



# Keeping Queensland's children more than safe: **Review of the blue card system**

Blue Card and Foster Care Systems Review

Queensland  
**Family & Child  
Commission**



Keeping Queensland's children more than safe: Review of the blue card system.

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### **Acknowledgements**

The Queensland Family and Child Commission acknowledges Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia and traditional custodians of the land and waters of the many Aboriginal and Torres Strait Island nations of Australia. We would like to pay our respects to the Stolen Generations and their families. We celebrate the diverse cultures and customs that have nurtured, and continue to nurture this land and its peoples. We honour the Elders past and present and thank them for their wisdom and guidance in this endeavour.

Throughout this paper we refer to 'Aboriginal and Torres Strait Islander peoples' rather than 'Aboriginal and Torres Strait Islander people' to reflect the plurality and diversity of Queensland Aboriginal and Torres Strait Islander communities.

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July 2017



# Foreword

For many years now, Queensland has led the way in providing safe environments for children through our blue card system, Queensland's term for working with children checks.

This system works alongside other laws and processes to help keep children safe. It has a wide reach in the Queensland community. Almost one in every five adults is subject to daily monitoring because they have a blue card or have applied for one. Organisations across a variety of sectors are required to identify and manage risk of harm to children.

The government's commitment to this review demonstrates the importance of the blue card system to the safety of Queensland's children.

The nation was shocked when Tiahleigh Palmer's foster carers were arrested after her tragic death. It was important to make sure the blue card and foster care systems were the best they could be. It was time to check whether they had kept pace with changes in service environments, technology and community expectations.

The Queensland Family and Child Commission (QFCC) considered the approach to this review carefully. It was clear from the outset that we needed to test the underlying policy positions on which this very complex system was built, some sixteen years ago, to confirm that they remained valid in 2017.

To make sure that we fully understood the rationale for those policy positions and had thought through all the implications (and possible unintended consequences) of changing them, we consulted widely at all stages of the review. We undertook a number of statewide visits—listening to blue card system stakeholders, employers, community organisations and those members of the community who have blue cards. These different perspectives and voices have shaped the recommendations for reform in this report. I thank each person for the time, commitment and insights offered.

The expert panel I appointed at the request of the Premier to assist the QFCC with this review was also invaluable. It included leaders in the field of child safety, advocates, employers and key users of the blue card system. These committed people helped to test long-standing views about the scope and structure of the system and advised on ways to improve it.

I thank each of the panel members for their dedication to this review and to making Queensland's children safer. Without their advice and vigorous discussions at panel meetings, the recommendations in this report would not be as strong as they are.

I also thank the QFCC review team for its tireless efforts and support. In the time available team members have examined a huge range of issues, across two major service systems, to great effect.

This review found that while the blue card system is a strong foundation for creating safe environments for children, it could be stronger.

Several machinery of government changes have meant the leadership and governance of the system has not been consistent. The system does not currently have the capacity to keep up with the needs and expectations of the people who use it and rely on it. It provides robust processes for screening those people who wish to work with children, but the processes need streamlining. It is overdue for investment if it is to remain one of the best in Australia.

This will be even more critical when the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) hands down its final report at the end of this year. It has already made recommendations on ways to make service environments safer for children through 'child safe standards'. The

Royal Commission is soon to release its views on the broader issue of creating child safe organisations and on how to improve information sharing. It is critical that Queensland closely monitors these developments and implements them in a considered manner.

The expert panel and many of the stakeholders told us that, while they endorse the directions of the Royal Commission and the focus on achieving national consistency, they will not support any reforms reducing the safeguards Queensland already has for children. I agree that Queensland should keep those safeguards. For this reason, this report treats the Royal Commission's position as a set of minimum requirements. Where Queensland already has stronger safeguards for children, I recommend that government maintains these standards.

The working with children check is only one of many ways organisations can create environments which are child safe. These checks will only prevent people with particular categories of known offences or issues from working or volunteering with children. Even the best screening systems cannot accurately predict which people will offend against children in the future.

Child safe organisations take action to protect children by creating environments that reduce the likelihood of harm. They build a culture and governance valuing the safety and wellbeing of children and respond in a child friendly way to disclosures, allegations or suspicions of harm.


Queensland needs to restructure its laws, policies and resourcing to change the way we think about children's safety. We rely too much on working with children checks. The best way to keep children safe is to focus on education to make sure Queensland has child safe organisations in conjunction with the best blue card system. This is where we need to direct our attention.

This critical change of focus needs to be understood by all Queensland communities including the organisations providing child-related services, workers, volunteers, the media and most importantly, families, parents and carers. Everyone needs to understand that the processes used by child safe organisations to keep children safe (for example, how they recruit staff, handle children's disclosures, and enforce codes of conduct for people working with children) are equally as important as the working with children check.

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 make kinship care accessible.

Achieving better outcomes for Aboriginal and Torres Strait Islander peoples requires change at every stage of the process. We need to provide opportunities for active involvement in decision-making and we need to improve the system's capacity to understand different cultural approaches. However, in doing so, we must remain vigilant in keeping Aboriginal and Torres Strait Islander children more than safe.

Finally, I encourage government and all stakeholders to build the momentum for change and embrace the vision of this report—of Queensland as a place where children can learn and grow in safe environments and develop resilience and a robust sense of personal worth. This will need sustained energy and effort over the next few years from all involved in changing the system.



Cheryl Vardon

**Principal Commissioner**

Queensland **Family and Child** Commission



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# Executive Summary

## Background to the review

On 21 September 2016, the Director-General of the Department of the Premier and Cabinet, on behalf of the Premier, asked the Principal Commissioner, Queensland Family and Child Commission (QFCC) to ‘undertake a whole of system review of the *Working with Children (Risk Management and Screening) Act 2000* and its operation’.

The Director-General also asked the Principal Commissioner to review the assessment and approval processes for foster and kinship carers in Queensland. The request for these reviews arose from the arrest of Tiahleigh Palmer’s foster carers after her tragic death.

The Premier asked the QFCC to appoint an expert panel to provide advice at all stages of the review.

The review provided an opportunity to challenge the current system and consider the value it adds to keeping children safe and if there are better ways to achieve this goal.

The findings of the 2013 Queensland Child Protection Commission of Inquiry informed the review. That inquiry found that the system needs streamlining ‘based on a balanced view of risk and downstream effects on community participation’.

More recently, the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) released its recommendations for working with children checks (WWCCs). The Royal Commission has also worked to identify the specific standards that institutions should adopt in order to be child safe. This review considered the work and recommendations of the Royal Commission and the extent to which Queensland should implement them.

This report focuses on recommendations to improve the blue card system. A separate report focuses on the results of the review of the foster care system.

## Overview of the blue card system

Queensland’s blue card system has two key components. It imposes obligations on organisations providing regulated services to children to:

- adopt child safe organisation approaches through using risk management strategies that help keep children safe
- make sure that staff and volunteers have WWCCs.

Information on blue card holders and applicants is monitored on a daily basis to identify changes in criminal history.

As a regulatory scheme, the blue card system has a unique reach in the community. As at 30 June 2016, the continued eligibility of over 680 000 blue card holders and applicants was being monitored on a daily basis. This equates to approximately one in every five Queensland adults.

The blue card system is part of a much broader framework for keeping children safe in our community. It complements the criminal justice system and other laws and strategies that work to protect children. These include laws for managing offenders who have committed child-related offences, as well as systems for child protection and the regulation of early childhood education and care.

These measures are designed to support parents, carers and families—who have the primary responsibility for keeping children safe.

## Key findings

Queensland's blue card system has always been one of the strongest in Australia. Queenslanders have embraced it, and it is now an important part of our culture. However, new risks emerge, and we need to counter them to keep our children safe in future.

The blue card system operates in line with the *Working with Children (Risk Management and Screening) Act 2000* (the WWC Act). While it already provides strong safeguards for Queensland's children, there is scope to make those safeguards even more robust and to improve the system's efficiency.

There is limited research on the effectiveness of WWCCs. However, the Royal Commission's extensive work, data provided by Blue Card Services (BCS—the Department of Justice and Attorney-General business unit administering the blue card system), and stakeholder feedback suggests that WWCCs do contribute to improving safety for children—when implemented alongside other strategies.

The blue card system is currently too focused on the actual 'blue card' or WWCC. It is only one tool in the broader system for keeping children safe. It only excludes people with certain types of known offences or issues from working with children.

