

Working with Children (Indigenous Communities) Amendment Bill 2021

Submission

November 2021



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The Queensland Family and Child Commission (QFCC) acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies on which we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strength and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to their Elders past, present and emerging.

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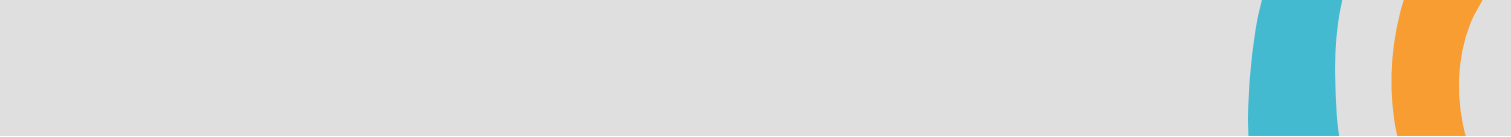
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Background

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Legal Affairs and Community Safety Committee on the Working with Children (Indigenous Communities) Amendment Bill 2021 (the Bill).

The QFCC is a statutory authority of the Queensland Government seeking to give practical effect to the rights of all children and young people in Queensland through awareness, advocacy and accountability. Under the *Family and Child Commission Act 2014* the QFCC is responsible for promoting the safety, wellbeing and best interests of children and young people.¹ This includes representing their best interests in legislative decision-making processes.

The QFCC acknowledges the blue card system can be a significant barrier to employment and kinship care for Aboriginal and Torres Strait Islander people.

In 2017, following a request from the Premier, the QFCC released *Keeping Queensland's children more than safe: Review of the blue card system* (the Review). The Review made 81 recommendations to strengthen the blue card system. Full implementation of these recommendations would go some way to addressing the concerns raised by the Bill.

While this submission will not make comment on specific provisions in the Bill, it will provide context to help address unintended consequences of the blue card system for Aboriginal and Torres Strait Islander communities. The submission will suggest opportunities to overcome these barriers while maintaining the objects of the *Working with Children (Risk Management and Screening) Act 2000*,² and children's rights under the *Human Rights Act 2019* and the United Nations *Convention on the Rights of the Child*.³

¹ *Family and Child Commission Act 2014* (Qld), S4

² *Working with Children (Risk Management and Screening) Act 2000* (Qld), S5 – to promote and protect the rights, interests and wellbeing of children and young people in Queensland

³ United Nations *Convention on the Right of the Child* (1989),

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, accessed 02 November 2021.

Proposed mechanisms

Summary

- Aboriginal and Torres Strait Islander people experience significant barriers engaging with the blue card system.
- These barriers extend to Aboriginal and Torres Strait Islander people seeking paid employment and becoming kinship carers.
- The QFCC does not support the use of conditional cards or different clearance types. This approach was not recommended by the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse.
- Introducing prescribed delegate functions and expert panels may ensure information relevant to Aboriginal and Torres Strait Islander communities is appropriately considered in assessment processes.
- Implementation of the child safe standards will help organisations maintain safe environments without overreliance on working with children checks.

The Bill proposes a new blue card framework which would allow Community Justice Groups to make decisions regarding an Aboriginal and Torres Strait Islander person's ability to work within their community, addressing two identified concerns linked to the lack of employment opportunities in regional communities:

- there is no mechanism to allow the local community to have input into the issuing of Blue Cards for employment in the community
- no mechanism exists that recognises behavioural improvements and the positive impact employment of an individual may have on the community.⁴

The QFCC acknowledges there are significant barriers to Aboriginal and Torres Strait Islander people's participation in the blue card system. To overcome these barriers, Aboriginal and Torres Strait Islander communities should be involved in the assessment process.

While the Bill centres on Aboriginal and Torres Strait Islander peoples' access to and engagement in their employment, there are also significant concerns that the blue card system may prevent some people taking up roles as kinship carers for children in their families and communities.

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 (ATSICPP) within the *Child Protection Act 1999*.⁵

The ATSICPP 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 ATSICPP 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. There are five elements to the ATSICPP: prevention, partnership, participation, placement and connection.⁶

⁴ Working with Children (Indigenous Communities) Amendment Bill 2021, Explanatory Notes, pp.1-2

⁵ *Child Protection Act 1999* (Qld), s.5C(2)

⁶ *Child Protection Act 1999* (Qld), S5C(2)



As outlined in the QFCC's *Principle Focus: A child-rights approach to systemic accountability for the safety and wellbeing of Queensland's First Nations children*,⁷ parties involved in service provision for Aboriginal and Torres Strait Islander children must consistently implement the ATSICPP to safeguard the rights of these children and to reduce the harm they experience.⁸

The QFCC believes the blue card system plays a significant role in the broader child protection system, in addition to employment access and engagement. It is important to explore options to overcome any limitations in the blue card system that could prevent full implementation of the ATSICPP for Aboriginal and Torres Strait Islander children or restrict economic participation within Aboriginal and Torres Strait Islander communities.

