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A thematic analysis of provisionally approved kinship carers who receive a subsequent Blue Card negative notice



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Contents

1. Introduction.....	3
1.1 When we talk about family.....	5
1.1.1 Defining First Nations parent and kin.....	5
1.1.2 Kin and foster care are not the same	6
1.2 Navigating between kinship carer and Blue Card systems.....	7
1.2.1 Provisional kinship approval.....	7
1.2.2 Blue Cards	7
1.2.3 Best interests of the child	8
2. Thematic analysis methodology	8
2.1 Data Sources	8
2.2 Thematic Analysis	9
3. Findings.....	9
3.1 Blue Card screening is not designed for kinship care	9
3.2 Processes create additional barriers for kinship carers.....	11
3.3 A focus on reoffending rather than risks to children	12
3.4 The application of ‘discretion’	13
3.5 Use of a 'cultural lens'.....	14
3.6 Evidence used to determine the versions of events	16
Our recommendations	17
<i>The logic for recommendations</i>	17
References.....	19

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1. Introduction

There should be no tolerance for lowering standards or limiting the rights of Aboriginal and Torres Strait Islander children to be safe. Yet the universal approach of the Blue Card system in Queensland presents unintended consequences for Aboriginal and Torres Strait Islander kinship carers and children. The Blue Card system, established under the *Working with Children (Risk Management and Screening) Act 2000*, assesses suitability for child-related employment. However, in assessing the suitability of Aboriginal and Torres Strait Islander kin to care for Aboriginal and Torres Strait Islander children it presents significant limitations to adhering to legislative requirements under the *Child Protection Act 1999*, particularly regarding self-determination, recognition of cultural child rearing practices and prioritising the placement of Aboriginal and Torres Strait Islander children with family and community members, as required by the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). Further, the unintended consequence of the finality of blue card eligibility decision, can undermine the primacy of the paramount principle, that decisions and actions are in the best interests of individual child, now and for the duration of the child's life.

Aboriginal and Torres Strait Islander families want the best for their children. To grow up in safe homes that allow them to thrive, sustaining cultural continuity and connection to kin and country, to create strong future generations. When child protection agencies are involved, the ATSICPP provides a legislative framework for safeguarding the rights and best interests of Aboriginal and Torres Strait Islander children. The introduction of the standard of active efforts within legislation, moves us beyond passive acknowledgement of the ATSICPP in practice, requiring that all actions taken are purposeful, timely and thorough. Not simply what is convenient or reasonable at a point in time. The paramount principle of best interests is an enduring right of all children and young people. For best practice, active efforts must be used in applying all five elements of ATSICPP for all significant decisions,¹ including when making decisions about the placement of children and young people. The Act prescribes that when an Aboriginal or Torres Strait Islander child is unable to remain in the care of their biological parent, that the preferred option is that they be placed within their families' cultural kinship structure. Despite this, too many Aboriginal and Torres Strait Islander children continue to be placed and raised away from their kin, culture and Country. Queensland has the second lowest placement with First Nations kin (21.7 per cent) in Australia.¹

The Department of Child Safety, Seniors, and Disability Services (Child Safety) *Strategic Plan 2022 – 2026* commits to addressing this situation, with measures to increase the proportion of children in kinship care to 70 per cent by 2026.ⁱⁱ The Queensland Family and Child Commission's (QFCC) monitoring of over-representation has seen some Child Safety regions make early positive gains to increasing kinship placements, with 45.6 per cent of children being placed with kin.ⁱⁱⁱ However, at the same time Child Safety regional staff have consistently highlighted to the QFCC their greatest challenge in engaging kinship carers are the complicated processes associated with securing a positive Blue Card notice.

The delivery of Working with Children Checks, known as Blue Cards in Queensland, have been examined in detail through reviews since 2016. This includes the 2017 QFCC *Keeping Queensland's children more than safe: Review of the Blue Card and Foster Care System Review*^{iv} and through examination of the Working with Children

¹ The *Child Protection Act 1999*, schedule 3, defines a significant decision about an Aboriginal or Torres Strait Islander child as one that is likely to have a significant impact on the child's life. This includes a decision about where or with whom a child will live—if the child is subject to a child protection care agreement or an order granting custody or guardianship to the chief executive.

(Indigenous Communities) Amendment Bill 2021.^v Each of these reviews, including submissions made from individuals and organisations, have persistently highlighted the challenges and inequity of the Blue Card system for Aboriginal and Torres Strait Islander peoples. Throughout the review process, stakeholders highlighted the need to reform the Blue Card system to better support Aboriginal and Torres Strait Islander peoples, both to improve participation in employment, and ensure kinship care is accessible.

The breadth of information captured from these reviews, including anecdotes from stakeholders and community, have highlighted that:

- the system presents significant barriers to Aboriginal and Torres Strait Islander peoples in becoming kinship carers
- Aboriginal and Torres Strait Islander peoples contact with the criminal justice system is at much higher rates than non-Indigenous people^{vi}
- there is limited support in, and engagement with, communities to assist across every stage of the process.
- suitability for obtaining a Blue Card is based on irrelevant information, over-policing and subjective assessments of an individual's character by police and other sources at the time of an offence, rather than on the risk of harm to a child
- current Blue Card Services processes and systems are not culturally appropriate and cultural considerations do not form part of the decision-making process
- there is a lack of community education and culturally appropriate information and resources for Aboriginal and Torres Strait Islander peoples
- a dual process between assessment by Child Safety about suitability to place a child, followed by a second Blue Card assessment that results in a different outcome
- greater communication and information sharing is required between Child Safety and Blue Card Services.^{viiiviii}

