reported substantial negative impacts on their mental health whilst waiting for a decision.<sup>69</sup>

In correspondence to the committee dated 29 September 2022, the DJAG stated that BCS aims to process online applications with no assessable information within 5 business days and online applications with assessable information within 4 months. However, it was noted that more complex applications can take longer, with the longest taking 520 days.<sup>70</sup>

#### **2.3.4 Committee comment**

We received considerable evidence concerning the long timeframes involved in processing blue card applications and applications to have negative notices cancelled. These long timeframes are being experienced not only in Indigenous communities but across Queensland generally. We consider it appropriate for the government to review the situation and provide, where necessary, additional resources and support to BCS to administer blue card applications and reviews in a more timely manner and for BCS to review performance targets for timely decision-making on blue card applications and publish performance quarterly.

Further, it is apparent from evidence obtained at the public hearings and information provided by DJAG that visitation to communities by BCS to assist with blue card issues in those communities is insufficient. It is our view that the allocation of additional resources to BCS to employ local delegates in the communities or regionally would assist greatly with some of the issues currently faced in Indigenous communities, such as timeliness of decision-making, education and literacy levels, lack of access to the internet and necessary infrastructure, and assisting with administrative procedures relating to blue card applications.

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<sup>66</sup> Submission 4, p 3.

<sup>67</sup> Submission 4, p 4.

<sup>68</sup> Submission 4, p 4.

<sup>69</sup> Submission 4, p 4.

<sup>70</sup> Correspondence dated 29 September 2022 from DJAG to the committee, Attachment p 4.



## **2.4 Limited geographical application of proposed restricted working with children clearance**

### **2.4.1 Outline of issue**

The explanatory notes discuss why there is a need for a ‘restricted working with children clearance’:

The existing system, whilst well-meaning in its intention, is not practical in its application to remote Indigenous communities. Numerous examples exist where individuals who have made significant progress reforming their behaviour are faced with no hope of accessing employment due to the Blue Card system. Feedback from community leaders, law enforcement and judicial representatives indicates that handing more decision-making power to the communities themselves would assist in opening up employment opportunities whilst maintaining child safety standards.<sup>71</sup>

The main issue is that currently ‘[t]here is no mechanism to allow the local community to have input into the issuing of blue cards for employment in that community’.<sup>72</sup>

### **2.4.2 Proposal under the Bill**

The proposal under the Bill to deal with the above issue is detailed in the explanatory notes:

- An application (community area application) for a Blue Card is made to the chief executive and the applicant indicates that the application is for a restricted working with children clearance, in a community area.
- A restricted working with children clearance only allows the person to undertake employment in the community in which the Community Justice Group has jurisdiction (the community area) so there is no risk that they will undertake relevant employment in other areas.<sup>73</sup>

### **2.4.3 Stakeholder comment**

The concept of a ‘restricted working with children clearance’ was supported by the QHRC:

The Bill provides for CJGs to issue a restricted working with children clearance which would only be valid in the specific community area.... This aims to allow “the holder to work only in the specific community to which the *restricted working with children clearance* relates.” The Commission sees merit in this approach and suggests to further address the barriers faced by Aboriginal and Torres Strait Islander Peoples, a conditional approval process could be extended beyond that suggested in the Bill.<sup>74</sup>

However, PeakCare did not support the proposal for the limited geographical application of the restricted working with children clearance submitting that it could create confusion for both holders and decision makers as:

For a range of reasons, and often to do with seeking medical treatment that cannot be provided in community, ‘sorry business’ responsibilities, or because of contact with the statutory child protection system, people travel between community and towns and cities, for example, to and from Cape and Gulf communities and Cairns and Townsville, Cherbourg and Brisbane, or Woorabinda and Rockhampton. It follows that there are many scenarios where the person may need to seek employment or to stay for an extended period with family who are approved carers for a child in care and would therefore require an (unconditional) positive notice.<sup>75</sup>

Sisters Inside also raised concerns that under the current draft of the Bill, the restricted geographical application of any blue card will hinder people from moving out of a community to live elsewhere:

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<sup>71</sup> Explanatory notes, p 1.

<sup>72</sup> Explanatory notes, p 1.

<sup>73</sup> Explanatory notes, p 3.

<sup>74</sup> Submission 10, p 9.

<sup>75</sup> Submission 6, p 5.

In effect, this will mean that individuals will be forced to go through the protracted application process all over again if they move out of their community. We worry that this may be a considerable disincentive for individuals to move residence or continue in employment if they do move. For example, the limited geographical range of the clearance may dissuade a woman from moving out of a community to further her career, or, more concurringly, escape domestic violence.

