ChildProtectionPeak

22 November 2021

Committee Secretary
Legal Affairs & Safety Committee
Parliament House
George Street
Brisbane Qld, 4001

Via email lasc@parliament.qld.gov.au

Dear Chairperson & Members,

Thank you for the opportunity to present to you our submission in response to the Working with Children (Aboriginal and Torres Strait Islander Communities) that was introduced into the Queensland Parliament by Mr Robbie Katter MP on 1 September 2021.

We are encouraged by your commitment to engage with the community on this very important legislative reform. Whilst we support this Bill in principle, and to ensure that there is meaningful reform of the Blue Card system, there needs to be significant work and consultation with Aboriginal and Torres Strait Islander communities across the state. QATSICPP is willing to work in partnership with the government to co-design this consultative strategy to ensure culturally safe processes are embedded.

I would welcome the opportunity to discuss this submission with you in further detail. Please do not hesitate to contact my office on 07 3153 7787.

Yours sincerely,

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Response to Working with Children (Aboriginal and Torres Strait Islander Communities) Amendment Bill 2021

QATSICPP Submission to Amend the Working with Children Act 2000

Who we are

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) is the peak body representing, advocating and supporting the Aboriginal and Torres Strait Islander child protection and family support sector in Queensland. Our membership includes 35 Aboriginal and Torres Strait Islander community controlled organisations across Queensland. At the community level, our members provide services, advice and support relating to the safety and wellbeing of Aboriginal and Torres Strait Islander children.

We welcome the opportunity to provide input on the Working with Children (Aboriginal and Torres Strait Islander Communities) Amendment Bill 2021 (the Bill) referred to the Legal Affairs and Safety Committee for consideration. We note this Bill has been tabled previously, including in 2018, and we acknowledge input provided by a wide range of stakeholders to date.

Our context

The Bill will impact on QATSICPP Members substantively, in relation to existing requirements for staff to attain Blue Cards and in support to service users to attain Blue Cards for kinship care and employment purposes.

QATSICPP and our members are in favour of reforming the Blue Card system and support placing decision making power in the hands of carefully chosen community leaders that hold cultural authority and are representative of their community.

However, QATSICPP and our members are concerned about the effectiveness of the Bill to address current concerns with the blue card system, some of the most common concerns include:

- Lengthy processing times for Aboriginal and Torres Strait Islander applicants in comparison to non-Aboriginal and Torres Strait Islander employees of QATSICPP Member services
- 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)
- Excessively lengthy appeal process to review a decision through the Queensland Civil and Administrative Tribunal (known to be 15 months in some cases)
- Assessments based on list of offences without any context or consideration of recency of charges (e.g. Elders being declined due to minor, non-serious offences, committed more than 20 years ago)
- Young people leaving care having difficulty obtaining a Blue Card due to their behavioural record also being considered in the assessment process (e.g., fighting in a residential unit).

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. Despite community concerns regarding the Blue Card system being raised through various platforms over a number of years (including the re-tabling of this Bill on three occasions), it raises questions for the community that a failure to address these issues could be a result of systemic issues including structural racism that has not been addressed.

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. We have long been in favour of addressing the flaws of the Blue Card system for Aboriginal and Torres Strait Islander peoples.

Our position

We assessed the Bill in relation to our rights-based advocacy platform that is grounded in maintaining the culture, traditions and the self-determination of Aboriginal and Torres Strait Islander peoples.

In principle, QATSICPP supports the objectives of the Bill:

> 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 (*Working with Children [Aboriginal and Torres Strait Islander Communities] Amendment Bill 2021 Explanatory Notes*)

We agree 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.

The current Blue Card system significantly impairs the state's legislative requirements under the Child Protection Act 1999 (section 5C) to uphold our right to self-determination and to prioritise placement of Aboriginal and Torres Strait Islander children with Aboriginal and Torres Strait Islander family and community members.

QATSICPP agrees that the legislative framework in Queensland can and should be revised for decision making power to be held by communities for Aboriginal and Torres Strait Islander applicants, whilst maintaining child safety standards and the safety, wellbeing and best interests of a child (the 'paramount principle' of the Child Protection Act 1999).

However, we hold significant concern about the local community mechanisms presented in the Bill for this to occur. We believe that the state government should undertake a significant community level consultation and discussion with Aboriginal and Torres Strait Islander communities across the state, seeking local level input to develop the right decision-making mechanisms that would lead to meaningful reform.

Our recommendations

1. Reform the *Working with Children (Risk Management and Screening) Act 2000* for Aboriginal and Torres Strait Islander applicants for both employment and child protection purposes

QATSICPP agrees the Blue Card system warrants reform for Aboriginal and Torres Strait Islander applicants, not just those residing in remote communities, but across Queensland.

The Bill is heavily weighted towards employment processes and outcomes in remote communities. We believe equal weighting in design be considered for Aboriginal and Torres Strait Islander applicants across the state relating to child protection matters, such as members of a household where a child is residing with kin or young people recently transitioning out of care and protection placements and seeking employment, both of whom face barriers in achieving positive notices under the current system.

The reform requires further inquiry with Aboriginal and Torres Strait Islander communities to achieve the policy objectives.