Blue Card Services in the Department of Justice and Attorney-General should be recognised for the persistent and direct efforts they have undertaken to create better support and engagement with Aboriginal and Torres Strait Islander peoples. 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 2021–2025* details the actions Blue Card Services have already made and set a plan for future action.^{ix} In 2022–23, 94 per cent of applicants who identify as Aboriginal and Torres Strait Islander were issued with a Blue Card.^x People who identify as Aboriginal and Torres Strait Islander account for 5 per cent of total Blue Card applicants. Yet from 2017–2020, Aboriginal and Torres Strait Islander peoples accounted for 22 per cent of negative notices.^{xi}

The structural barriers created by Blue Card decision making frameworks for kinship care arrangements have a significant and enduring impact on the lives of Aboriginal and Torres Strait Islander children, their families and the child protection system. In October 2022, the QFCC was provided with information that indicated that across the reporting period (2020-2021), there were 64 Aboriginal and Torres Strait Islander people, who had been provisionally approved by the Department to provide kinship care and who later received a negative notice from Blue Card Services. At the time, the QFCC was advised that two negative notices were the result of the applicants being disqualified people or having committed a disqualifying offence or offences of a sufficiently serious nature. The incongruence between the outcomes of the two distinct processes required further examination and, importantly a recognition of the immediate and long-term impact, particularly for the children and young people and their best interests. To understand the decision making behind a negative Blue Card outcome on a kinship

arrangement, the QFCC requested and received a sample of case summaries from both Child Safety and Blue Care Services. The summaries included a group of 11 cases where a family had been assessed and provisionally approved to be a kinship carer by Child Safety, and subsequently assessed by Blue Card Services and received a negative notice. This report shares the findings of a thematic analysis of these cases.

1.1 When we talk about family

1.1.1 Defining First Nations parent and kin

For Aboriginal and Torres Strait Islander children, families, and communities, kin carry a particular cultural context and meanings which are critical to a child's safety, identity, and connection. However, there is no single one way in which Aboriginal and Torres Strait Islander families raise their children.^{xii} Understanding each family's make-up, and the ways of child rearing, is critical to decision making about a child's safety.

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak's (QATSICPP) position Statement for Aboriginal Kinship Care defines kin as:

"... the biological bloodlines that have been passed on from generation to generation. For example, although not an immediate family member (e.g., father's sister), a father's cousin would be considered Aboriginal Kinship connection due to the bloodlines that they share."^{xiii}

QATSICPP also highlights the responsibility of the family, who has the cultural authority, in deciding who is considered kin to a child, not a statutory agency.^{xiv} There is alignment to the *Child Protection Act 1999*, that recognises that the child and child's family are the primary source of cultural knowledge about the child and the priority is for a child to be placed with family.²

The extended kinship network of Torres Strait Islanders is rich with the practice of traditional child rearing practice (Ailan Kastom), protected under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*. Under Ailan Kastom a child's birth parents and the child's cultural parents may agree that the parental rights and responsibility for the child are permanently transferred from the birth parents to the cultural parents.

"The underlying principle of Torres Strait Islander child rearing practices is that giving birth to a child is not necessarily a reason to be raising the child. The issue of who rears the child is dependent on a number of social factors and is a matter of individual consideration by the families involved. Children are never lost to the family of origin, as they have usually been placed with relatives somewhere in the family network."^{xv}

While Aboriginal and Torres Strait Islander kinship is diverse, consideration of who is kin to a child is the decision and responsibility of family and those with cultural authority for the child, not the statutory system. What is common when considering cultural kinship, is the recognition of shared obligations and responsibilities for child rearing and the collective care of children, physically, spiritually, and culturally.

Amendments to the definition of parent and kin in Queensland's *Child Protection Act 1999* commenced in 2023. These amendments have strengthened how Child Safety legislatively define parent and kin for First Nations families. The impact of this change will be seen through the consistent application of this definition in practice in

² Section 83 of *Child Protection Act 1999*

significant decisions regarding a child. These definitions clearly frame kinship care as *family caring for family* and should not be considered as alternative care and distinct from foster care.

Section 11 Who is a *parent*

- (1) A **parent** of a child is the child's mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.
- (5) A reference in this Act to the parents of a child or to 1 of the parents of a child is, if the child has only 1 parent, a reference to the parent.^{xvi}

Schedule 3 defines *kin*, in relation to a child, means the following persons

- (a) a member of the child's family group who is a person of significance to the child;
- (b) if the child is an Aboriginal child—a person who, under Aboriginal tradition, is regarded as kin of the child;
- (c) if the child is a Torres Strait Islander child—a person who, under Island custom, is regarded as kin of the child;
- (d) another person—
 - (i) who is recognised by the child, or the child's family group, as a person of significance to the child; and
 - (ii) if the child is an Aboriginal or Torres Strait Islander child—with whom the child has a cultural connection.^{xvii}

1.1.2 Kin and foster care are not the same

Family will often step up and provide informal support for children, and their parents, when there are concerns about their safety. This informal support happens without government intervention. Where Child Safety intervenes and a decision is made that a child can no longer stay with their parents, kinship care arrangements become subject to the legislative and policy requirements and eligibility for financial support.

Kinship care is fundamentally different in nature to foster care. Yet, it is primarily understood and treated as 'a placement', with processes and forms developed from the formal foster care system.^{xviii} If the definitions, regarding Aboriginal and Torres Strait Islander parent and kin (as listed above) are applied, with an acknowledgement of cultural authority of family, it becomes problematic to use the same legislative and policy frameworks to that used for foster care, including screening and assessment processes, that trivialise or overlook, the cultural and familial obligations and practices that promote the safe care and connection of children within cultural kinship structures.