WWCCs cannot predict whether people will offend against children in the future. They do not guarantee that children will be safe from harm when interacting with people who hold blue cards. In fact, over-reliance on the WWCC may create risks for children, as parents and carers may assume their children are safe when left with people holding blue cards.

Queensland is one of the only states in Australia to require organisations to have child and youth risk management strategies. These requirements are a helpful starting point in creating child safe organisations. They support a need for greater recognition that the WWCC process should be only one of the tools organisations use to keep children safe. This means changes to law and resource allocation and a significant change to the way people think about children's safety. Organisations, parents and carers all need to be vigilant and share responsibility for keeping children safe.

## Overarching reforms

This report recommends extensive changes to legislation. The WWC Act needs an overarching review in order to ensure that changes result in a cohesive and simple piece of legislation. Similarly, the funding arrangements that support the blue card system will need to be fully reviewed to ensure there is capacity for the recommendations to be implemented.

As part of this process, there is benefit in conducting a whole-of-government review of all similar screening processes to see if it is possible to consolidate them or streamline how they work together. There are likely economies of scale and savings that can be achieved.



## Strengthening the blue card system

There is strong support from blue card system stakeholders for national consistency. The benefits of moving towards a nationally consistent blue card system include:

- making sure children receive the same level of protection across Australia
- reducing barriers to information sharing
- supporting portability of WWCCs across Australia
- achieving consistency of regulation for organisations operating in multiple jurisdictions.

This report considers the approach taken by other jurisdictions (see Appendix A) and how the recommendations of the Royal Commission can be implemented in Queensland. Queensland should adopt the Royal Commission's recommendations as a minimum standard. Appendix B outlines how the Royal Commission's recommendations can be implemented in Queensland.

Stakeholders strongly support maintaining current safeguards where they are stronger in Queensland than what the Royal Commission has recommended. This report recommends retaining these existing safeguards.

While current laws offer important safeguards for children in service environments, there are opportunities to strengthen those safeguards. For example, this report includes recommendations to:

- refocus the system on child safe standards and clarify and simplify the obligations on organisations to manage risks
- expand the scope of regulation to include all services targeted at children
- clarify the role of WWCCs and when they are required
- increase the range of information considered as part of a WWCC
- expand the range of offences that will disqualify people from holding a WWCC
- amend the law to focus decision-making for WWCCs on risks of harm to children
- improve decision-making processes for WWCCs to make sure there is a robust and contemporary evidence base underpinning risk assessments
- improve the consistency and fairness of decision-making for WWCCs to make sure the best decision is made at the earliest opportunity
- improve information sharing to manage risks of harm to children
- establish an escalating compliance model.

## Streamlining the blue card system

The current (largely paper-based) application process needs to be updated. This should reduce the time, cost and inconvenience it currently imposes on the people and organisations that use it.

Opportunities to streamline the blue card system include:

- developing an online system with appropriate proof of identity arrangements to improve efficiency
- developing an organisation portal to help regulated organisations meet their obligations electronically
- automating risk assessment, file management and information-sharing processes.

These will require up-front investment.

## Improving support and maintaining public confidence

Stakeholders painted a picture of a system that falls short of meeting the needs of the people and organisations that interact with it.

Organisations advised that they need more support and practical assistance to make sure they are child safe and comply with all their obligations.

Members of the general community do not fully understand the role of the WWCC in the broader system and the need for those caring for children to share responsibility for keeping them safe. An education and awareness campaign will help with this.

Aboriginal and Torres Strait Islander peoples experience significant disadvantage at every stage of the WWCC process. Many withdraw from the process when they may have been successful in their WWCC application if they had the right support. Investment in more support will help to improve participation by Aboriginal and Torres Strait Islander peoples in the blue card system.

There is also scope to increase the system's ability to recognise and support diverse cultures. This report makes a number of recommendations intended to overcome these cultural and knowledge issues.

General misunderstanding about the role of the WWCC in protecting children has a negative impact on public confidence in the blue card system. More importantly, risks to children increase when adults assume that holding a blue card is itself enough to ensure the blue card holder will not harm children. Educating the public on the limits of the WWCC is critical to overcoming the impacts the misconceptions have on public confidence.

This report identifies opportunities for streamlining the operations of the blue card system and for strengthening the safeguards it offers. This will have a positive effect on public confidence. The report also makes recommendations designed to increase transparency and improve blue card system governance.

## Implementation

The implementation effort will be significant and stakeholders will see benefits begin with a streamlined system and a reduction in processing timeframes.

The recommendations made in this report will create significant change in the blue card system.

The implementation of these recommendations will need to be staged and overseen by a multi-agency implementation working group. This group should develop a detailed implementation plan and should monitor and report on the progress of implementation.

# List of recommendations

Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
<b>Overall reforms</b>		
1.	the Queensland Government considers whether there are benefits from: <ul style="list-style-type: none"> <li>consolidating screening functions across government where possible</li> <li>streamlining processes and implementing a revised funding structure to reduce invoicing across government departments</li> </ul>	28
2.	the Queensland Government undertakes an overarching review of the WWC Act to: <ul style="list-style-type: none"> <li>implement the recommendations of this report</li> <li>simplify the laws and make it easier for stakeholders to understand their obligations</li> </ul>	29
3.	the Queensland Government reviews the funding arrangements that support the blue card system (including funding for functions related to child safe standards and WWCCs)	29
<b>Reforms to child safe standards</b>		
4.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to: <ul style="list-style-type: none"> <li>remove references to child and youth risk management strategies and instead introduce a requirement for organisations to meet child safe standards</li> <li>remove the link between WWCC requirements and risk management strategy requirements so that child safe standards are the priority and the overarching mechanism for achieving safe service environments</li> <li>reframe the current risk management strategy requirements to reflect the Royal Commission's 10 elements of child safe environments as simple standards</li> <li>increase penalties for offences about child safe standards, to reflect each organisation's responsibility to keep children safe in service environments</li> <li>require organisations to meet child safe standards before starting operation</li> </ul>	33
5.	the Queensland Government considers: <ul style="list-style-type: none"> <li>whether there is merit in separating the administration of the functions related to child safe organisations and WWCCs</li> <li>the links between child safe standards and a reportable conduct scheme if the government introduces one in Queensland</li> </ul>	34
6.	the Queensland Government undertakes a review of the resourcing requirements necessary to support organisations in building capacity to be child safe	34
7.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to include a specific function—for the agency responsible for regulating child safe standards—to develop the capacity of people and organisations to create child safe environments	35

## Recommendations

Page  
number

### The QFCC's Principal Commissioner, advised by an expert panel, recommends:

- |       |   |    |
|-------|---|----|
| 8.    | the Department of Justice and Attorney-General develops:  | 36 |
|       | <ul style="list-style-type: none"><li>• an annual sector-wide education and training strategy to build the capacity of organisations to become child safe. In doing so, it should consider whether BCS should provide the training or if government will fund non-government organisations to provide it</li><li>• an accreditation process for training providers, including a training program and resource materials, to ensure fee-for-service training organisations have knowledge and understanding of Queensland law and the requirements of child safe standards and WWCCs</li><li>• a new suite of materials to support organisations in developing and implementing child safe standards. These should include sector-specific best practice guidelines on creating child safe standards—to build greater understanding in organisations and the broader community</li></ul> |    |
| <hr/> |   |    |
| 9.    | the Department of Justice and Attorney-General:   | 37 |
|       | <ul style="list-style-type: none"><li>• develops an education and community awareness strategy for parents, carers and the community to:<ul style="list-style-type: none"><li>– raise awareness about the role of the blue card system in keeping children safe</li><li>– help parents and carers choose child safe organisations for their children</li><li>– increase understanding about child safe standards and about the fact that the WWCC is only one component of a much broader strategy</li></ul></li><li>• improves access to information about the blue card system that highlights the roles of parents, carers and the community in keeping children safe—including WWCC requirements</li></ul>  |    |
| <hr/> |   |    |
| 10.   | the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to require organisations to publish or display information about how they are meeting their child safe standards obligations  | 37 |
| <hr/> |   |    |
| 11.   | the Queensland Government considers further reforms to include any recommendations of the Royal Commission to strengthen child safe standards   | 37 |