No Card, No Start

The new framework proposed in the Bill seeks to address two further concerns which are directly linked to Aboriginal and Torres Strait Islander people accessing employment:

- the current application process has no set timeframe for the issuing of a blue card for individuals in Indigenous communities
- the current application process does not allow an applicant to undertake work during the application process.⁹

The QFCC acknowledges 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. While the Review identified unacceptable processing timeframes at the time the report was drafted, especially for renewals where there had been no change to a person's criminal history,¹⁰ legislated timeframes for blue card decisions were not recommended.

On 31 August 2020 the No Card, No Start law came into effect, preventing a person from starting their employment before receiving a blue card.¹¹ This change followed recommendation 20 of the Review, one of the 13 recommendations that have been completed to date.¹² The Review considered that allowing a person to work while their blue card application was processing increased risks to the safety of children, without appropriate safeguards.¹³ Any change to this provision would need to consider alternative policy and practice responses to reduce risks to children in institutional settings.

⁷ Queensland Family and Child Commission, *Principle Focus: A child-rights approach to systemic accountability for the safety and wellbeing of Queensland's First Nations children* (2021), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/principle-focus>, accessed 18 November 2021.

⁸ Queensland Family and Child Commission, *Principle Focus: A child-rights approach to systemic accountability for the safety and wellbeing of Queensland's First Nations children* (2021) <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/principle-focus>, accessed 18 November 2021, p. 7.

⁹ *Working with Children (Indigenous Communities) Amendment Bill 2021* 'Explanatory Notes', p2

¹⁰ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 199.

¹¹ *Working with Children Risk Management and Screening) Act 2000* (Qld), S176A

¹² Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 51.

¹³ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, pp. 49-50.

Conditional blue card

The Bill proposes the implementation of an interim restricted working with children clearance for a specified community area with the intention to overcome the processing delays for a blue card decision.¹⁴ The proposed interim restricted working with children clearance would allow a person to commence work within the community while their application for a blue card was processed, if approved by a Community Justice Group.

The Review considered the use of conditional blue cards for Aboriginal and Torres Strait Islander people, reflecting on commentary from supporters of conditional cards and those against, who felt there should not be different levels of protection and that the safety of children should be the primary consideration.¹⁵ Ultimately, the Review did not recommend the use of conditional blue cards, and instead recommended building cultural capability within the blue card system.¹⁶

At the time of the Review, it was considered that the range of reforms recommended would achieve change that addressed many of the concerns which underpin a desire for conditional cards.¹⁷ However, given the delays in the implementation of the accepted recommendations, the QFCC is open to considering alternative options, other than conditional blue cards, which may achieve the recommendations intended goals with respect to Aboriginal and Torres Strait Islander people.

Notably, 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.¹⁸ 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.

Addressing the barriers

The report identified and responded to the barriers faced by Aboriginal and Torres Strait Islander people through several recommendations. While all 81 of the report's recommendations were accepted or accepted in principle, only 13 recommendations have been completed in full to date.¹⁹

Significantly, none of the recommendations which specifically address the barriers within the blue card system for Aboriginal and Torres Strait Islander people have been implemented or completed.

¹⁴ Working with Children (Indigenous Communities) Amendment Bill 2021, Clause 8, S231D

¹⁵ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 127.

¹⁶ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 130.

¹⁷ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 131.

¹⁸ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 131.

¹⁹ Queensland Parliament, Questions on Notice No.219 (asked on 11 March 2021)



Several recommendations from the report are highlighted in this submission for the Committee's consideration, as the QFCC believes their implementation should contribute to reducing the barriers faced by Aboriginal and Torres Strait Islander people within the blue card system.

Access to domestic violence information

Recommendation 39 proposes amendments facilitating access to applications for domestic violence orders and all documents related to orders made where the applicant was a respondent and they have a charge or conviction related to a breach of a domestic violence order or another domestic violence offence.²⁰

This recommendation is relevant to Aboriginal and Torres Strait Islander people who are over-represented in domestic violence orders, including cross orders where the victim has been misidentified. Understanding the context to the criminal offence or breach and associated court process is crucial to assessing a person's risk to children.

Recommendation 40 proposes the creation of policy to facilitate the timely exchange of domestic violence information so that it does not adversely affect processing timeframes, and to make sure staff have sufficient expertise to assess domestic violence information.²¹

While it is appropriate to include domestic and family violence information in the blue card assessment process, it must be considered in a specialised, multi-disciplinary approach to assessment, which considers the localised context of risk for individual children.