1.2 Navigating between kinship carer and Blue Card systems

1.2.1 Provisional kinship approval

Under the *Child Protection Act 1999*, a person can be provisionally approved as a carer, allowing them to care for a child or young person while their application is assessed. This type of approval is usually given to family members or other people already well-known to a child to enable an immediate placement to be made. A provisional approval cannot exceed 90 days.

The process for assessment of provisional kinship approval is detailed in the Child Safety Practice Manual.^{xi} Simply the steps for provisional approval include:

1. Complete the Child Safety application for approval form.
2. Complete a Blue Card application (for both applicants and all other adult members of the household).
3. Domestic violence, traffic, child protection and criminal history checks are completed by Child Safety.
4. Assessment of the home environment.
5. Brief assessment. This is an assessment of the applicant's ability to provide care in accordance with the Statement of Standards outlined in the *Child Protection Act 1999*.

Once these requirements have been met and approved by Child Safety, the applicant will be issued with a Certificate of Approval for each child in their care.^{xx}

1.2.2 Blue Cards

The *Working with Children (Risk Management and Screening) Act 2000*, schedule 1, section 14, requires foster and kinship carers, and each adult person who meets the definition of an adult household member, to be issued with and maintain a current Blue Card or exemption card³.

The Blue Card system consists of three important parts: screening, ongoing monitoring, and risk management. The screening part of the Blue Card system is the Working with Children Check, where checks and assessments are conducted on individuals to determine if they are eligible to work with children based on their known police or disciplinary information.

Blue Card Services use a decision-making user guide and tool to assist in reviewing the material, including the material provided by the applicant, to determine whether it would be in the best interests of children for the application to be approved.^{xxi} The tool was developed using current empirical research about the risk assessment of people with criminal histories, together with current practice knowledge. The tool is not used in isolation and does not replace the statutory discretionary decision-making process and other relevant considerations, such as the cultural lens applied to Aboriginal and Torres Strait Islander applicants. Rather, the tool forms part of the larger evaluation process and will identify specific empirically derived variables, characteristics, or behaviours that are known to be indicative of risk of reoffending or likelihood of desistance.

³ An exemption card only applies to Queensland registered teachers and police officers who are also carer applicants.

1.2.3 Best interests of the child

Both the Acts are based on the principle of 'best interests of the child'. The *Child Protection Act 1999*'s paramount principle is:

"... that the safety, wellbeing and best interests of the child, both through childhood and the rest of the child's life, are paramount."

Similarly, the *Working with Children (Risk Management and Screening) Act 2000* principles for administering the Act include:

"... the welfare and best interests of a child are paramount."

While having best interests as the fundamental principle across the legislative framework is a strength of Queensland's approach to protecting and upholding the rights of children, there may be differences and inconsistencies in how it is applied. The practical application of best interests requires further consideration to its consistency and understanding in policy and practice.

2. Thematic analysis methodology

2.1 Data Sources

Summary of the data set

- Blue Card Services identified a cohort of 64 provisionally approved kinship carers and adult household members who received a negative notice, drawn from 2020-21 and 2021-22.
- In total, data was provided by both Blue Card Services and Child Safety relating to 27 unique cases of kinship care related applicants who were unsuccessful in obtaining a positive Blue Card notice.
- Of these, only 13 cases were provisionally approved by Child Safety before going to Blue Card Services, 2 were disqualified.
- This analysis focused on the 11 provisionally approved cases without disqualifying or serious offences.
- 3 of the 11 applicants did not make a submission or provide referees.

This independent thematic analysis examines 11 kinship carer applicants who were unsuccessful in their application for a Blue Card, after having been provisionally approved as kinship carers or adult household members. Blue Card Services and Child Safety provided the de-identified information for these applicants to the QFCC for the purpose of this analysis. Both Department's provided contextual information and a summary of their assessments. The datasets include the child protection history, criminal history, traffic history, applicant submissions, references and other information used in the respective assessment processes.

2.2 Thematic Analysis

The purpose of this analysis is to identify recurring patterns that may assist in gaining insights into systemic barriers for kinship carers and opportunities for systemic change. The intention is to critically understand how Blue Card assessment outcomes are reached for individuals that have already been assessed and approved by child safety officers, and not to dispute the outcome of individual applications. The full datasets provided contextual information, however, the thematic analysis focused on Blue Card Services 'Key Reasons for Decision', here in referred to as 'Blue Card assessment'. The quotes included in the report help to exemplify the patterns identified in the assessments.

The QFCC focused on identifying and making sense of patterns in the language used by assessors, in an effort to reveal new insights into the barriers facing kinship carers and the opportunities for meaningful change. In taking this approach, attention was drawn to key terms used in submissions and references such as: "offences", "risks and triggers", "best interests of children", "discretion", "conflicting versions of events", and the culturally specific concept of 'kin'. While the identified patterns have been observed at an individual level, they are interpreted as reflections of the system and social structures that this work takes place within.

3. Findings

Several patterns relevant to the assessment of kinship carers for Aboriginal and Torres Strait Islander children emerged in the data, including:

- Blue Card screening is not designed for kinship care
- Processes create additional barriers for kinship carers
- A focus on risk of reoffending rather than risks to children generally, nor specifically the children, who are family, in their care
- The application of 'discretion'
- Use of a 'cultural lens'
- Evidence used to determine the versions of events.

3.1 Blue Card screening is not designed for kinship care

While the Blue Card process is a requirement for kinship carer applicants, Blue Card assessors are explicit about the general nature of this suitability check for employment purposes. In every case reviewed, the Blue Card Services assessment concludes with an identical sentence about how the applicant's suitability to be 'engaged in child-regulated employment or conduct any child-related business' has been assessed. In a small number of cases, the assessor continues with an acknowledgement that the negative notice may prevent the applicant from being a kinship carer, before reiterating the assessor's role in determining whether 'granting unsupervised access to work or interact with children would be contrary to the best interests of children'.