### Reforms to the scope of the blue card system

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|-------|--|----|
| 12.   | the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to expand the scope of the blue card system in line with the recommendation of the Royal Commission by: <ul style="list-style-type: none"><li>• including additional categories of child-related work</li><li>• allowing regulation to prescribe other activities that involve providing services primarily to children and that require contact with children</li></ul> | 41 |
| <hr/> |  |    |
| 13.   | the Department of Justice and Attorney-General works with the Department of Transport and Main Roads to: <ul style="list-style-type: none"><li>• define the types of child-related transport services that will be within scope of the system to ensure they are only those targeted at children</li><li>• consider ways to reduce duplication of effort, processes and costs for those people affected</li></ul>  | 41 |



Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
14.	the Queensland Government reviews the <i>Child Employment Act 2006</i> to ensure that organisations employing children are required to meet child safe standards	42
15.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:</p> <ul style="list-style-type: none"><li>• have one consolidated list of regulated child-related services as recommended by the Royal Commission, which are:<ul style="list-style-type: none"><li>– accommodation and residential services for children, including overnight excursions or stays</li><li>– activities or services provided by leaders, officers or personnel of religious organisations</li><li>– child care or minding services</li><li>– child protection services</li><li>– sports, clubs and associations and other community activities</li><li>– coaching or tuition services for children</li><li>– commercial photography, entertainment or party services, including gym or play facilities and talent or beauty competitions</li><li>– disability services</li><li>– education and care services (including early childhood education and schools)</li><li>– health services (including counselling)</li><li>– justice and detention services, including immigration detention facilities where children are regularly detained</li><li>– transport services for children, including school crossing services</li><li>– other services prescribed by regulation, where the service is targeted at children and requires contact with children.</li></ul></li><li>• provide that the following are not regulated services for the purposes of the WWC Act:<ul style="list-style-type: none"><li>– services provided to the general public, including children</li><li>– friend or relative child minding arrangements</li><li>– workplaces employing children but not providing services to children.</li></ul></li></ul> <p>NOTE: Workplaces will be regulated under the <i>Child Employment Act 2006</i> and be required to meet child safe standards (see recommendation 14)</p>	43
16.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow its agency's chief executive to issue legally binding advice declaring whether a service is regulated (for example, through a statutory instrument)	43

## The QFCC's Principal Commissioner, advised by an expert panel, recommends:

## Reforms to the requirements for working with children checks

- |     |  |    |
|-----|--|----|
| 17. | <p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to require WWCCs for people who:</p> <ul style="list-style-type: none"> <li>• operate a regulated service and make decisions that could impact on the implementation of child safe standards in the organisation</li> <li>• provide regulated activities i.e.: <ul style="list-style-type: none"> <li>– engaged by a regulated service for an overnight camp where they will have contact with children, and/or</li> <li>– engaged by a regulated service to work or volunteer for more than seven days in a calendar year and are: <ul style="list-style-type: none"> <li>• in a position where they will have contact with children</li> <li>• in a specified child-related service while children are ordinarily present—this includes schools, boarding schools, long day care services or kindergarten services, residential facilities, child-related health services, child-related disability services and youth detention facilities</li> </ul> </li> </ul> </li> <li>• are in a specified role—an adult member of a household where foster or kinship care, family day care or home stay is provided</li> </ul> | 47 |
| 18. | <p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow its agency's chief executive to issue legally binding advice declaring whether a WWCC is required (for example, through a statutory instrument)</p>  | 47 |
| 19. | <p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to remove the requirement for a person to have an agreement to work with an organisation before applying for a WWCC. Consideration should be given to the following to make sure the system is sustainable and the focus remains on child-related activities:</p> <ul style="list-style-type: none"> <li>• having an appropriate fee structure—with a new streamlined application process it may be possible to allow paid applications to be processed on a cost-recovery basis</li> <li>• requiring volunteers to have an agreement with a regulated service in order to have an application processed free of charge</li> <li>• allowing BCS to give a non-compliance notice to an organisation that does not provide regulated child-related services but is attempting to require employees or volunteers to obtain WWCCs rather than relying on alternative criminal history screening processes</li> </ul>   | 49 |
| 20. | <p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:</p> <ul style="list-style-type: none"> <li>• require organisations to make sure their employees and volunteers do not start regulated activities without a WWCC</li> <li>• prevent people who are independent from an organisation and who need a WWCC from starting regulated activities without one</li> </ul>  | 51 |





Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
21.	as part of the review of screening processes across government (recommendation 1), consideration is given as to whether removing the exemption for registered teachers is the most effective way to achieve a comparable level of screening. The following must be considered: <ul style="list-style-type: none"><li>• whether the reforms recommended for implementation in the blue card system, in particular those about the range of information considered and the decision-making framework, can be adopted so that the teacher registration process remains comparable with the WWCC</li><li>• whether it is more cost-effective to maintain separate screening functions or consolidate them</li><li>• whether the issues with the operation of the current separate systems can be resolved, namely<ul style="list-style-type: none"><li>– barriers to information sharing</li><li>– differences in the information considered</li><li>– differences in decision-making processes and outcomes</li></ul></li></ul>	55
22.	the exemption for police officers should remain in the WWC Act	56
23.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to: <ul style="list-style-type: none"><li>• remove the exemption card process for police officers and registered teachers (if the exemption remains) and instead identify automated ways to link an exempted person with BCS when they are engaging in child-related work outside of their professional duties</li><li>• provide that a person should not be entitled to an exemption if there are conditions placed on their registration or employment that are relevant to a risk of harm to children</li></ul>	56
24.	as part of the review of screening processes across government (recommendation 1), consideration is given as to whether removing the exemption for registered health practitioners and lawyers is the most effective way to achieve comparable screening for individuals providing child-related services	57
25.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to have a consistent exemption for volunteer parents when they are engaged in activities that are regulated. Volunteer parents who are in a position where they are responsible for the care of a child or children (for example, on overnight camp) should not be exempt	59
26.	paid employees under 18 years and students under 18 years on placement continue to need a WWCC for regulated services; and that children who are volunteering remain exempt	61
27.	the Department of Justice and Attorney-General works with other states and territories to consider whether issues about mutual recognition of WWCCs can be resolved, namely: <ul style="list-style-type: none"><li>• the comparability of screening processes</li><li>• the establishment of a centralised database</li><li>• barriers to information sharing about WWCC decisions.</li></ul> <p>If these issues can be resolved, the Attorney-General and Minister for Justice and Minister for Training and Skills should propose amendments to the WWC Act to allow people screened in another Australian state or territory to be exempt from screening in Queensland. BCS will need to be able to do any additional checks necessary in Queensland, for example, disciplinary information</p>	62

Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
28.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to remove the ability for people to rely on an exemption if they:</p> <ul style="list-style-type: none"> <li>are subject to reporting obligations or a prohibition order under the <i>Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004</i></li> <li>have a suspended WWCC</li> <li>have a current negative notice</li> </ul>	62
<b>Reforms to decisions on working with children checks</b>		
29.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce a new disqualification framework to:</p> <ul style="list-style-type: none"> <li>remove the current eligibility declaration process</li> <li>expand the range of offences that will result in the issue of an automatic negative notice as recommended by the Royal Commission, but consider excluding kidnapping offences that arise in the context of a family law dispute</li> <li>require the automatic issue of a negative notice to a person over the age of 18 who has been convicted of a disqualifying offence and sentenced to a period of imprisonment (including a suspended sentence)</li> <li>continue the agency's chief executive's discretion about all other applications involving a conviction for a disqualifying offence</li> </ul>	68
30.	<p>the Department of Justice and Attorney-General consults with the Australian Department of Immigration and Border Protection on opportunities for sharing information about international criminal histories</p>	72
31.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:</p> <ul style="list-style-type: none"> <li>require applicants to disclose if they have been convicted of a crime or any other offence, or charged with any offence in a country other than Australia</li> <li>require applicants to disclose if they have lived or worked in New Zealand for six months or more</li> <li>require BCS to obtain a New Zealand criminal history for applicants who disclose they have lived or worked in New Zealand for six months or more</li> <li>enable BCS to require applicants to provide criminal history records from the relevant country and/or further information in relation to their criminal history</li> <li>enable BCS to seek further information from applicants (including statutory declarations) where they have disclosed international criminal history or cannot provide information</li> </ul>	73
32.	<p>the Queensland Government reviews the criteria for giving investigative information to BCS to see whether they are sufficient to allow the QPS to share the information BCS needs to assess risks of harm to children</p>	74
33.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:</p> <ul style="list-style-type: none"> <li>allow the QPS to share information about a suspect with BCS to allow any risk to be managed while an investigation is finalised</li> <li>develop criteria for giving information about suspects, including that the QPS has told a person that they are a suspect in a disqualifying offence</li> <li>enable BCS to suspend a blue card to manage risks of harm to children while an investigation is finalised</li> </ul>	75



Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
34.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to: <ul style="list-style-type: none"><li>• enable BCS to use information from a reportable conduct scheme, if introduced in Queensland, for WWCCs</li><li>• in the absence of a reportable conduct scheme, enable BCS to consider disciplinary information under the <i>Public Service Act 2008</i> and other regulatory frameworks as part of the risk assessment process, including for:<ul style="list-style-type: none"><li>– Queensland Health employees</li><li>– police officers</li><li>– youth workers</li><li>– child safety officers</li><li>– Department of Education and Training employees</li><li>– disability workers</li><li>– health practitioners</li><li>– corrective services officers</li></ul></li></ul>	76
35.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to enable BCS to assess relevant child protection information as part of a WWCC. Relevant child protection information is: <ul style="list-style-type: none"><li>• information about a substantiated allegation of harm</li><li>• information about unsubstantiated allegations of harm showing a pattern of concerning behaviour</li></ul>	78
36.	the Department of Justice and Attorney-General develops relevant policies to make sure that BCS: <ul style="list-style-type: none"><li>• checks for child protection information wherever there is information to suggest there may be a risk of harm to children</li><li>• has staff with expertise in assessing child protection history as part of a multi-disciplinary approach to risk assessments</li></ul>	78
37.	the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services identify the most efficient way to exchange child protection information so as not to adversely affect processing timeframes	78
38.	the Queensland Government considers the use of child protection information for WWCCs as part of the statutory review of the system recommended in this report (see recommendation 77). The review should determine if BCS should assess child protection information for all WWCC applications	78
39.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow BCS to obtain applications for domestic violence orders and all documents related to orders made where: <ul style="list-style-type: none"><li>• the applicant for a blue card is named as a respondent, and</li><li>• the applicant has a charge or conviction related to a breach of a domestic violence order or another domestic violence offence as defined under the Criminal Code</li></ul>	79

Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
40.	<p>the Department of Justice and Attorney-General puts in place relevant policies to make sure that:</p> <ul style="list-style-type: none"> <li>• BCS has staff with sufficient expertise in assessing information about domestic violence as part of a multi-disciplinary approach to risk assessments</li> <li>• the most efficient way to exchange information about domestic violence applications and orders is identified so that it does not adversely affect processing timeframes</li> </ul>	79
41.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce a new decision-making framework, to include:</p> <ul style="list-style-type: none"> <li>• a requirement to assess whether there is a risk of harm to the safety of children without the use of legislative tests that direct decision-making based on the type of information known about a person</li> <li>• a review of the list of serious offences (in order to focus on those offences that indicate a risk of harm to children)</li> <li>• the ability to conduct an assessment based on any information that is relevant to considering risk of harm to children</li> <li>• specific criteria for assessing risks to children as outlined by the Royal Commission</li> <li>• an ability to suspend (rather than giving a negative notice) a blue card where there is a change in criminal history or other assessable information that suggests a risk of harm. (Consideration will need to be given to the feedback received from organisations about the difficulties associated with not being able to stand down an employee when a blue card is suspended)</li> </ul>	85
42.	<p>the Department of Justice and Attorney-General implements a multi-disciplinary structure within the risk assessment unit in BCS so it includes people with expertise in, for example:</p> <ul style="list-style-type: none"> <li>• administrative law</li> <li>• child protection</li> <li>• domestic and family violence</li> <li>• mental health</li> <li>• social work</li> <li>• drug and alcohol abuse</li> <li>• criminal law</li> <li>• youth justice.</li> </ul> <p>The structure should also include people with experience in working with culturally and linguistically diverse communities, and identified positions for Aboriginal and Torres Strait Islander risk assessment officers</p>	85
43.	<p>the Department of Justice and Attorney-General:</p> <ul style="list-style-type: none"> <li>• appoints a multi-disciplinary panel of advisors, including an Aboriginal person and a Torres Strait Islander person, with relevant expertise to advise on complex cases and more generally</li> <li>• establishes a complex case review committee to review proposed decisions and make recommendations. This should include appropriate representation to ensure the interests of Aboriginal and Torres Strait Islander peoples are heard and considered</li> </ul>	86



Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
44.	the Department of Justice and Attorney-General: <ul style="list-style-type: none"><li>engages a consultant with relevant expertise to develop new risk assessment guidelines based on current research</li><li>establishes a process for regular independent audits of risk assessment decisions and processes</li><li>establishes a database to record decisions to support consistency and analysis of trends and statistical data</li></ul>	87
45.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to make the risk assessment guidelines a statutory instrument and subject to annual review	88
46.	the Department of Justice and Attorney-General: <ul style="list-style-type: none"><li>engages a consultant with relevant expertise to review the suite of materials BCS currently uses to communicate with applicants during the risk assessment process to make them easier to understand and less legalistic</li><li>makes sure all risk assessment staff are adequately trained in communicating with applicants</li><li>establishes a new process for requesting submissions, including giving applicants:<ul style="list-style-type: none"><li>advice about the process before sending requests for submissions</li><li>details of the types of information needed in submissions and referee reports</li><li>details of the risk factors they need to address</li><li>reasons for a proposed negative notice</li><li>enough time to make submissions and gather related information</li><li>ongoing support during the process, with the ability to make submissions orally</li></ul></li></ul>	90
47.	the Department of Justice and Attorney-General implements an internal review process and generally requires applicants to use it before applying to the Queensland Civil and Administrative Tribunal. This process must be designed to: <ul style="list-style-type: none"><li>simplify the current appeal process</li><li>provide an opportunity to ensure that the best decision is made at the earliest available opportunity</li><li>promote early engagement by applicants before a formal appeal process</li><li>promote consistency of decision-making</li></ul>	91
48.	the Department of Justice and Attorney-General reviews the current QCAT process to identify opportunities to provide more support to applicants	91

Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
<b>Reforms to capacity building and compliance</b>		
49.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce an escalating compliance and enforcement model. This should include:</p> <ul style="list-style-type: none"> <li>• a focus on capacity building, education and training with the ability to enforce compliance as necessary</li> <li>• a new function for the agency's chief executive to facilitate compliance with the WWC Act through effective and appropriate compliance and enforcement measures</li> <li>• consideration of provisions to support: <ul style="list-style-type: none"> <li>– authorised officers</li> <li>– the ability to compel provision of verbal and written information</li> <li>– the ability to enter a premises</li> <li>– the ability to seize documents</li> <li>– the ability to assess the adequacy of an organisation's or person's child safe standards</li> <li>– powers to require a person's name and address</li> <li>– directions notices, with actions to be taken (no direct penalty for non-compliance)</li> <li>– compliance orders, with actions to be taken (direct penalty for non-compliance)</li> <li>– penalty infringement notices</li> <li>– prosecution powers for the Department of Justice and Attorney-General officers</li> <li>– the ability to suspend a service by court order when non-compliance poses a risk of harm to children that requires immediate action.</li> </ul> </li> </ul> <p>Any further recommendations of the Royal Commission in relation to compliance frameworks should be considered</p>	96
50.	the Department of Justice and Attorney-General develops, publishes and implements an annual compliance and enforcement strategy and evaluates the strategy each year	96
51.	the Queensland Government undertakes a review of the resourcing requirements necessary to support an enhanced compliance and enforcement function	97
52.	<p>the following should be considered as part of the statutory review (see recommendation 77):</p> <ul style="list-style-type: none"> <li>• introducing accreditation frameworks as potential ways to improve the levels of compliance across organisations</li> <li>• introducing a public register of non-compliant organisations</li> </ul>	97
53.	the Department of Justice and Attorney-General explores options to implement an electronic case management system for compliance activities	97
54.	the Queensland Government considers whether authorised officers under compatible regulatory models could become authorised officers under the WWC Act for the exercise of all or some of the WWC Act enforcement powers	98
55.	in developing the compliance strategy identified in recommendation 50, the Department of Justice and Attorney-General develops an annual compliance strategy for government regulatory bodies operating in child safe regulated environments. This should include processes for sharing information about compliance breaches and actions	98



Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
56.	the Queensland Government reviews offences and penalties in the WWC Act to: <ul style="list-style-type: none"><li>• make sure offences for non-compliance with child safe standards requirements are kept and strengthened, including increased penalties, to emphasise the critical importance of creating and maintaining child safe environments</li><li>• consider whether the remaining offences relate to one of the categories of offences recommended by the Royal Commission and if they remain necessary under the new regime. Current safeguards in Queensland should not be reduced</li><li>• create national consistency in relation to penalties where possible</li><li>• introduce new penalties to support the new compliance and enforcement model as required</li></ul>	99
<b>Reforms to how information is shared</b>		
57.	once the Royal Commission releases its final recommendations, the Queensland Government considers developing separate legislation to allow information sharing for the purpose of assessing and managing risks of harm to the safety, welfare or wellbeing of children	103
58.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce new information-sharing provisions to allow BCS and other relevant agencies to exchange information for the purposes of: <ul style="list-style-type: none"><li>• completing a WWCC assessment or other screening process</li><li>• monitoring and enforcing compliance with child safe standards.</li></ul> Key features should include: <ul style="list-style-type: none"><li>• allowing agencies to share information for specific purposes</li><li>• penalties for misuse of information or unauthorised disclosure</li><li>• protection from liability for individuals where information has been shared in good faith</li></ul>	103
59.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to require BCS to develop information-sharing guidelines	103
60.	the Department of Justice and Attorney-General works with other relevant agencies to develop guidelines to provide: <ul style="list-style-type: none"><li>• practical guidance about the new information-sharing provisions</li><li>• a change management strategy to achieve the necessary cultural change</li></ul>	104
61.	the Department of Justice and Attorney-General works with relevant agencies to develop an information and communication technology (ICT) strategy to identify the technical solutions needed to automate information sharing. This is to maximise efficiencies and minimise the risk that agencies cannot share information quickly and easily	104
62.	the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow BCS to share risk assessment information with screening agencies in other states and territories and work with other state and territory screening agencies to identify ways to automate data matching and information exchange	104

Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
<b>Reforms to the application process</b>		
63.	the Department of Justice and Attorney-General urgently develops and implements: <ul style="list-style-type: none"> <li>an efficient online application process</li> <li>a new manual application form to be used as an exception. In doing so, it should consult stakeholders to make sure the new forms are user-friendly</li> </ul>	110
64.	the Department of Justice and Attorney-General develops and implements an integrated online service for WWCC applicants, including, at a minimum, the ability to: <ul style="list-style-type: none"> <li>submit a WWCC renewal</li> <li>update an applicant's or a card holder's details (for example, name and contact details)</li> <li>transfer from a volunteer blue card to a paid blue card</li> <li>replace or cancel a blue card</li> <li>pay card-related costs</li> <li>link or unlink an individual with different regulated organisations</li> <li>view the progress of a pending application</li> <li>obtain reminders, notifications or communications from BCS (for example, upcoming card expiry dates) in many ways (including email or text message)</li> <li>provide customer experience feedback directly to BCS</li> <li>view history of linked organisations, including the current and actively linked organisations</li> </ul>	111
65.	the Department of Justice and Attorney-General undertakes a full risk assessment against the Queensland Government Authentication Framework to determine the best way to check identities. This must strengthen the identity check process and, as far as possible, support a fully online application process	112
<b>Reforms to risk assessment processes</b>		
66.	the Department of Justice and Attorney-General works with the QPS to: <ul style="list-style-type: none"> <li>provide advice to the Queensland Government about the most efficient way to achieve electronic returns of police information that can be integrated into the BCS database. This should include advice about: <ul style="list-style-type: none"> <li>the services the Australian Criminal Investigation Commission (ACIC) currently provides</li> <li>the timeframes for implementation</li> <li>any implications for the role of the QPS in providing criminal history screening services across government.</li> </ul> </li> <li>establish the automated exchange of other police information, including QP9 court briefs</li> </ul>	116
67.	the Department of Justice and Attorney-General works with all relevant agencies to automate and streamline information sharing to support the WWCC process	116
68.	the Department of Justice and Attorney-General reviews the risk assessment process to identify and implement ways to: <ul style="list-style-type: none"> <li>automate the process for less complex risk assessments</li> <li>manage all risk assessment files electronically</li> </ul>	117





Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
<b>Reforms to the outcomes of working with children checks</b>		
69.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWCC Act to:</p> <ul style="list-style-type: none"><li>remove the positive notice letter as an outcome of a WWCC application</li><li>include a photograph on the WWCC product.</li></ul> <p>Any solutions developed should enable the:</p> <ul style="list-style-type: none"><li>ability to issue a digital rather than a physical card at a point in the future</li><li>use of biometric technology as it develops</li></ul>	119
70.	<p>once daily national interstate monitoring of criminal history is operational, the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWCC Act to extend the WWCC renewal period to five years. Consideration should be given to the appropriate fee structures to support a change in the renewal period and the potential to offer applicants a choice in the renewal time period</p>	122
<b>Reforms to how organisations and communities are supported</b>		
71.	<p>the Department of Justice and Attorney-General develops an organisation portal with the following minimum functions:</p> <ul style="list-style-type: none"><li>card holder management, including allowing an organisation to:<ul style="list-style-type: none"><li>maintain an up-to-date register of blue card holders and their expiry dates</li><li>validate, link and unlink a blue card holder or pending applicant (using a mobile or tablet device)</li><li>view the status of a person's application that is linked to their organisation</li><li>update organisation-specific details (such as name, address, contact details and delegated portal management users)</li></ul></li><li>notification management, including:<ul style="list-style-type: none"><li>providing notifications from BCS to organisations when a linked card holder has a change in status</li><li>allowing organisations to acknowledge receipt of notifications</li><li>recording the metadata of notifications for audit purposes</li><li>allowing organisations to receive notifications to channels outside of the online service (such as a mobile telephone or email address)</li><li>allowing organisations to report a change in disciplinary or police information for card holders or pending applicants linked to their organisation</li></ul></li><li>compliance management, including allowing organisations to upload documents about their child safe standards on request</li></ul>	125
72.	<p>the Department of Justice and Attorney-General supports culturally and linguistically diverse communities by:</p> <ul style="list-style-type: none"><li>promoting and advising applicants of the availability of interpreting services</li><li>providing resources on the BCS website that are translated into multiple languages</li><li>developing and undertaking targeted education about the blue card system in culturally and linguistically diverse communities</li></ul>	125

Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
<b>Reforms to how Aboriginal and Torres Strait Islander applicants are supported</b>		
73.	<p>the Department of Justice and Attorney-General develops and implements a specific strategy and action plan to provide more support for Aboriginal and Torres Strait Islander peoples and build cultural capability in the blue card system, including:</p> <ul style="list-style-type: none"> <li>identifying ways to partner with other agencies for consistency with other Queensland Government initiatives designed to improve outcomes for Aboriginal and Torres Strait Islander peoples</li> <li>establishing a reference group made up of Aboriginal and Torres Strait Islander stakeholders to co-design the strategy and action plan</li> <li>developing a specific community engagement plan to address common misconceptions about the blue card system, build understanding and improve participation in the process</li> <li>developing a suite of culturally appropriate information and resources</li> <li>funding and providing community-based support to assist with all stages of the WWCC process in all discrete communities</li> <li>funding and establishing identified positions in BCS to provide greater support to Aboriginal and Torres Strait Islander peoples and provide regular cultural capability training for all BCS staff</li> <li>developing guidelines to embed an appropriate consideration of culture in WWCC decisions</li> <li>considering ways to empower communities to be involved in decisions about their community</li> <li>establishing appropriate governance structures—led by Aboriginal and Torres Strait Islander stakeholders—to implement the strategy and action plan</li> <li>developing an evaluation strategy to measure the effectiveness of the strategy and action plan</li> </ul>	130
<b>Maintaining public confidence reforms</b>		
74.	<p>the Department of Justice and Attorney-General:</p> <ul style="list-style-type: none"> <li>establishes a comprehensive reporting framework of key indicators and benchmarks</li> <li>commences regular public reporting on performance against the framework of indicators</li> <li>includes specific measures on participation by Aboriginal and Torres Strait Islander peoples, as well as by other culturally and linguistically diverse applicants and blue card holders</li> </ul>	134
75.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow genuine researchers to access data (with identifying details removed) about the blue card system</p>	134
76.	<p>the Department of Justice and Attorney-General:</p> <ul style="list-style-type: none"> <li>promotes the benefits of analysing the data</li> <li>reports on research partnerships</li> </ul>	134