New decision-making framework

Recommendation 41 proposes the introduction of a new decision-making framework which refocuses the assessment considerations and the legislative test, and reviews the list of serious offences.²² This recommendation has been made following information which showed that in some cases assessments did not focus solely on risks of harm to children.

The QFCC has observed Aboriginal and Torres Strait Islander community specific information is underutilised during the assessment process. Community specific information provides context to offending behaviour and increases understanding of community life outside of metropolitan areas. Any assessment tool developed in consideration of this recommendation should include the requirement to obtain community specific information for applicants residing in regional or remote communities.

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.²³

²⁰ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 79.

²¹ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 79.

²² Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 85.

²³ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 83.

Multidisciplinary approach to risk assessments

Recommendation 42 suggests the implementation of a multidisciplinary structure within the assessment unit of the blue card system.²⁴ The recommended structure includes people with experience working with culturally and linguistically diverse communities and identifies positions for Aboriginal and Torres Strait Islander risk assessment officers.

Multidisciplinary panel and complex case reviews

Recommendation 43 proposes the appointment of a multi-disciplinary panel of advisors, including an Aboriginal and a Torres Strait Islander person, and the establishment of a complex case review committee with Aboriginal and Torres Strait Islander representation.²⁵

This recommendation has been made following information regarding similar practices in other states and territories where expert panels and complex case reviews are utilised.

Engagement and communication review

Recommendation 46 suggests improvements to the communication of the assessment process and establishment of a new process for submissions.²⁶ The Review found the submission process was too legalistic and needed to be clearer and easier to understand, particularly for people with low literacy levels.

This recommendation is considered important because in circumstances where a submission was not received, the person's application was either withdrawn or a negative notice was issued.

Identity check review

Recommendation 65 proposes a full risk assessment be conducted against the Queensland Government Authentication Framework to determine the best way to check identities.²⁷ The QFCC is aware this recommendation has been completed, however is not aware whether a new identity check process is to be implemented.

Any new identity check process may impact on Aboriginal and Torres Strait Islander people seeking to apply for a blue card, due to challenges with accessing formal identity documentation.

²⁴ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 85.

²⁵ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 86.

²⁶ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 90.

²⁷ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 112.

Increasing cultural capability

Recommendation 73 proposes the development and implementation of a specific strategy and action plan to provide more support for Aboriginal and Torres Strait Islander people and to build cultural capability in the blue card system.²⁸

This recommendation is based on information that decision-makers did not adequately consider the realities of life in Aboriginal and Torres Strait Islander communities and that the over-representation of communities within the criminal justice system, resulting from a history of surveillance and over policing, was not reflected in decision-making.

The Review outlines the deficiencies within the blue card system regarding cultural capability and the lack of recognition in decision-making guidelines of cultural considerations and the impact of trauma. Similarly, at the time of the Review, there were no policies or procedures to ensure that Aboriginal and Torres Strait Islander peoples' perspectives informed the blue card system.

The QFCC acknowledges 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*²⁹ which seeks to increase cultural capability within the blue card system, including establishing a process to embed Aboriginal and Torres Strait Islander perspectives.³⁰ While the strategy and action plan is a positive step towards addressing the barriers for Aboriginal and Torres Strait Islander people within the blue card system, it does not resolve all the issues raised in the Bill.

Reporting framework

Recommendation 74 proposes a comprehensive reporting framework be established, public reporting be commenced, including specific measures on the participation of Aboriginal and Torres Strait Islander peoples.³¹

The recommendation will enable data to be captured on engagement with rural and remote Aboriginal and Torres Strait Islander peoples and increase transparency and public confidence in the blue card system.

While five years have passed since the report was published and many of its recommendations are yet to be implemented, the QFCC is open to alternative or additional pathways to reduce the barriers experienced by Aboriginal and Torres Strait Islander peoples, given this issue remains unresolved.

²⁸ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 130.

²⁹ Queensland Government, *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* (2021) <https://www.publications.qld.gov.au/dataset/resources-for-aboriginal-and-torres-strait-islander-organisations-and-communities/resource/7bdda690-f23e-45f0-996b-08f5f33f1849>, accessed 1 December 2021.

³⁰ Queensland Government, *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* (2021) <https://www.publications.qld.gov.au/dataset/resources-for-aboriginal-and-torres-strait-islander-organisations-and-communities/resource/7bdda690-f23e-45f0-996b-08f5f33f1849>, accessed 1 December 2021, p. 15-25.

³¹ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 134.

Delegated decision-making

Recommendation 54 proposes the use of an authorised officer to exercise enforcement powers with respect to monitoring and compliance matters resulting from the maintenance of child safe environment requirements.³² This would effectively create a system of delegated authority to exercise some of the functions of the chief executive under the *Working with Children (Risk Management and Screening) Act 2012*.