Additionally, we worry that some individuals may not understand that their clearance is only valid for certain geographical areas and may consequently be criminalised for working in regulated employment outside of that area. This gives further weight to the need for improved advice and support services for WWCC applicants.<sup>76</sup>

QCOSS queried the application of the Bill across different regions noting that while the Bill might be appropriate for rural communities, it might not apply to the more urban communities.<sup>77</sup>

QATSICPP also submitted that changes to the blue card system should apply to all Aboriginal and Torres Strait Islander applicants across Queensland and not just to those residing in remote communities.<sup>78</sup>

Sisters Inside took this even further and proposed that changes should apply to all Queenslanders and not just Aboriginal and Torres Strait Islander people living in regional Indigenous communities noting the 'issues identified in Mr Katter MP's Explanatory Speech extend beyond regional Indigenous communities' and that 'extensive legislative change to the WWCC system is required to ... improve the functioning of the system for the benefit all Queenslanders'.<sup>79</sup>

#### **2.4.4 Committee comment**

We understand the intentions of the Bill in relation to the proposed limited geographical application of the restricted working with children clearance; however, the evidence before the committee, discussed above, indicates that limiting a working with children clearance to a specific geographical area, on balance, is not workable. We also heard evidence that some employers were requesting blue cards for all employees in cases where they may not be needed. We suggest the government engage in further communication to make the guidelines around when a blue card is required for employers to be more accessible and easier to understand.

### **2.5 Broadening scope of the Bill**

A number of the key suggestions for broadening the scope of the Bill and recommendations put forward by stakeholders during the inquiry process are discussed below.

#### **2.5.1 Impact of blue card system on kinship care households**

In its submission, HUB Community Legal explained the relationship between the blue card system and kinship care:

Kinship care involves the exercise of cultural rights that are now protected under s28 of the *Human Rights Act 2019 (Qld)*. For kinship care arrangements to be approved, the primary carer and any other adult in the household must hold a blue card. Regular adult visitors to the household may also be required to hold a blue card.<sup>80</sup>

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<sup>76</sup> Submission 3, p 5.

<sup>77</sup> Submission 2, p 3.

<sup>78</sup> Submission 7, p 4.

<sup>79</sup> Submission 3, p 4.

<sup>80</sup> Submission 11, p 2.

A number of submitters commented on the significant barriers that the blue card system places on kinship cares in Aboriginal and Torres Strait Islander households.<sup>81</sup>

QATSICPP submitted that:

Ultimately and regrettably, the current system contributes to the ongoing removal of Aboriginal and Torres Strait Islander children from their families and communities due to barriers experienced by family and community members ('kinship carers') in obtaining Blue Cards.<sup>82</sup>

Queensland Council of Social Service (QCOSS) stated:

This Blue Card requirement imposes a tremendous barrier for many households to provide kinship care, particularly given housing overcrowding and the pattern of over-criminalisation of Indigenous peoples.<sup>83</sup>

The QFCC elaborated on the relationship between barriers for kinship carers and the ATSI CPP framework:

The limitations experienced by Aboriginal and Torres Strait Islander kinship carer applicants is of significant concern to the QFCC. It places at risk adherence to the Aboriginal and Torres Strait Islander Child Placement Principle (ATSI CPP) within the *Child Protection Act 1999*.

The ATSI CPP is a framework designed to promote policy and practice that will reduce the overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system. The ATSI CPP aims to keep children connected to their families, communities, cultures and country, and to ensure the participation of Aboriginal and Torres Strait Islander people in decisions about their children's care and protection.<sup>84</sup>

Sisters Inside submitted that 'it also prevents women from becoming kinship carers for member of their own family'<sup>85</sup> with ATSI CPP providing a specific example of the 'unintended impediments created for households to offer kinship care':

A relative has applied for a blue card so she can be a kinship carer for a cousin's baby. She is the mother of three children, two who are in their mid-teens and one 18- year- old. Because the 18- year- old is an adult living in the household, he too is required by law to hold a blue card for the kinship care arrangement to continue. Although the younger siblings are fine, the 18- year- old is pushing the boundaries and playing up and getting into trouble with his peer group. He gets charged with offences and now the mother must choose between refusing to let him be bailed to her house or giving up the care of the kinship care baby.<sup>86</sup>

...

The outcome of all of this is that there are currently higher numbers of Aboriginal or Torres Strait Islander children who have been placed with non-indigenous carers as opposed to being placed with kinship carers. While this situation continues, the Aboriginal and Torres Strait Islander Child Placement Principle will be badly undermined.<sup>87</sup>

PeakCare highlights the barriers and challenges that the blue card system has for the child protection system in Queensland submitting that:

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<sup>81</sup> Submission 3, p 6; Submission 4, pp 6-7, 9, 11; Submission 5, p 2; Submission 10, p 2; Submission 12, p 4 and Submission 15, p 3.