Recommendations		Page number
<b>The QFCC's Principal Commissioner, advised by an expert panel, recommends:</b>		
77.	<p>the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce a statutory review process. It should specify that:</p> <ul style="list-style-type: none"><li>the first review be completed within five years of commencement of the amendments arising from the recommendations in this report</li><li>the review must consider the results of the evaluation in recommendation 81</li><li>the report be released publicly.</li></ul> <p>In preparation for the statutory review, the Department of Justice and Attorney-General should consider appointing a panel of key external stakeholders to meet regularly and consider:</p> <ul style="list-style-type: none"><li>how the blue card system is operating (based on analysis of available data, complaints, customer satisfaction measures and other information)</li><li>what improvements are needed, including in relation to legislation, systems, policies and practices, on an ongoing basis.</li></ul> <p>The panel should have appropriate representation to ensure the interests of Aboriginal and Torres Strait Islander peoples are heard and considered</p>	136
<b>Implementation recommendations</b>		
78.	<p>the Department of Justice and Attorney-General establishes an implementation working group made up of government and non-government representatives to develop a detailed implementation plan and reporting framework. The working group should also oversee and report on progress over the implementation period.</p> <p>The panel should have appropriate representation to ensure the interests of Aboriginal and Torres Strait Islander peoples are heard and considered</p>	139
79.	<p>the implementation plan is regularly reviewed to consider any changes in the administrative arrangements for particular functions and to allocate responsibility for each recommendation to the agency with administrative responsibility for the relevant function</p>	140
80.	<p>the Department of Justice and Attorney-General works with the Queensland Government Chief Information Officer to use agile and iterative project methodologies to build capability and functionality in the system over time</p>	140
81.	<p>the Department of Justice and Attorney-General engages an independent entity to plan for and evaluate the success of these reforms of the blue card system.</p>	140

# Chapter 1

## The Queensland Family and Child Commission's Review

### The Premier's request

On 21 September 2016, the Director-General of the Department of the Premier and Cabinet (DPC), on behalf of the Premier, asked the Principal Commissioner of the Queensland Family and Child Commission (QFCC) to undertake a whole of system review of the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) and its operation (Attachment 1).

The QFCC was also asked to review other aspects of the assessment and approval of foster and kinship carers, including the use of working with children checks (WWCCs) in Queensland.

### Terms of reference

The QFCC published the terms of reference for this review on 18 October 2016 (Attachment 2) which were to:

1. Explore ways to build and sustain public confidence in the Blue Card and Foster Care Systems.
2. Review the Blue Card System legislation, including its scope, to identify any gaps, barriers, inconsistencies or inefficiencies in meeting the safety needs of children in Queensland.
3. Review key Blue Card System operations to identify opportunities to streamline, innovate and enhance access for members of the community, including Aboriginal people and Torres Strait Islanders.
4. Audit and review foster carer approval and monitoring processes, to assess their effectiveness as safeguards for vulnerable children and to identify any gaps or inconsistencies in meeting the safety needs of children in Queensland.
5. Review Child Safety Services within the Department of Communities, Child Safety and Disability Services to determine whether it is operating effectively, including engaging with frontline staff through targeted consultation to determine any capacity issues or pressure points in meeting the safety needs of children in the Child Protection System.

### Expert panel

At the Premier's request, the QFCC appointed an expert panel to guide this review. (Appendix C provides information on the panel members.) The panel met 13 times during the course of the review. It provided the QFCC with expert advice and guidance throughout the process and helped the QFCC to assess the evidence and prioritise issues.

### Authority to access information

The QFCC conducted this review under Part 3 of the *Family and Child Commission Act 2014*.

## The Queensland Family and Child Commission's approach to the review

This review considers the extent to which the blue card system contributes to keeping children safe and whether there are opportunities to improve it. The goal is to continue to ensure Queensland's children are as safe as possible. They deserve nothing less.

As with any complex process, there are terms that need to be understood. Appendix D provides definitions of key words and phrases and an outline of the acronyms used in this report.

The QFCC's approach to the review was consultative and not coercive, and involved significant stakeholder and community engagement. The QFCC released a public discussion paper to explore the issues that needed to be addressed through the review. An options paper was also released to test stakeholders' views on options for reform. In addition, the QFCC held workshops across the state and facilitated two sessions with peak stakeholders.

Appendix E provides a summary of the consultation undertaken during the review and of the feedback received from stakeholders. Stakeholders provided valuable feedback, which was used in formulating the findings and recommendations in this report.

During consultation, many stakeholders raised concerns about WWCC processes and decisions. They mentioned:

- inconsistent decisions in similar cases
- delays and lack of support for applicants
- lack of cultural perspective—impacting on Aboriginal and Torres Strait Islander applicants.

To test these concerns, the QFCC reviewed a very small selection of blue card files and decisions. Case studies in this report illustrate key points from that review. While noting that a small number of case studies may not represent all of the decisions made by Blue Card Services (BCS), the results of this review provided some support for the stakeholders' feedback.

The QFCC also worked with BCS to obtain an indication of the financial implications of some of the options for reform. This involved using a financial modelling tool previously developed by BCS in conjunction with Queensland Treasury Corporation. The financial modelling information included in this report provides high-level indicative costs and savings associated with the reforms. The financial modelling only includes costs associated with general application processing and risk assessment. A number of assumptions underpin this modelling, which will need to be fully tested during implementation.

## Procedural fairness

The review's findings and recommendations address opportunities for improvements to the blue card system as a whole. The report contains no adverse findings or inferences about the people who work and volunteer within the system or members of the community.

To satisfy procedural fairness obligations and ensure operational workability of the recommendations, the review included targeted consultation with some stakeholders on the proposed recommendations and draft report. The QFCC carefully considered all relevant feedback in finalising this report.

# Chapter 2

## Introduction to the blue card system

The *Working with Children (Risk Management and Screening) Act 2000* (the WWC Act) establishes Queensland's blue card system.

Since its establishment in 2001, the blue card system has changed significantly, improving safeguards for children. Appendix F outlines the history of the blue card system and the changes that have occurred since its commencement.

From 2001 until 2014, the former Commission for Children and Young People and Child Guardian was responsible for the blue card system. In July 2014, responsibility transferred to the Public Safety Business Agency. In October 2016, the Department of Justice and Attorney-General (DJAG) took over responsibility. Blue Card Services (BCS), a business unit of the DJAG, currently administers it.

### Purpose of the blue card system

Queensland's blue card system is part of a broader criminal justice and child protection system. The intent of the blue card system is to make it easier for parents and carers to safely access important services for their children. These are often service environments where parents and carers are not present because of the nature of the activity, for example, schools and child care.

The government supports parents and carers in keeping children and young people safe through the following requirements for risk management strategies and working with children checks (WWCCs).

#### Risk management strategies

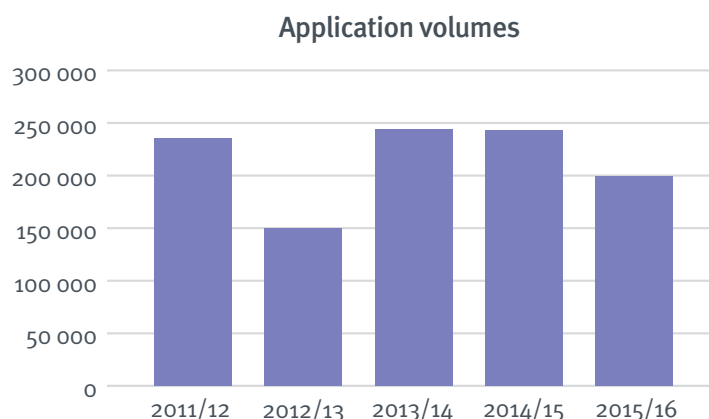
Organisations are required to develop and implement risk management strategies to identify and manage risks of harm to children.

#### Working with children checks

Organisations' employees and volunteers must have WWCCs. Individuals are not permitted to work with children if they are identified as a risk of harm.

Changes in Queensland criminal history information are monitored and assessed daily.

BCS assesses and determines the outcomes of WWCCs. It manages high volumes of applications, as shown in Figure 1.