"The transferability of the Blue Card in allowing the applicant to work in any child-regulated employment or conduct any child-related business was also identified as a relevant consideration."

“While it was acknowledged that issuing a negative notice may prevent the applicant from working in childcare and being a kinship carer, the decision maker’s role was to focus on whether granting the applicant unsupervised access to work or interact with children would be contrary to the best interests of children. Any hardship or prejudice suffered by the applicant was irrelevant to this consideration. The transferability of the Blue Card in allowing the applicant to work in any child-regulated employment or conduct any child-related business was therefore identified as a relevant consideration.”

“While it was acknowledged that issuing a negative notice may prevent the applicant from being a kinship carer, the decision maker’s role was to focus on whether granting the applicant unsupervised access to work or interact with children would be contrary to the best interests of children.”

“It was acknowledged that the decision may prevent the applicant from being a kinship carer. However, the ultimate consideration was whether granting the applicant unsupervised access to work or interact with children would be contrary to the best interests of children.”

The applicant’s status as a kinship carer or adult household member with provisional approval from Child Safety is not noted as having formed part of the Blue Card Services assessment. While applicants speak in their submissions about their kinship role for their nephew, grandchildren, children, extended family, or a child, in the summaries reviewed, Blue Card Services assessments referred to these relationships in a minimal way, if at all. For example, one applicant shares in his submission that he needs a Blue Card to provide kinship care to his partner’s nephew and the Blue Card Services assessment mentions only that he has “concerns for his partner’s nephew” are considered favourably.

References to the applicants’ relationship with children take several forms but ultimately are not discussed in a way that adds weight to their suitability to be a kinship carer or reflect the “best interests” principle. In some cases, the Blue Card Services assessments make reference to the applicants’ relationships with the child or children when exploring concerns (see below), however this is referred to briefly among a string of things that were considered in the applicants favour but were ultimately not sufficient to mitigate the risks identified. No consideration is given to the impact upon the child in relation to the negative Blue Card assessment. This is at odds with the principle of the best interests of a child now and for the duration of the child’s life. The implications of not approving a kinship carer are likely to result in the child residing with a stranger and/or in a residential care placement, compromising their family and cultural connections and impacting on their right to physical and relational permanency.

The assessors tend to reference the applicant’s existing or desired roles to care for kin in ways that tie in with their overall, negative assessment.

*“The applicant’s comments suggested a lack of insight into his own conduct, a failure to recognise the importance of being a role model to his then partner’s child, and a failure to take responsibility for shaping the child’s behaviour. This was directly relevant to the assessment of the applicant’s **ability to provide kinship care** to his current partner’s nephew, a vulnerable child to whom the applicant was expected to provide appropriate guidance and positive role modelling.”*

*“The applicant’s criminal history were adverse to the assessment of her ability to **continue** to provide a protective environment to children and be a positive role model for them.”*

Our analysis of the sample shows a significant misalignment between the assessment process designed primarily for employment-related suitability and the unique requirements and responsibilities of kinship carers. The

assessments often give limited attention to the applicants' roles as kinship carers and their relationships with the children they care for, focusing instead on employment-related factors. The assessors themselves acknowledge that the Blue Card system is not designed to assess kinship carers. This recognition highlights the need for a more tailored and comprehensive evaluation process for individuals seeking to provide kinship care. Such an approach would better ensure the wellbeing and best interests of the children involved in kinship care arrangements.

3.2 Processes create additional barriers for kinship carers

In the cases reviewed, applicants discontinued the process at several points and some of the assessment process continued to the point of a final negative notice decision, without their active engagement in the process.

Three of the 11 applicants were issued a negative notice because the assessor was unable to assess the risk without a submission and references. These applicants did not respond to what is referred to as 'an invitation to make a submission'. Blue Card Services notes say that the first applicant did not answer and has no voicemail, there were no recorded attempts to contact the second applicant and the third applicant said the application was not received and arranged to resubmit. In all three cases, the assessor wrote that this knowledge gap prevented them from being able to assess the risk:

"The applicant did not provide submissions or references in support of his application despite being invited to do so, which meant that the decision maker could not be satisfied the circumstances or triggers that led to his offending were no longer present such that it would suggest he was not likely to re-offend in a similar manner in the future."

It appears applicants are told that they have the option to provide references and that there is no requirement for their referees to know of their police information. While this may be true, the positive comments of referees who demonstrate no knowledge, or limited knowledge of the applicants' police information, are seen as being tempered by the risks or unable to outweigh or mitigate the risks. In some cases, the Blue Card Services links concerns regarding gaps in the referee's knowledge of the applicant's offending history with the assessment that they are not suitable. For people with convictions, the data provided in the submission and references are likely to be critical elements of a positive Blue Card application. Without knowing this, applicants are at risk of submitting applications that are viewed as insufficient to address the concerns or risks.

Our analysis shows that if the assessor is unable to assess the risk, they can finalise the assessment and issue a negative notice, an outcome that prevents the applicant from re-applying for two years. There is a window for appeals but an applicant who is not contactable or responsive at the time of the negative notice will not likely receive this information. The word 'invitation' seems to be a misleading name for a form that seems to be essential for a Blue Card applicant (at least those with criminal histories).

Blue Card Services has advised the QFCC that if they are unable to contact the applicant for submissions through these extensive efforts, rather than proceeding to issue a negative notice, which has significant adverse implications for the person, including preventing them from reapplying for two years, Blue Card Services advised that they will withdraw the matter unless there is information to indicate the person is currently engaging in regulated child-related employment (which may include a provisionally approved kinship carer who has children placed with them). This reflects a recent change in practice within Blue Card Services.