The QFCC is also open to the possibility of expanding the scope of this recommendation to include delegating authority for assessing blue cards in certain circumstances, as foreshadowed in this Bill. The concept of delegating decision-making powers to another party is not unique. The delegation of functions and powers to a prescribed delegate in relation to an Aboriginal and Torres Strait Islander child in need of protection or likely to be in need of protection has been a mechanism of the *Child Protection Act 1999* since 2018.³³

Under this Act, the chief executive may delegate a function or power to an Aboriginal and Torres Strait Islander person, who is a chief executive officer of an Aboriginal and Torres Strait Islander entity, who holds a positive notice or exemption card, and is an appropriately qualified and suitable to perform the function or exercise the power in relation to the child.³⁴ The QFCC is aware that this function is currently being used for child placement decisions in Rockhampton and on the Sunshine Coast.

The QFCC is particularly interested in how delegated authority in the blue card system could support blue card applications by Aboriginal and Torres Strait Islander people applying to be kinship carers.

There is a clear policy intent to increase the proportion of children being placed in kinship care, which is known to have benefits for children who may otherwise be placed in foster or residential care. Child Safety currently convenes multidisciplinary Carer Assessment Panels to assist with deciding the outcome of carer applications, and to provide advice on complex applications.³⁵ Under the delegated authority power, the chief executive, Child Safety, could delegate formal authority for placement decisions to the Chair of the Carer Assessment Panel.

If a similar delegated authority mechanism were incorporated in the *Working with Children (Risk Management and Screening) Act 2012*, the Chair could also have authority to make a decision in relation to the blue card application for a kinship carer. This would enable the Chair to simultaneously decide an application for kinship care and a blue card application.

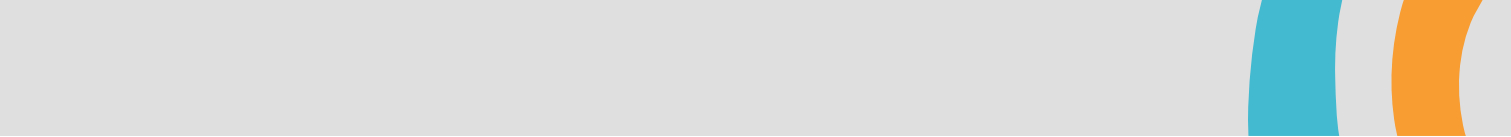
The delegated authority mechanism must have cultural authority for the delegation to be effective and to protect Aboriginal and Torres Strait Islander children. One way to incorporate cultural authority into decisions affecting Aboriginal and Torres Strait Islander children would be to have relevant experts on a panel to make the decision or to provide advice to the decision maker.

³² Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 98

³³ *Child Protection Act 1999* (Qld), s.148BB(1); Child Protection Reform Amendment Act 2017 – Act 2017 No. 44, reprint 29 October 2018, publication date 30 October 2018; Child Protection Reform Amendment Bill 2017

³⁴ *Child Protection Act 1999* (Qld), s.148BB(3)

³⁵ Queensland Government, 'Carer assessment panel guidelines', *Child Safety Practice Manual* (24 September 2019), <https://cspm.csyw.qld.gov.au/>, accessed 18 November 2021.



Privacy concerns may arise from a delegated authority mechanism or expert panel, similar to those referenced in the Statement of Compatibility for the Bill. However, the QFCC is aware Carer Assessment Panels are subject to confidentiality agreements and it is expected that any new delegated decision-making function or power under the *Working with Children (Risk Management and Screening) Act 2012* would have a similar requirement.

The QFCC believes that consultation with Aboriginal and Torres Strait Islander communities is required to comprehensively explore the efficacy of a delegated authority mechanism for kinship care applications and kinship carer blue card applications.

Blue card requirements and child safe standards

The QFCC acknowledges the blue card system is often relied on as a risk management system under the misconception that a blue card is sufficient to keeping children safe. Some large employers require all staff to hold a blue card regardless of whether they have incidental or no direct contact with children in the workplace.

The QFCC would support clear guidance to encourage large organisations to require blue cards only for employees who require them under the *Working with Children (Risk Management and Screening) Act 2012*. This way, potential employees would not miss opportunities to work in roles where a blue card has been expected by their employer but is not legally required.

Blue cards are not the only way to guarantee safe environments for children. The Royal Commission outlined child safe standards, setting a benchmark against which organisations can assess their child safe capacity.³⁶ In line with the Royal Commission's recommendations, the Review recommended the introduction of a requirement for organisations to meet child safe standards.³⁷

The QFCC understands the Queensland Government is currently considering options for the implementation of child safe standards in Queensland. Child safe standards will help to embed the policies and practices needed to develop child safe environments across organisations, including but not limited to working with children checks.

³⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 6, Making institutions child safe* (2017) pp. 254-255, 413-436.

³⁷ Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system* (2017), <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/system-reviews>, accessed 18 November 2021, p. 33.