**Figure 1:** Yearly volumes of applications for blue cards and exemption cards.

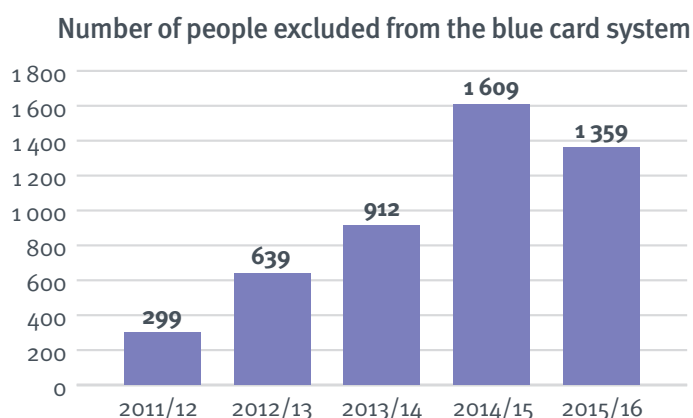
WWCCs result in a positive notice, an exemption notice or a negative notice. Since 2001, BCS has issued close to three million blue cards.

As at 30 June 2016, the Queensland Police Service (QPS) was monitoring changes in the police information of over 680 000 current WWCC holders and applicants on a daily basis. When it detects a change, the QPS passes this information on to BCS.

## Effectiveness of the blue card system

Research tells us the best way to keep children safe is through child safe environments.<sup>1</sup> A child safe organisation has a culture based on policies and procedures that promote children’s safety.

There is no large-scale research to help understand the effectiveness of WWCCs in reducing the risk of harm to children. A WWCC is not a guarantee of safety—it will only identify people who pose a risk based on their history. As shown in Figure 2, BCS has identified many people who posed a risk to children and prevented them from working with them.



**Figure 2:** Number of people who are excluded from the blue card system yearly. This graph includes the total number of applicants issued with a negative notice, including cancellations.

Research shows that WWCCs contribute to creating safe environments for children when they are part of broader child safe strategies.<sup>2</sup>

# Chapter 3

## Overarching reforms

### Whole-of-government screening processes

During the review, it became apparent that working with children checks (WWCCs) are only one of a number of screening processes in Queensland. A number of other government agencies screen people and decide on their suitability to work in a range of areas. Some examples of these screening processes are:

- teacher registration
- the 'yellow card system' for disability workers and volunteers
- employment screening for public servants working in health, child protection and other services
- driver authorisations.

Most of these processes assess criminal history as well other suitability criteria. This involves gathering information from police. The Queensland Police Service (QPS) currently undertakes approximately 250 000 criminal history checks per year and continuously monitors more than 950 000 people on a daily basis.

They all have their own systems, structures and legislation. Information is also sourced from other government agencies to support these screening processes. In many cases, government agencies invoice each other for the relevant information.

This review did not investigate these other processes in any detail. However, there is benefit in conducting a whole-of-government review of all similar screening processes with a view to consolidating them or streamlining processes for how the systems work together. It is likely that government can achieve economies of scale and savings by consolidating screening or streamlining processes.



#### Recommendation 1

It is recommended that the Queensland Government considers whether there are benefits from:

- consolidating screening functions across government where possible
- streamlining processes and implementing a revised funding structure to reduce invoicing across government departments.

### Review of the Act

This review has considered the operation of the *Working with Children (Risk Management and Screening) Act 2000* (the WWC Act). The WWC Act is complex and government has not considered it, as a whole, for more than 10 years. The many legislative changes recommended by this report will need action as part of a broader, overarching review of the WWC Act. This will ensure that all the recommended amendments fit together in a cohesive and simple piece of legislation. It will also provide an opportunity to consider whether the requirements for child safe standards and WWCCs should remain in the same piece of legislation.



## Recommendation 2

It is recommended that the Queensland Government undertakes an overarching review of the WWC Act to:

- implement the recommendations of this report
- simplify the laws and make it easier for stakeholders to understand their obligations.

In addition, it will be necessary to consider how strengthening the blue card system (through the recommendations in this report) will affect other screening systems that are linked with the WWCC process. Consideration will need to be given to updating other relevant laws. For example:

- the *Child Protection Act 1999* regulates the process for approving and regulating foster and kinship carers
- the *Education (Queensland College of Teachers) Act 2005* regulates registered teachers in Queensland and requires them to undergo criminal history screening as part of this registration
- the *Transport Operations (Passenger Transport) Act 1994* requires people to have a driver authorisation to provide public passenger services
- the *Disability Services Act 2006* provides for the criminal history screening of people engaged by a Department of Communities, Child Safety and Disability Services (DCCSDS) funded non-government service provider or a National Disability Insurance Scheme (NDIS) non-government service provider.

Criminal history screening for the disability sector is currently under review due to the implementation of the NDIS. Any changes will need to be considered in that context.

## Funding arrangements

Government will also need to review the funding arrangements that support the blue card system. With up-front investment, streamlining the system as recommended by this report can achieve savings. However, other recommendations in this report will require funding. A full review of the financial implications and funding requirements will need to be undertaken.

## Recommendation 3

It is recommended that the Queensland Government reviews the funding arrangements that support the blue card system (including funding for functions related to child safe standards and WWCCs).

# Chapter 4

## Strengthening the system

### Child safe standards

#### At a glance

#### Findings



The best way to keep children safe is through child safe environments

Organisations, parents and the community over-rely on WWCCs to keep children safe

Current laws and practices do not reflect the importance of child safe standards

More investment is needed to support organisations in becoming child safe

#### Reforms



##### CHANGE

the law to emphasise that child safe standards are the best way to keep children safe

##### CONSIDER

the administrative arrangements for child safe standards and WWCCs

##### DEVELOP

a strategy and suite of resources to build organisations' capacity

##### INCREASE

awareness of parents, carers and the community about child safe organisations

##### REALLOCATE

resources to build the capacity of organisations to be child safe

##### REQUIRE

organisations to publish or display information about their child safe standards

#### Impacts



##### CHILDREN

Safeguards will be stronger



##### ORGANISATIONS

Organisations will have more support to be child safe



##### COMMUNITY

The community will have a better understanding of how to keep children safe



##### NATIONAL CONSISTENCY

There will be consistency with the Royal Commission's child safe standards

## Current position

Queensland is one of the only states with laws requiring organisations to have child and youth risk management strategies. Organisations must review these annually. The purpose is to identify and minimise the risk of harm to children within the organisation.

In Queensland, there are eight minimum requirements for risk management strategies. They are similar to the child safe standards the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) recently recommended.

Current child and youth risk management strategy requirements	Royal Commission—10 child safe standards
<ol style="list-style-type: none"><li>1. A statement of commitment to the safety and wellbeing of children and young people</li><li>2. A code of conduct outlining values and providing clear expected standards of behaviour</li><li>3. Policies for recruitment and management of staff, including volunteers</li><li>4. Procedures for handling disclosures or suspicions of harm</li><li>5. A plan for managing breaches of the strategy.</li><li>6. Policies and procedures for compliance with the blue card system</li><li>7. A risk management plan for high-risk activities and special events</li><li>8. Strategies for communication and support in relation to risk management requirements</li></ol>	<ol style="list-style-type: none"><li>1. Child safety is embedded in institutional leadership, governance and culture.</li><li>2. Children participate in decisions affecting them and are taken seriously.</li><li>3. Families and communities are informed and involved.</li><li>4. Equity is promoted and diversity respected.</li><li>5. People working with children are suitable and supported.</li><li>6. Processes to respond to complaints of child sexual abuse are child focussed.</li><li>7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.</li><li>8. Physical and online environments minimise the opportunity for abuse to occur.</li><li>9. Implementation of child safe standards is continuously reviewed and improved.</li><li>10. Policies and procedures document how the institution is child safe.</li></ol>

**Table 1:** Current risk management strategy requirements and the Royal Commission's child safe standards.

## Stakeholder views

Stakeholders believe there is too much focus on working with children check (WWCCs) and not enough focus on organisations being child safe.



For example, one said:

As a number of public inquiries and case reviews continue to reveal, the majority of those perpetrating abuse and not providing children with a quality of care to which they are entitled have not been disciplined or subject to police investigation, charges or convictions.

Overly relying on criminal history checking fosters both complacency and risk aversion, and serves to de-emphasise the criticality of induction and ongoing supervision, support and training and a number of other organisational factors that act together to keep children and young people safe and promote their wellbeing in organisational settings.<sup>3</sup>

Many stakeholders raised concerns that organisations and the community now ‘over-rely’ on WWCCs. Stakeholders also support the Royal Commission’s child safe standards.