Due to the number of applicants failing to provide a submission or provide references that meet the requirements to support a successful application, there appears to be an issue with the perceived quality of applications and how this influences the exercise of discretion. Consideration should also be given to the adjustments, supports and processes available to people who may be experiencing barriers to navigating unfamiliar systems.

Our analysis of the sample highlights several critical issues within the process. Noting, some applicants discontinue the process or fail to provide necessary submissions and references, leading to negative notice decisions that can have significant and long-lasting consequences, not only for the applicants but for the children they hope to provide care for. The use of the term 'invitation' for a form that appears to be essential for applicants, especially those with criminal histories, can be misleading and may not adequately convey the importance of timely and complete submissions.

The findings align with existing research on barriers faced by applicants, particularly those with criminal backgrounds, in navigating the Blue Card process. Our analysis provides evidence of the importance of improving the clarity and accessibility of the Blue Card application process to ensure that individuals, including those with criminal histories, are given fair and equitable opportunities to demonstrate their suitability for kinship care.

3.3 A focus on reoffending rather than risks to children

In the cases reviewed, the focus is on how the applicant's offending history may present concerns regarding the applicant's ability to ensure the best interests of children. None of the assessments discuss details of instances whereby the applicant is known to have caused harm to an individual child.

To assess suitability for working with children, assessors look at past offending and risk of re-offending. Assessors describe past offending with terms such as recency, persistence, or extensiveness (as referred in the guidelines). In several cases, assessors identify that they need to have enough information to determine that the circumstances or triggers of the offending are no longer present or have been satisfactorily addressed. They outline the risk of continued offending but give limited attention to the offence type or the nature of the risk posed to children. They do not mention whether applicants have a history of offences that caused harm to children (none of the applicants reviewed had Police charges relating to harming children, or any disqualifying offences).

High level concerns are flagged about an applicants' ability to provide a protective environment for children, either in a general sense or in regard to children already placed in their care. Sometimes these concerns are as general as *"their ability to act in the best interests of children"*, or in one case, the assessor had concerns about the person's ability *"to interact with children in activities regulated by the Act"* at large.

Assessors show an expectation of maturity and prosocial behaviour, often using words such as "appropriate", "of mature age", "wrongful behaviour", "unlawful behaviour", and "old enough to know better". These are usually captured in Blue Card Services assessments under umbrella concerns such as, the "ability to provide appropriate guidance to a specific child", "ability to be an appropriate role model to child/children", "ability to judge appropriate behaviour", or "manage medical conditions in a lawful and appropriate manner". The use of these

statements is absent of the fact that a kinship carer assessment undertaken by Child Safety in regards to their provisional approval would have considered the expectation that carers meet the Standard of Care.⁴

Applicants with offences such as obstruct Police, public nuisance, and possession of drugs, are said to be a concern to work with children given their lack of self-management skills, appropriate or lawful behaviour. In these cases, assessors describe concerns as pertaining to the applicant's ability to “role model respect for positions of authority”, “exercise self-control”, “exercise restraint”, “restrain conduct in the presence of children”, “deal with difficult and/or stressful situations in an appropriate manner” and “in a rational and law-abiding manner”, or “use appropriate conflict resolution strategies”.

In the Blue Card Services assessment, past offending is seen to have involved children when, for example, it has occurred in the vicinity of children and/or may have posed a threat. When an applicant is unable to articulate how their offending may be of relevance to working with children, any inability to speak to this is interpreted as lacking insight into their offending or minimising the offending.

In one case, a drug instrument was located. Given evidence of the applicant’s previous use of methylamphetamines, the assessor writes:

“Engagement in drug use and drug related activities were likely to detract from his ability to provide a protective environment for children placed in his care, and his ability to present as an appropriate role model for them.”

A male applicant had a history of using marijuana for pain relief and this was deemed to be a factor in assessing eligibility because:

“should he suffer a relapse on his path to full recovery, children may be exposed to risk.”

Our analysis found that none of the assessments delve into specific details of instances whereby the applicant is known to have caused harm to an individual child. Instead, the assessments centre on the broader evaluation of an applicant's past offenses and their potential implications for their ability to work with children in a safe and appropriate manner. Based on the use of language and inferences drawn, there is evidence of unconscious bias in the assessments. This is supported by the fact that applicants were also provisionally approved for kinship care by Child Safety.

3.4 The application of ‘discretion’

From our analysis the use of ‘discretion’ appears to be applied to determine if children were exposed to offending behaviour, could potentially be harmed or negatively influenced. In several cases, assessors perceive children to be automatically at risk if exposed to a person who is in possession of drugs and/or drug-related utensils, either on their person or in the home shared with children (see below).

⁴ Legislated statement of standards set out in the *Child Protection Act 1999*, section 122.

In one case, the assessor refers to an applicant's 18-year-old son as a child placed at risk with bad role modelling in relation to drugs and drug utensils being found in the house. There are no children under 18 mentioned and there is no evidence that the son knew of her drug use, witnessed it or was in any way impacted by it. The assessor applies discretion in extrapolating how this offence may have been causing harm to her 18-year-old son:

“The material indicated that the drugs and related items were located in the residence the applicant shared with her 18-year-old son, raising concerns that her drug use may have been occurring in the home she shared with her son, shaping his perceptions of what is acceptable behaviour in respect of drugs and drug use in the community.”