<sup>82</sup> Submission 7, p 2.

<sup>83</sup> Submission 2, p 3.

<sup>84</sup> Submission 12, p 3.

<sup>85</sup> Submission 3, p 1.

<sup>86</sup> Submission 15, p 4.

<sup>87</sup> Submission 15, pp 4-5.

Children and young people are therefore more likely to be placed with strangers in foster care or in residential care, which are lower order priorities in the 'placement' element of the Child Placement Principle.<sup>88</sup>

Ms Martin gave evidence during the public hearing on 10 October 2022, that the lengthy delay is a 'barrier to having families together in a supported environment'.<sup>89</sup>

Representatives from Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) stated at the public hearing on 10 October 2022 that they were working with colleagues at BCS to find potential solutions to allow the sharing of information regarding kinship care between departments to help reduce delays in obtaining, accessing and analysing information.<sup>90</sup>

### **2.5.2 Member for Traeger's response**

In relation to the issue of the impact of the blue card system on kinship care households raised by various submissions as discussed above, the Member for Traeger responded that he acknowledged the 'negative impact on kinship care' and very much welcomed suggestions to extend the reach of the proposals under the Bill to deal with the 'inflexibility' of the current blue card system.<sup>91</sup>

### **2.5.3 Committee comment**

Discussion around placing a child within their own family or kinship group is of the utmost importance. This is reflected in the Aboriginal and Torres Strait Islander Child Placement Principle. The current WWCC system in Queensland, for the reasons discussed already, poses significant barriers for Aboriginal and Torres Strait Islander peoples in becoming kinship carers.

We note that the Bill specifically references Indigenous people and Indigenous communities and that such provisions would contradict recommendation 28 (b) of the Royal Commission into Institutional Responses to Child Sexual Abuse, Working with Children Checks Report, which provides that 'all state and territory governments should amend their WWCC laws to specify that ... the outcome of a WWCC is either that a clearance is issued or it is not; there should be no conditional or different types of clearances'.<sup>92</sup>

However, it is arguable that this recommendation was drafted without considering the unique situation of Indigenous people especially within Indigenous communities. Additionally, the unintended consequences that stem from a strict adherence to recommendation 28 (b) of the Royal Commission Report for Indigenous people within Indigenous communities arguably warrant a re-consideration of the need for a more autonomous approach or, at the very least, giving Indigenous communities greater inclusion in the blue card process.

Further, we heard evidence of families firstly being assessed by DCYJMA for suitability as to placement for a child, and then having to also be assessed by BCS with sometimes different outcomes. We heard that restrictions due to information privacy prevented information gathered by various departments on individuals or family being easily shared with other departments working with the same individuals or families. We therefore suggest a holistic review of the kinship care system aimed at seeking opportunities for communication improvement: for example, to allow for the disclosure of information between BCS and DCYJMA.

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<sup>88</sup> Submission 6, p 5.

<sup>89</sup> Public hearing transcript, 10 October 2022, p 27.

<sup>90</sup> Public hearing transcript, 10 October 2022, p 14.

<sup>91</sup> Correspondence dated 10 March 2022 from the Member for Traeger, p 1.

<sup>92</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Working with Children Checks*, August 2015, Recommendation 28(b), p 13.

## 2.6 Other jurisdictions

In conducting this inquiry, the committee considered the laws and regulations that apply to working with children checks in other jurisdictions throughout Australian and in some overseas jurisdictions, specifically New Zealand.

In Australia, each state and territory has its own scheme for conducting background checks for people seeking to engage in child-related work.<sup>93</sup> These schemes are commonly known as WWCCs or working with vulnerable people checks. The committee was not able to locate any provisions in WWCC legislation in Australia or overseas that specifically referenced Indigenous, First Nations or Aboriginal communities.

### 2.6.1 Committee comment

The scope of this Bill inquiry does not extend to the committee conducting a comprehensive cross-jurisdictional study about how working with children checks are conducted in other states, territories and in certain overseas jurisdictions. However, it is clear there may be lessons to be learned from other jurisdictions, and the government could consider approaches that are working in other jurisdictions to see if lessons can be learned for Queensland, particularly in relation to the Northern Territory Ochre card and the core worker exemption in New Zealand.