2. Aboriginal and Torres Strait Islander communities engaged to co-design reform measures

The reform process needs to be resourced for Aboriginal and Torres Strait Islander communities to co-design with government the local level mechanisms that support the intent of the Bill:

> 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 (*Working with Children [Aboriginal and Torres Strait Islander Communities] Amendment Bill 2021 Explanatory Notes*).

It is QATSICPP's view that the proposed measures in the Bill to allow local community to have input into the issuing of Blue Cards for their community is a positive improvement to the current system, aligns with our rights to self-determination and is compatible with the Queensland Human Rights Act 2019.

While we agree a 'unique assessment regime' that relies on community knowledge and leadership is needed, we cannot confidently support the proposed framework that the local Community Justice Groups will be the best group to hold decision making power in each community. Rather, we believe communities should be engaged in a process of co-design to develop the framework and mechanisms most suitable to meeting the objective, as well as invested in to implement their assumed responsibilities.

The framework as presented is too restrictive, even its application to remote communities only, and is not presented with sufficient evidence of the framework being accepted and endorsed outside of Mornington Island.

There is great value in engaging in community-led development of the framework, including reducing the likelihood of furthering community conflict, identifying the resources required to support the reform to succeed (rather than set communities up to fail), and developing processes regarding sharing personal information with select members of a community in ways that uphold an individual's right to privacy and do not have unintended negative consequences for individuals or communities.

3. Ensure reforms are evidence based and likely to achieve intended outcomes

Under the proposed new framework, we recognise that the safety of children and young people is prioritised by omitting disqualifying offences, such as sexually-based offences, and limiting the types of serious offences 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.

It is not clear, however, if the amendments are based on evidence that demonstrate applicability across a range of Aboriginal and Torres Strait Islander communities and for both purposes of fostering economic prosperity and protecting children's safety (in other words, positive notices issued for employment and kinship care purposes).

Further investigation is warranted on the range of offences present in negative notices issued for Aboriginal and Torres Strait Islander applicants and the probability that re-assessing applicants with offences limited to those

listed above will result in more positive notices being issued for Aboriginal and Torres Strait Islander applicants. For consideration also is the intersection with other charges outside of the listed offences, such as public nuisance charges or existing domestic and family violence orders, and whether these would negate eligibility for the reformed assessment process.

We are concerned with a system that lists a limited number of eligible offences rather than considers assessments on a case by case basis, which is in better alignment with the intent of the Bill to engage a more equitable and informed process of elected Aboriginal and Torres Strait Islander community members '*vetting the individual applicant based on their intimate knowledge of their character and the circumstances of each case*' (Explanatory Notes).

4. The Blue Card system be reviewed in respect of the Queensland Human Rights Act 2019

There is a need for the Blue Card system, originating in 2000, to be assessed against Queensland's more recent Human Rights Act 2019 to determine its alignment with the rights of Aboriginal and Torres Strait Islander peoples in Queensland and to address systemic racism inherent in the current system.

Specifically, the Blue Card system engages the following rights protected under Queensland's Human Rights Act 2019:

- recognition and equality before the law
- protection of families as the fundamental group unit in society
- rights of the child to special protection, in their best interests
- cultural rights specific to Aboriginal peoples and Torres Strait Islander peoples
- privacy and reputation.

While the Human Rights Act does not protect these rights absolutely, the government is only permitted to limit human rights in a way is that proportionate and reasonably justifiable (Queensland Human Rights Commission, 2019). The Bill presents less restrictive and reasonably available ways to achieve the purpose of the Working with Children Act for Aboriginal and Torres Strait Islander applicants. Accepting this Bill and reforming the Blue Card system would enhance Queensland's human rights obligations and take action to reduce racism and discrimination in assessment processes for Aboriginal and Torres Strait Islander applicants.

The Bill also upholds the United Nations Declaration on the Rights of Aboriginal and Torres Strait Islander Peoples (namely articles 4, 5, 8, 18, 19, 23 and 35) relating to self-determination, decision-making and determining the responsibilities of individuals to their communities.

Of note, in recent review of the Child Protection Act the Community Support and Services Committee recommended 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 (Report No. 12, 57th Parliament Community Support and Services Committee, November 2021).

Every Queenslander, regardless of age, race or religion, deserves the right to work and not to be impeded unnecessarily from realising that right.

Conclusion

QATSICPP agrees that legislative reform to the Blue Card system for Aboriginal and Torres Strait Islander applicants is needed. Therefore, we support the Bill in principle.

However, we are concerned that the current framework's reliance on existing Community Justice Groups is insufficient and risky.

We agree with the Queensland Parliamentary recommendation for 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 (Report No. 12, 57th Parliament Community Support and Services Committee, November 2021).

To achieve the dual objectives of this Bill and the above-mentioned Queensland Government recommendation, we are in favour of the state government undertaking significant consultation with Aboriginal and Torres Strait Islander communities across the state.

This consultation should seek local level input to develop localised decision-making mechanisms that would lead to meaningful reform of the Blue Card system.

QATSICPP would be willing to work in partnership with the government to co-design this consultative strategy to ensure culturally safe processes are embedded.

Contact Details

Please contact Mr Garth Morgan, QATSICPP CEO, about this submission on 07 3153 7787 or via email ea@qatsicpp.com.au