In another case, the assessor notes that children may have witnessed the applicant in possession of the drugs and drug-related utensils and thereby may have been placed at risk as a result. This applicant did not provide a submission about this charge which occurred outside the home. The applicant had past convictions for possessing cannabis and drug utensils over five years ago. The assessor used discretion to assess that:

“Given the time and location where his offending occurred, it was inferred that children may have witnessed his behaviour. This raised concerns that the applicant may have been unable to restrain his conduct in the presence of children, thereby placing their physical and emotional wellbeing at risk ... Further drug use and drug related activities by the applicant would likely detract from his ability to provide a protective environment for children placed in his care, and his ability to present as an appropriate role model for them.”

There is another matter where mental health challenges are raised in the applicant's submission. This applicant shared in her submission that her deteriorating mental health and failure to take her medication had contributed to her offending. Rather than seeing this level of awareness and ownership as positive, the assessor notes it as a cause of concern, pointing out that she had failed to manage it in the past and also implying that she was dishonest about resuming her medication because she had offended since that time. The assessor writes that the applicant's *“... ability to adequately and appropriately manage her Mental Health issues on a long-term basis was deemed to be of direct relevance to her ability to provide a safe and protective environment for children in her care.”*

Our analysis of the sample revealed that the application of 'discretion' in determining potential harm or risk to children varies across cases and assessors. In some instances, assessors perceive children to be automatically at risk when an applicant is in possession of drugs or drug-related utensils. The findings highlight the discretionary nature of the assessment process and the potential for variation in how assessors interpret and apply criteria related to child safety.

3.5 Use of a 'cultural lens'

Every applicant in this thematic analysis is part of the kinship network of an Aboriginal and Torres Strait Islander child or children, yet there is little reference to culture at any stage of the process. While Blue Card Services has a Cultural Engagement Team only one applicant was 'allocated' to them and there is no record of the role they played. There are no notes regarding one Aboriginal applicant and whether they too were 'allocated' to this team, before they disengaged from the Blue Card assessment process.

Blue Card Services provided copies of the *User Guide: Blue Card Services & Queensland College of Teachers Decision Making Guide*^{xxii} for context to this review. This guide is used alongside other information to inform decision making. Other materials provided by Blue Card Services indicate a commitment to applying a cultural lens to the Blue Card assessment process, including:

- alternative identification processes for people who cannot meet standard identification requirements
- establishing a dedicated assessment team (including two identified roles - male and female) that provides targeted assistance to Aboriginal and Torres Strait Islander peoples in remote discrete communities who have assessable police or disciplinary information
- targeted travel to remote communities to provide one-on-one support for individuals and general information about the Blue Card system
- annual cultural capability training provided for Blue Card Services staff, with specific and targeted training provided to staff who engage directly with Aboriginal and Torres Strait Islander peoples
- specific information resources developed by an Aboriginal and Torres Strait Islander creative agency which promote key messages in a culturally sensitive way and that debunk myths about applying for a Blue Card
- regular attendance at community events and the provision of tailored workshops.

These initiatives have seen a reduction in the numbers of applicants in remote discrete communities withdrawing from the Blue Card assessment process prior to a Blue Card decision being made. There has also been an increase in the issue of Blue Cards in circumstances where a negative notice may otherwise have been issued.^{xxiii}

While all well intentioned, this effort is simply adjusting a system that fundamentally has a disproportionate impact on the lives of Aboriginal and Torres Strait Islander children, young people and their families. In the case of kinship care arrangements, it is not assessing family and culture as a strength and protective factor for a child.

For example, one applicants' reflection on his offence was interpreted as a cause for concern:

“The applicant's remorse and responsibility for his offending were considered in his favour. However, his explanation for his offending, stating that he had a “lapse in judgment”, “outburst” and was standing up for his son, suggested he was unable to use appropriate coping mechanisms in response to conflict.”

In one case the applicant mentioned bruises on the children's legs and how he did an anger management course after Child Safety visited. His submission states the bruises were not caused by him and the Child Safety assessment indicates the notification of physical harm was not substantiated. His version of events does not appear to have been believed by the assessor who writes this information into the final assessment in what seems to be a misleading way such that attending the anger management course is framed as an implication of guilt of harming the children.

“The applicant's submissions indicated previous interactions with DCSSDS which saw him completing an anger management course after children were found with marks on their legs, raising concerns about his capacity to safeguard and protect children placed in his care.”

Our analysis of the sample determined a significant gap in the consideration of culture, particularly for applicants who are part of the kinship network of Aboriginal and Torres Strait Islander children. While Blue Card Services has made efforts to apply a cultural lens to the assessment process, there is limited evidence of the actual impact of

these initiatives on assessments. The lack of substantial reference to culture in the assessments suggests that the system may not adequately acknowledge the importance of family and cultural connections as protective factors for Aboriginal and Torres Strait Islander children. This omission raises concerns about the potential disproportionate impact of the Blue Card assessment process on the lives of Aboriginal and Torres Strait Islander children, their families and kin.

3.6 Evidence used to determine the versions of events

When an applicant's submission conflicts with a version they told Police earlier, or other materials, the assessor notes that this is detrimental to the assessment of their suitability to work with children. For example, an applicant told Blue Card Services her son (18 years old) had been responsible for the drug utensil and that she was not home at the time Police attended the house. The primary concern noted is with the inconsistency with her admissions at the time and the Police brief of facts. The assessor also notes:

"...if the applicant's submissions were to be accepted it indicated she lied to police, and this would reflect adversely on her ability to role model appropriate behaviour and respect positions of authority."

In two different cases the assessor has expressed concern that this failure to accept full responsibility for the offences from many years prior (seven years and 18 years earlier), posed a significant risk factor in terms of their ability to "provide appropriate guidance and role modelling". For example, the assessor notes "alcohol played a role in at least some of his violent offending" however, from the data available, it appears to be 18 years since the last alcohol-fueled violent offence, at which time he was 26 and showed insight and remorse. The assessor notes "ongoing risk of recidivism" but it is interesting that the two charges noted in the past 18 years involved "obstruct Police" (no convictions recorded). The assessor notes that this applicant fails to demonstrate insight into the relevance of his offending in an assessment of his eligibility to engage in child-related employment.