## 2.7 Overall committee comment and additional recommendations

### Committee comment

We note that the QFCC Blue Card Review report was issued in 2017, and a number of key recommendations, many relevant to Indigenous communities and the issues considered by the Bill, still remain to be implemented over 5 years later, specifically:

- Recommendation 41 – which involves a proposal to amend the WWC Act to introduce a new decision-making framework including a review of the list of serious offences
- Recommendation 43 – which involves the appointment of a multi-disciplinary panel including an Aboriginal person and a Torres Strait Islander person with relevant expertise to advise on complex cases and more generally
- Recommendation 46 – which involves a review of communication material to make them easier to understand and less legalistic and establishing a new process for requesting submissions, including giving applicants advice and details of the types of information required and the ability for applicants to make oral submissions
- Recommendation 54 – which involves considering whether other officers could be authorised to exercise some or all of the WWC Act enforcement powers.

In particular, the committee received evidence from the QFCC that the implementation of these recommendations would go a long way to solving many of the issues existing in Indigenous communities regarding the blue card. The committee suggests that the government considers expediting the implementation of the remaining recommendations.

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<sup>93</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Working with Children Checks*, August 2015, p 3.

**Recommendation 2**

The committee recommends that the Queensland Government trials a program of dedicated persons available within Indigenous communities to assist with Blue Card applications and processes, in collaboration with local Community Justice Groups and councils.

**Recommendation 3**

The committee recommends that the Queensland Government issues clear guidance to large employers, including Queensland Government departments and authorities, and the construction industry about their requirements under the *Working with Children Suitability (Risk Management and Screening) Act 2000*. This guidance should be towards supporting organisations to develop child-safe policies, which do not unnecessarily rely on the positive issue of blue cards.

**Recommendation 4**

The committee recommends that the Queensland Government considers legislative amendments to allow for the disclosure of information between government departments to streamline and facilitate the timeliness of blue card and kinship care approvals.

**Recommendation 5**

The committee recommends that the Queensland Government considers reviewing family-related definitions under the *Working with Children Suitability (Risk Management and Screening) Act 2000* and their application in Indigenous communities.

**Recommendation 6**

The committee recommends that the Queensland Government accelerates implementation of the Queensland Family and Child Commission's Report, *Keeping Queensland's Children More Than Safe: Review of the blue card system*. In particular, government should urgently progress work on recommendations 41, 43, 46 and 54.

**Recommendation 7**

The committee recommends that the Queensland Government reports back on its progress on the implementation of the committee's recommendations within 12 months.

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

#### 3.1 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
- 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.

##### 3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals. These rights include traditional common law rights and human rights.<sup>94</sup>

###### 3.1.1.1 *Rights of the child*

The Bill proposes to amend the Working with Children (Risk Management and Screening) Act 2000 to introduce two new types of working with children clearances – the interim restricted working with children clearance and the restricted working with children clearance that may be made following a community area application.<sup>95</sup>

Effectively, this means the Bill creates exceptions for certain individuals in certain communities to the safeguards protecting children that are enshrined in the WWC Act.<sup>96</sup> Individuals can apply for these clearances despite having been convicted of offences relating to stealing with violence,<sup>97</sup> burglary,<sup>98</sup> unlawful entry of a vehicle,<sup>99</sup> or certain drug offences under the *Drugs Misuse Act 1986*.<sup>100</sup>

The explanatory notes recognise a possible breach of fundamental legislative principle, as the proposed amendments allow certain applicants to receive a working with children clearance, when they ordinarily would not, resulting in children in community areas being exposed to particular convicted persons while children elsewhere are not.<sup>101</sup>

The explanatory notes justify any such breach of the LSA on the grounds that the CJG would be vetting of the individuals based on intimate knowledge of their characters and circumstances ensuring the fundamental legislative principles are still met.<sup>102</sup>

<sup>94</sup> Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2006, p 95.

<sup>95</sup> Bill, cl 8 (WWC Act, new ch 8, pt 4, div 9A), cl 12 (WWC Act, amended sch 7); explanatory notes, pp 2-4.

<sup>96</sup> Statement of compatibility, p 3.

<sup>97</sup> *Criminal Code*, s 409.

<sup>98</sup> *Criminal Code*, s 419.

<sup>99</sup> *Criminal Code*, s 427.

<sup>100</sup> Specifically, sections 5, 6, 8 and 9D which relate to trafficking dangerous drugs, supplying dangerous drugs, producing dangerous drugs and trafficking in relevant substances or things.

<sup>101</sup> Explanatory notes, p 5.

<sup>102</sup> Explanatory notes, p 5.

Further, more generally, the explanatory notes state the new framework created by the Bill is aimed at empowering 'Indigenous communities to make decisions which best serve their interests in relation to child protection and employment of community members'.<sup>103</sup>

### Committee comment

We are of the view that sufficient regard has been given to the rights of the child by allowing certain applicants to receive working with children clearances when they otherwise would not be eligible.

#### 3.1.1.2 Privacy

The right to privacy, and the disclosure of private or confidential information, are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.<sup>104</sup>

The Bill introduces new provisions in the WWC Act that allow the chief executive to share information they receive as part of an individual's community area application, with the relevant CJG.<sup>105</sup> This includes, for example, the person's application and any supporting documents, a written summary of any oral information received by the chief executive made as part of the application, and notice of any change in police information about the applicant.<sup>106</sup>

The provision of this personal information (including, in some instances, criminal history) to the relevant CJG is required for the CJG to be able to make a recommendation to the chief executive about the individual's suitability to hold an interim restricted working with children clearance or restricted working with children clearance.<sup>107</sup>

According to the explanatory notes, the Bill addresses any potential breach of a person's privacy by including provisions in the WWC Act that require an individual to consent before the chief executive can share information with the relevant CJG.<sup>108</sup>

Although the Bill contains no provision in relation to the confidentiality of an applicant's information, the WWC Act contain confidentiality provisions that would seem to adequately cover disclosure by the chief executive to the CJG.<sup>109</sup>

In relation to the use by members of a CJG of *protected information* (e.g. police information about a person and information about the person's mental health<sup>110</sup>) and *confidential information* (this includes certain information about a person's affairs<sup>111</sup>), it is highly doubtful that this would be covered by the confidentiality provisions in the WWC Act as CJG members do not appear to come within the classes of persons covered by those provisions being public service employees, the Minister, and the Minister's staff.

Further confidentiality provisions are contained within the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*,<sup>112</sup> however it is unclear whether the information provided to a CJG under the Bill would be covered as whilst the functions under that Act

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<sup>103</sup> Explanatory notes, p 1.

<sup>104</sup> OQPC, *Fundamental legislative principles: the OQPC notebook*, pp 95, 113-115; LSA, s 4(2)(a).

<sup>105</sup> Bill, cl 8 (WWC Act, new ss 231C, 231E, 231G).

<sup>106</sup> Bill, cl 8 (WWC Act, new ss 231C, 231E, 231G); WWC Act, schedule 7.

<sup>107</sup> Bill, cl 8 (WWC Act, new ss 231D(4), 231F(4)); WWC Act, schedule 7.

<sup>108</sup> Explanatory notes, pp 5-6. See also Bill cl 5 (WWC Act, amended s 188(3)(bb)), cl 11 (WWC Act, new s 594).

<sup>109</sup> See WWC Act, ss 384, 385.

<sup>110</sup> WWC Act, s 384(1)(b).

<sup>111</sup> WWC Act, schedule 7.

<sup>112</sup> See *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, s 63A; WWC Act, ss 384, 385.



are extended by clause 14 to the making of recommendations regarding the working with children provisions, in some instances the CJG may not make a recommendation.<sup>113</sup>

While the confidentiality provisions in the relevant Acts may not be applicable to information and documents about an applicant given to a CJG, the applicant must consent to the chief executive giving documents and information about the applicant to the CJG for each community area to which the application relates.<sup>114</sup>

### **Committee comment**

In the circumstances, we consider the Bill has sufficient regard to the rights and liberties of individuals with respect to the applicant's right to privacy and the disclosure of private information.

#### **3.1.1.3 Penalties**

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant. A penalty should be proportionate to the offence in that an offence of greater seriousness has a higher penalty than a lesser offence.<sup>115</sup>

The Bill introduces a new offence for failing to return to the chief executive a working with children card issued for an interim restricted working with children clearance (once notice has been given), unless the person has a reasonable excuse.<sup>116</sup> The maximum penalty is 20 penalty units (\$2,757).<sup>117</sup>

This penalty is consistent with other low level offences in the WWC Act<sup>118</sup> and is considered reasonable in the context of the framework proposed by the Bill.

### **Committee comment**

We are satisfied that the penalty proposed for this offence is reasonable and proportionate in the circumstances, such that the provision has sufficient regard to the rights and liberties of individuals.

#### **3.1.1.4 Administrative power**

Whether legislation has sufficient regard to the 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.<sup>119</sup> Further, legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons.<sup>120</sup>

The Bill allows a CJG to make a recommendation to the chief executive to issue an interim restricted working with children clearance and, subsequently, may make a recommendation to issue a restricted

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<sup>113</sup> See Bill, cl 8 (WWC Act, new s 231F(7)) and see *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, s 63A.

<sup>114</sup> See Bill, cl 5 (WWC Act, amended s 188(3)); cl 11 (WWC Act, new s 594(3)).

<sup>115</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>116</sup> Bill, cl 8 (WWC Act, s 231F(6)).

<sup>117</sup> A penalty unit is \$137.85 - Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, s 5A.