Additionally, it is noted that where Blue Card Services send an invitation to make a submission they advise that the inconsistencies in the applicant's version of events would need to be addressed as part of the assessment process. Often, the applicant did not continue to engage in the process and a negative notice was issued.

Our analysis revealed that assessors often view inconsistencies in an applicant's statements as detrimental to the assessment of an applicant's suitability to work with children. In some cases, concerns about ongoing risk and recidivism may not align with the actual nature and recency of an applicant's offenses. For example, concerns about recidivism may be expressed even when an applicant has not committed similar offenses in many years, and the nature of the past offenses may not necessarily indicate a risk to children. The requirement for applicants to address inconsistencies in their versions of events as part of the assessment process can present a challenge, particularly if an applicant chooses not to continue engaging in the process. In such cases, a negative notice may be issued and can have long-lasting implications for families and children.

Our recommendations

The QFCC recommends that the Queensland Government:

1. **Remove the requirement for Aboriginal and Torres Strait Islander kinship carers, as defined in the *Child Protection Act 1999*, to hold a Blue Card if they are caring for children in their family.**
2. **Retain the existing Departmental assessment and approval process, in relation to Aboriginal and Torres Strait Islander kinship carers, removing the provisional status period in the absence of the blue card condition.**

The logic for recommendations

The current Blue Card system has a disproportionate impact on Aboriginal and Torres Strait Islander peoples. It is continuing to perpetrate the displacement of children away from their kin, culture and Country. The residual and enduring impacts of historical practices within child protection, policing and justice systems, are well known. These systemic legacies of surveillance, interventionism, over policing and criminalisation of vulnerability continue to be experienced by Aboriginal and Torres Strait Islander people today. This is critical context for understanding why this particular reform of the blue card system is necessary. Focussing on incremental improvements to the cultural capability of the system or its actors is sufficient to mitigate the very real, human impacts for Aboriginal and Torres Strait Islander children, their families and communities of a process that is not only culturally biased, but fundamentally not fit for purpose.

The *United Nations Convention on the Rights of the Child* articulates the right of a child to be brought up safely within their family (Article 9) and within their culture (Article 30). Parents and guardians should be supported to meet their responsibilities (Article 18). This is affirmed in Queensland's *Human Rights Act 2019* (sections 26 and 28).

Enshrined in the *Child Protection Act 1999*, the ATSCPP was developed to protect key human rights of Aboriginal and Torres Strait Islander children, including the right to be raised in their own culture and the importance and value of their family, extended family, kinship networks, culture and community.

A parent is defined in *Child Protection Act 1999* (section 11) as:

- for an Aboriginal child ***includes a person who, under Aboriginal tradition, is regarded as a parent of the child***; or
- for a Torres Strait Islander child ***includes a person who, under Island custom, is regarded as a parent of the child***.

The *Child Protection Act 1999* provides the legislative authority to assess if a child has a parent who is willing and able to protect the child.

The *Working with Children (Risk Management and Screening) Act 2000* assess suitability for child-related employment, not suitability as a parent or kin. Caring for a child on the basis of familial or cultural obligations for the collective care and responsibility of child rearing is not employment (nor volunteer) as defined in the *Working with Children (Risk Management and Screening) Act 2000*.

The paramount principle of both legislative frameworks is the **'best interests of the child'**. Amendments to the Child Protection Act in 2017, expanded upon the paramount principle, requiring that the best interest of a child be considered both through childhood and for the rest of the child's life. Whilst there is a common principle in legislation, the application in practice is resulting in conflicting decisions between departments and a "one size fits all approach" to determine suitability to work in any child-related employment and suitability for providing safe care for a child within the applicant's kinship network. The current government processes for approving kinship carers are duplicative and overly intervene in families lives. They do not appropriately recognise the legitimate parental role established and undertaken within the context of cultural kinship. The recommendations herein do not seek to undermine the best interests of the child or reduce the expectation of safety or level of protection against harm for Aboriginal and Torres Strait Islander children but, rather, remedy the impact of processes that result in compromising both the immediate and long-term best interests of Aboriginal and Torres Strait Islander children as a result of a point in time administrative decision.

The recommendation seeks to ensure the appropriate level and type of risk assessment, for the specific purpose of providing for safe care and connection for Aboriginal and Torres Strait Islander children, by their families, through cultural kinship. The process of assessment of safety and risk for the purposes of providing kinship care is undertaken by child safety officers with specialist skills and experience in child protection. It is "provisional" in nature, pending a positive blue card notice. It is a legitimate and appropriate assessment of actual risk and safety of a child. It is comprehensive in that it involves consideration of child protection information, participation of children and families, interviews with family members and an assessment of the environment in which the child will live. The centralised screening of criminal history checks of prospective kinship carers is a mandatory component of the assessment process. The screening process may be strengthened by ensuring all information considered in scope and accessible within the blue card screening process is made available to delegated officers within the Department. It is uncontested that the existence of disqualifying offences, involving harm to children, on criminal history reports should be preserved as grounds for denying approval of kinship carers within the Departmental process. Departmental staff have access to requisite information which enables officers to assess risk and the suitability of a kinship carer in the context of the best interests of an individual child and young person. Further, the provision of ongoing support to the child and carer and periodic case review enables ongoing consideration of safety and risk. This provides an appropriate ongoing safeguard, and the safety of children is not compromised by the removal of the requirement for a blue card.