<sup>118</sup> See, for example, section 348A of the WWC Act which requires a person to return a replaced card to the chief executive if a new card is issued (maximum penalty 10 penalty units) or section 348 which relates to failure of a person to notify the chief executive of change of name or contact details within 14 days (maximum penalty 10 penalty units).

<sup>119</sup> LSA, s 4(3)(a).

<sup>120</sup> LSA, s 4(3)(c).

working with children clearance.<sup>121</sup> The CJG may opt not to make a recommendation.<sup>122</sup> If a CJG makes a recommendation to the chief executive, the chief executive must issue the relevant clearance.<sup>123</sup>

The Bill sets out specifically the matters the CJG must have regard to in their decisions about interim restricted working with children clearances and restricted working with children clearances.<sup>124</sup>

The matters to which the CJG must have regard include:

- whether, and in what capacity, the person has previously worked with children
- the person's social standing and participation within the community area
- whether, in the group's reasonable opinion, withholding the recommendation would have a negative impact on the social or economic wellbeing of the community area's inhabitants
- anything else the group reasonably considers to be relevant to the decision.<sup>125</sup>

While the Bill does not provide a right of review if the CJG does not make a recommendation, the WWC Act provides for certain review and appeal rights.<sup>126</sup>

The members of a CJG must be of good standing in the community and are appointed to their positions by the Minister.<sup>127</sup> The chief executive may make inquiries to decide whether a person is suitable for appointment as, or to continue as, a member of a CJG.<sup>128</sup> The Minister may revoke a member's appointment if the Minister decides a member of the CJG is no longer eligible or suitable for appointment.<sup>129</sup>

### **Committee comment**

We consider the delegation of this administrative power to the CJG is appropriate in the circumstances, having regard to the nature and function of a CJG, the role given to the CJGs by the Bill, and the policy objectives of the Bill.

#### **3.1.2 Institution of Parliament**

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

### **Committee comment**

We noted no issues in regard to the institution of Parliament as set out in section 4(2)(b) of the LSA.

#### **3.2 Explanatory notes**

Part 4 of the LSA 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 provide a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, the explanatory notes do not include a 'simple explanation of the

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<sup>121</sup> Bill, cl 8 (WWC Act, new ss 231D and 231F).

<sup>122</sup> Bill, cl 8 (WWC Act, new ss 231D(1), (2), (5) and 231F(1), (2), (7)).

<sup>123</sup> Bill, cl 8 (WCC Act, new ss 231D(5), 231F(5)).

<sup>124</sup> Bill, cl 8 (WCC Act, new ss 231D(4), 231F(4)).

<sup>125</sup> Bill, cl 8 (WCC Act, new ss 231D(4), 231F(4)).

<sup>126</sup> See WWC Act, ch 8, pt 7, div 3.

<sup>127</sup> *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, s 20.

<sup>128</sup> *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, s 21.

<sup>129</sup> *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, s 20.

purpose and intended operation of each clause of the Bill', as required by section 23(1)(h) of the LSA. In all other respects, the explanatory notes comply with the LSA.

## 4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.<sup>130</sup>

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.<sup>131</sup>

The HRA protects fundamental human rights drawn from international human rights law.<sup>132</sup> Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

### 4.1 Human rights compatibility

The Statement of Compatibility notes that there could be two issues 'that may be perceived as potential incompatibilities'. These relate to the protection of children (section 26 (b) of the HRA) and privacy issues.

Section 26(b) of the HRA (Protection of families and children) provides that:

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

Section 25 (b) of the HRA (Privacy) provides that:

A person has the right—

- (a) not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with;

Regarding the issue of protection of children under section 26(b) of the HRA, the Statement of Compatibility provides:

This Bill introduces two (2) new types of working with children clearances (i.e. the *interim restricted working with children clearance* and the *restricted working with children clearance*). Effectively, this means the Bill creates exceptions for certain individuals in certain communities to the safeguards protecting children enshrined within the *Working with Children (Risk Management and Screening) Act 2000*.

I accept this may create the perception of the Bill, in theory, therefore being potentially incompatible with the Human Rights Act 2019, section 26(b), which states that 'every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child'.

<sup>130</sup> HRA, s 39.

<sup>131</sup> HRA, s 8.

<sup>132</sup> The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

However I argue that such a view is based on a misguided and overinflated confidence that a centralised, bureaucratic process that applies a static set of wide-ranging criteria is the most effective, and only, way to implement safeguards to prevent offending against children.<sup>133</sup>

Regarding the issue of privacy under section 25(a) of the HRA, the Statement of Compatibility provides:

It may be perceived that Section 188(3)(bb), as well as new sections 231B, 231D, 231F and 594(3), impact on individuals' right to privacy, and arguably limit the human right stated in the Human Rights Act 2019, s 25(a), which states 'that person has the right not to have (their) privacy, family, home or correspondence unlawfully or arbitrarily interfered with'.

While I accept this perception to be genuine, the amendments to section 594 account for, and mitigate, this possible issue – as well as a possible *Fundamental Legislative Principle* issue – by a) allowing for the applicant to notify the chief executive that the application is for a restricted Working with Children clearance for a community area and b) requiring express permission from the applicant for the chief executive to supply personal documents and information relating to the application to the Community Justice Group for each community area to which the Working with Children application relates.

Therefore, I believe the limit is reasonable and demonstrably justifiable in accordance with section 13 of that Act (see ss 8[b] and 13 of that Act).<sup>134</sup>

The above issues raised in the Statement of Compatibility and other human rights principles that arise for consideration under the Bill are discussed below.

#### **4.1.1 Child protection matters**

##### ***Substantive right to protection***

It is noted that the Bill does not simply raise section 26(2) of the HRA. Risks of harm to children also implicate s 16 (right to life), s 17 (protection from torture and cruel, inhuman or degrading treatment), and s 25 (privacy, which is interpreted widely and includes bodily autonomy).

The duty to protect typically involves the need for laws that are protective, the enforcement of those laws and the taking of operational steps when there are specific risks in relation to specific potential victims. Risk-assessment based laws such as those contained in the WWC Act are an example of the first type of obligation, i.e., protective laws.

The Statement of Compatibility indicates that the level of protection being offered is not significantly reduced because (i) only limited offending is covered and (ii) there is no evidence that centralised as opposed to local decision-making is better. These appear to be valid points, involving judgment calls that are for the legislature.

Supporting the view expressed in the Statement of Compatibility are the processes to be followed in that the CJG must consider certain criteria, have a reasonable basis (i.e., an objective standard) for their views, and give reasons. These provisions require a justification for a decision, and also assist any challenge to the decision (by way of judicial review), which provides additional protection. These factors support the view that there remains under the Bill a paramount need to protect children.

##### ***Without discrimination***

The substantive need for protection must not be offered in a discriminatory fashion. The statute necessarily applies in a discriminatory fashion in that it applies only to certain communities of Aboriginal and Torres Strait Island peoples. The potential for discrimination needs to be considered in various distinct settings:

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<sup>133</sup> Statement of compatibility, p 3.

<sup>134</sup> Statement of compatibility, p 4.

- (i) Firstly, the process can only apply in those areas that have a statutory CJG. The courts of Queensland website suggests that there are also various non-statutory CJGs, which will not be able to exercise the power, and in turn meaning that the benefits will be enjoyed only by those areas that have a statutory CJG. It is not clear how big a problem this is or might be, but a differential impact in that some community areas have a process and others do not should be addressed, preferably by expanding the number of CJGs rather than by curtailing the proposed scheme.
- (ii) Secondly, this will not apply to those areas where there is no statutory CJG because the relevant legislation does not apply. It is not clear from the papers what populations are affected (and how this overlaps with the first point – for example, are there areas where there is a non-statutory CJG because it is an area to which the relevant legislation does not apply, such as urban areas with a mixed population but a disproportionate number of Aboriginal and Torres Strait Island persons in the criminal justice system). Again, there is a need for evidence to determine whether this can be addressed by providing an equivalent mechanism rather than by any curtailment of the proposed scheme.
- (iii) Thirdly, those who are not Aboriginal or Torres Strait Island people but who are currently excluded from the blue card scheme (at least in practice) because they have a conviction for a serious offence are subject to a regime that is more restrictive.

#### **4.1.2 Privacy**

The view that there is not a significant privacy concern appears to be justified in the circumstances.

#### **4.1.3 Cultural rights – Aboriginal peoples and Torres Strait Islander peoples**

Section 28 of the HRA (Cultural rights - Aboriginal Peoples and Torres Strait Islander peoples) provides that:

- (1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
- (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community—
  - (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
  - (b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and
  - (c) to enjoy, maintain, control, protect and develop their kinship ties; and
  - (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and
  - (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.
- (3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

It is necessary to consider the Bill in light of section 28 of the HRA. The aim of the Member for Traeger in introducing the Bill is to benefit the socio-economic structure of Indigenous communities.<sup>135</sup>

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<sup>135</sup> Explanatory notes, p 1.

**Committee comment**

The committee finds that the Bill is compatible with human rights other than as outlined above. However, the limits on the human rights outlined above are reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

**4.2 Statement of compatibility**

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA.