There has been significant effort from both the Department of Justice and Attorney-General and Child Safety to improve how the kinship care and Blue Card assessment processes work to keep children safe with kin, in culture and Country. It does not matter how much we tinker at the edges of these systems and processes, they will not have the cultural capability or authority to reverse the enduring impact of removing a child from kin, culture, and Country.

References

- ⁱ Family Matters Australia. 2022. *The Family Matters Report 2022: Measuring trends to turn the tide o the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*. <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf>
- ⁱⁱ Department of Children Youth Justice and Multicultural Affair (former). 2022. *Strategic Plan 2022- 2026*. <https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/publications/coporate/strategic-plan-2022-26.pdf>
- ⁱⁱⁱ Queensland Family and Child Commission. 2022. Statewide and Regional snapshots of over-representation of Aboriginal and Torres Strait Islander children in the child protection system. <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/over-representation-snapshots>
- ^{iv} Queensland Family and Child Commission. 2017. *Keeping Queensland’s children more than safe: Review of the Blue Card system Blue Card and Foster Care Systems Review*. <https://www.qfcc.qld.gov.au/sites/default/files/2022-08/Review%20of%20the%20blue%20card%20system.pdf>
- ^v Queensland Parliament Legal Affairs and Safety Committee. 2022. *Examination of the Working with Children (Indigenous Communities) Amendment Bill 2021* (Report no. 38). <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2022/5722T1799-B205.pdf>
- ^{vi} Department of Justice and Attorney-General. 2021. *Safe children and strong communities: A strategy and action plan for Aboriginal and Torres Strait Islander peoples and organisations accessing the Blue Card system 2021–2025*. <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/7bdda690-f23e-45f0-996b-08f5f33f1849/safe-children-and-strong-communities.pdf?ETag=740314a09eabb693702bee873aba4ead>
- ^{vii} Queensland Family and Child Commission. 2017. *Keeping Queensland’s children more than safe: Review of the Blue Card system Blue Card and Foster Care Systems Review*. <https://www.qfcc.qld.gov.au/sites/default/files/2022-08/Review%20of%20the%20blue%20card%20system.pdf>
- ^{viii} Queensland Parliament Legal Affairs and Safety Committee. 2022. *Examination of the Working with Children (Indigenous Communities) Amendment Bill 2021* (Report no. 38). <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2022/5722T1799-B205.pdf>
- ^{ix} Department of Justice and Attorney-General. 2021. *Safe children and strong communities: A strategy and action plan for Aboriginal and Torres Strait Islander peoples and organisations accessing the Blue Card system 2021–2025*. <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/7bdda690-f23e-45f0-996b-08f5f33f1849/safe-children-and-strong-communities.pdf?ETag=740314a09eabb693702bee873aba4ead>
- ^x Queensland Government. 2023. *Blue Card Statistics*. <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/blue-card/system/statistics#:~:text=There%20are%20895%2C832%20current%20links%20between%20employers%20and,are%20blue%20card%20holders%20and%2013%2C196%20are%20applicants>
- ^{xi} Queensland Government. 2023. *Blue Card Statistics*. <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/blue-card/system/statistics#:~:text=There%20are%20895%2C832%20current%20links%20between%20employers%20and,are%20blue%20card%20holders%20and%2013%2C196%20are%20applicants>
- ^{xii} SNAICC. 2011. *Growing up our way: Aboriginal and Torres Strait Islande child rearing Practice Matrix*. <https://www.snaicc.org.au/wp-content/uploads/2016/03/Growing-Up-Our-Way.pdf>
- ^{xiii} Queensland Aboriginal and Torres Strait Islander Child Protection Peak. 2018. *Position Statement for Aboriginal Kinship Care*. <https://www.qatsicpp.com.au/wp-content/uploads/2020/05/PPP-POSITION-STATEMENT-KINSHIP-BK.pdf>
- ^{xiv} Queensland Aboriginal and Torres Strait Islander Child Protection Peak. 2018. *Position Statement for Aboriginal Kinship Care*. <https://www.qatsicpp.com.au/wp-content/uploads/2020/05/PPP-POSITION-STATEMENT-KINSHIP-BK.pdf>
- ^{xv} Meriba Omasker Kaziw Kazipa. 2022. *Annual Report 2021-22*. <https://www.ocmkk.qld.gov.au/resources/ocmkk/publications/2022-meriba-omasker-annual-report.pdf>
- ^{xvi} Queensland Government. *Child Protection Act 1999*. <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1999-010>

^{xvii} Queensland Government. *Child Protection Act 1999*. <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1999-010>

^{xviii} Department of Child Safety, Youth and Women (former). 2020. *Review of Training and Assessment: Kinship Care and Foster Care*. (Unpublished).

^{xix} Department of Child Safety, Seniors and Disability Services. 2023. *Child Safety Practice Manual*. <https://cspm.csyw.qld.gov.au/>

^{xx} Department of Child Safety, Seniors and Disability Services. *Providing foster and kinship care What is provisional approval?*. <https://www.cyjma.qld.gov.au/resources/dcsyw/foster-kinship-care/fs-01-provisional-approval.pdf>

^{xxi} Griffith University. 2020. *User Guide: Blue Card Services and Queensland College of Teachers Decision*. (Unpublished).

^{xxii} Griffith University. 2020. *User Guide: Blue Card Services and Queensland College of Teachers Decision*. (Unpublished).

^{xxiii} Department of Justice and Attorney-General. 2021. *Safe children and strong communities: A strategy and action plan for Aboriginal and Torres Strait Islander peoples and organisations accessing the Blue Card system 2021–2025*.

<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/7bdda690-f23e-45f0-996b-08f5f33f1849/safe-children-and-strong-communities.pdf?ETag=740314a09eabb693702bee873aba4ead>