**Committee comment**

The statement of compatibility tabled with the introduction of the Bill contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Australian Lawyers Alliance
002	Queensland Council of Social Service
003	Sisters Inside Inc
004	LawRight
005	CREATE Foundation
006	PeakCare Queensland Inc
007	Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited
008	Queensland Mental Health Commission
009	Caxton Legal Centre Inc
010	Queensland Human Rights Commission
011	HUB Community Legal
012	Queensland Family and Child Commission
013	Wugu Nyambil
014	Confidential
015	Aboriginal and Torres Strait Islander Legal Service

## **Appendix B – Witnesses at public hearings**

### **Mount Isa - 6 September 2022**

#### **Waanyi Tribal PBC**

- Ms Rose Iles, Elder

#### **Cloncurry Justice Association**

- Ms Julie Arthur, Manager
- Ms Hayley Iles, Board Member

#### **North West Queensland Indigenous Catholic Social Services Limited**

- Mr William Blackley, Cultural and Community Engagement Manager
- Mr Faisal Khan, Chief Executive Officer
- Mr Martin McHugh, Manager

#### **Individual speakers**

- Ms Valerie Craigie
- Ms Tiarna Craigie

#### **Selectability**

- Ms Helen Davis, Regional Coordinator

### **Palm Island – 7 September 2022**

#### **Palm Island Community Co. Ltd**

- Narelle Gleeson-Henaway, Executive Manager, Community Services

#### **Palm Island Community Justice Group**

- Ms Iris Cannon
- Ms Margaret Conway
- Mrs Ruth Gorringer

#### **Individual speaker**

- Ms Marion Turner

#### **Palm Island Aboriginal Shire Council**

- Mr Mislam Sam, Mayor
- Mr Derek Haines, Deputy Mayor

### **Yarrabah – 8 September 2022**

#### **Yarrabah Aboriginal Shire Council**

- Mr Ross Andrews, Mayor



- Richard Wright, Acting Chief Executive Officer

**North Queensland Regional Aboriginal Corporation Languages Centre**

- Judulu
- Mr Paul Neal

**Individual speaker**

- Mr Leslie Baird

**Yarrabah Seahawks**

- Mr Samuel Bann, President

**Yarrabah Leadership Forum**

- Ms Ngema Andrews

**Brisbane – 12 September 2022**

**Mornington Shire Council**

- Mr Kyle Yanner, Mayor

**Doomadgee Community Justice Group**

- Mr Henry Aplin, Elder
- Mr Elijah Douglas, Councillor, Doomadgee Aboriginal Shire Council
- Ms Charlotte George, Elder, Doomadgee Community Justice Group
- Pauline Johnny, Elder, Doomadgee Community Justice Group
- Mr Stephen McNamee, Elder, Doomadgee Community Justice Group
- Mr Jason Ned, Mayor, Doomadgee Aboriginal Shire Council
- Ms Cynthia O’Loughlin, Coordinator
- Mr Craig Oxlade, Community Development Officer, Doomadgee Aboriginal Shire Council
- Mr Athol Walden, Councillor, Doomadgee Aboriginal Shire Council
- Mr Veronica Walden, Elder, Doomadgee Community Justice Group

**Junkuri Laka Wellesly Islands Aboriginal Law Justice & Governance Association Inc**

- Ms Marina Evans
- Mr Nasa Kuruduadua
- Ms Lorna Rogers
- Ms Louisa Roughsey
- Ms Nikita Sellin
- Mr Johnny Williams

**Individual speaker**

- Mr Calvin Page

### **Recovery Mission**

- Mr Grant Garvie

### **Brisbane – 10 October 2022**

#### **Department of Justice and Attorney-General (Blue Card Services)**

- Nicola Doumany, Acting Deputy Director-General, Justice Services
- Fiona Fraser, Acting Executive Director, Community Justice Services
- Gregory Bourke, Director, Strategic Policy and Legal Services

#### **Department of Children, Youth Justice and Multicultural Affairs (Child Safety)**

- Kate Connors, Deputy Director-General, Strategy
- Helen Missen, Acting Executive Director, Strategic Policy and Legislation

#### **Queensland Family and Child Commission**

- Natalie Lewis, Commissioner

#### **Queensland Council of Social Service**

- Meg Martin, Human Rights Lead

#### **Queensland Human Rights Commission**

- Neroli Holmes, Deputy Commissioner
- Rebekah Leong, Principal Lawyer

#### **Normanton Justice Group**

- Andrew Dawes, Coordinator
- Maureen Douglas, Volunteer

#### **Aboriginal and Torres Strait Islander Legal Service QLD Ltd**

- Kate Greenwood, Senior Policy Officer
- Pree Sharma, Prevention, Early Intervention and Community Legal Education Officer