## Changing laws to promote child safe standards

The WWCC is only one of a range of strategies that support child safe organisations. Research shows that it is important to recognise the limits of pre-employment screening schemes such as the WWCC, because many child-sex offenders do not have criminal records.<sup>4</sup>

Child safe organisations play a crucial role in protecting children from harm. They manage situational risks and create positive cultures that encourage disclosure. They clarify unacceptable behaviour and involve police and child protection authorities when necessary. Research suggests that the ‘focus should be on creating child safe environments rather than just on safe individuals’.<sup>5</sup>

The current laws and practices in Queensland do not reflect this as well as they could as:

- only those organisations that employ people who need to have a blue card must have a risk management strategy
- the penalty for not complying with risk management obligations is much lower than for not complying with WWCC requirements
- there is no need for an organisation to have a risk management strategy in place before offering regulated services.

Changing the focus in the *Working with Children (Risk Management and Screening) Act 2000* (the WWC Act) to promote the importance of organisations being child safe will help to change the misconception that blue cards are the key to keeping children safe. This can be achieved by:

- separating child safe obligations from WWCCs
- increasing penalties for non-compliance with child safe standards
- requiring compliance with child safe standards before services are provided to children.

A large number of stakeholders said that the current requirements are confusing and not well understood. They believe the use of the term ‘risk management’ is a problem. Adopting the Royal Commission’s term ‘child safe standards’ instead will help to make the concept more relevant for organisations and the community.

Current requirements are largely consistent with the Royal Commission’s child safe standards. However, they need to be easier to understand. They need to reflect all aspects of the standards identified by the Royal Commission and focus more on equity and diversity and on involving children in developing policies and procedures.

Other changes were also considered, such as:

- an accreditation process for organisations to become child safe
- a public register of child safe organisations
- compulsory training for organisations.

While stakeholders broadly support these options, it is clear that investment is needed to build organisations' capacity before they can be considered further.

#### Recommendation 4

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:

- remove references to child and youth risk management strategies and instead introduce a requirement for organisations to meet child safe standards
- remove the link between WWCC requirements and risk management strategy requirements so that child safe standards are the priority and the overarching mechanism for achieving safe service environments
- reframe the current risk management strategy requirements to reflect the Royal Commission's 10 elements of child safe environments as simple standards
- increase penalties for offences about child safe standards, to reflect each organisation's responsibility to keep children safe in service environments
- require organisations to meet child safe standards before starting operation.

### Investing in building capacity

There is broad stakeholder agreement that government needs to play a stronger role in helping organisations to develop child safe practices.

The WWC Act does not reflect the importance of building organisations' capacity. Blue Card Services (BCS) focuses its resources almost entirely on blue card activities. It only allocates limited resources to supporting organisations and to monitoring compliance with risk management obligations.

It is clear that WWCCs have absorbed the resources and focus of every agency that has been responsible for managing the blue card system. One way to fix this problem is to split the WWCC and risk management functions. This means having a different agency responsible for each function. The agency responsible for risk management would focus solely on making sure organisations are child safe.

The Queensland Government is currently considering the introduction of a reportable conduct scheme in Queensland. Reportable conduct schemes are designed to improve oversight of how organisations prevent and respond to allegations of child abuse. Under a reportable conduct scheme, designated agencies or individuals must report allegations of reportable conduct to a body that oversees the responses to the allegations.

If government introduces a reportable conduct scheme there will be an opportunity to consider the strong links between reportable conduct and child safe standards. For example, when an organisation becomes aware of reportable conduct, it should implement its child safe standards.



## Recommendation 5

It is recommended that the Queensland Government considers:

- whether there is merit in separating the administration of the functions related to child safe organisations and WWCCs
- the links between child safe standards and a reportable conduct scheme if the government introduces one in Queensland.

Many recommendations in this report about child safe standards are directed to the Department of Justice and Attorney-General (DJAG). If a decision is made to change the administration arrangements, any recommendations relating to child safe standards should be directed to the agency that takes responsibility for the function.

Regardless of the administrative arrangements, specific resources are needed to support organisations in building their capacity to become child safe. Government needs to either invest in providing training and support or fund non-government organisations to provide it.

There needs to be a change in resource allocation to acknowledge the importance of child safe standards. The recommendations in this report will assist in streamlining the administration of WWCCs and should provide the opportunity to reinvest resources into helping organisations to become child safe.

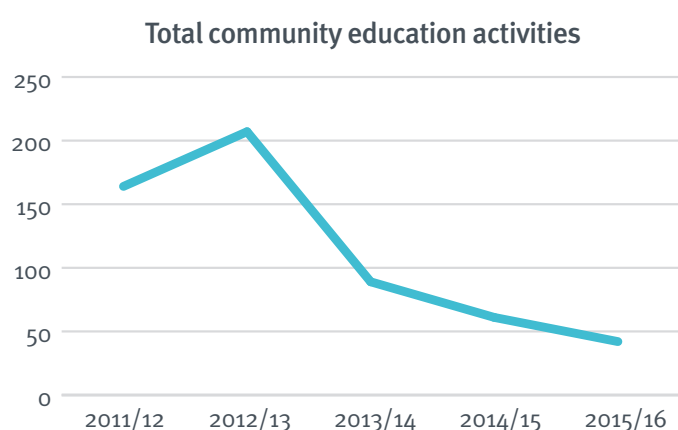


## Recommendation 6

It is recommended that the Queensland Government undertakes a review of the resourcing requirements necessary to support organisations in building capacity to be child safe.

## Providing community education

The range of community education and engagement activities undertaken by BCS has declined over recent years.



**Figure 3:** Number of community engagement activities conducted yearly by BCS since 2011–12.

BCS does not have a strategy for evaluating, at a strategic level, the impact of training activities to inform continuous improvement.

In the absence of BCS-provided training and education, a number of fee-for-service organisations have started providing child safe training. Stakeholders are concerned that there is no regulation of the quality of the training provided or any guarantee that it meets Queensland’s legal requirements. A process of accreditation for the training organisations providing child safe training would give organisations certainty about the quality of the advice.

The BCS website has a range of training materials and templates to help organisations develop and implement child and youth risk management strategies. A toolkit and online videos give guidance on the minimum requirements.

However, stakeholders overwhelmingly said the information is too academic and confusing. They also said the information they needed was hard to find and understand.



For example, one said:

Providing a good suite of resources and an education campaign about the value of developing and implementing appropriate child safe strategies and policies will raise community awareness and support organisations to achieve good practice in this area.<sup>6</sup>

Stakeholders generally believe that organisations need more guidance, advice and training to help them create and maintain child safe environments.

In developing materials to support organisations, it is important to recognise that child safe standards apply to a wide range of businesses and organisations across Queensland. These organisations face different risks. This means each organisation will meet the standards in different ways, depending on its operations and circumstances.<sup>7</sup>

For example, the strategies that may apply to tutors operating in a domestic home-based setting will be different to strategies used to reduce risks of harm to children in a more public setting, such as the local soccer club.

BCS needs to develop new materials to help organisations. Publishing sector-based best practice guidelines will help. These will provide specific guidance on how organisations in those sectors can meet the child safe standards.



### Recommendation 7

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to include a specific function—for the agency responsible for regulating child safe standards—to develop the capacity of people and organisations to create child safe environments.



## Recommendation 8

It is recommended that the Department of Justice and Attorney-General develops:

- an annual sector-wide education and training strategy to build the capacity of organisations to become child safe. In doing so, it should consider whether BCS should provide the training or if government will fund non-government organisations to provide it
- an accreditation process for training providers, including a training program and resource materials, to ensure fee-for-service training organisations have knowledge and understanding of Queensland law and the requirements of child safe standards and WWCCs
- a new suite of materials to support organisations in developing and implementing child safe standards. These should include sector-specific best practice guidelines on creating child safe standards—to build greater understanding in organisations and the broader community.

### Increasing awareness

The BCS website provides information for parents, carers and the community. The information sheets and resources provided are intended to help educate them about the role of the blue card system. They include information on:

- the purpose and functions of the blue card system
- who does/does not need a blue card
- compliance with risk management requirements.

Stakeholders say the BCS website is outdated and largely unhelpful. They support emphasising the shared responsibility for keeping children safe. They also highlight the importance of giving parents, carers and the community more information to assist them to choose child safe organisations for their children.

They agreed that the community needs education and information about the role of the blue card system but it must be clear, concise and tailored to the target audience—including people whose primary language is not English.



For example, one stakeholder advised:

Increased community and organisational awareness around what makes organisations child safe is essential ... public focus in Queensland has been around the 'blue card', not the 'blue card system' and the important elements of the Child and Youth Risk Management Strategy. Where parents and communities are more aware, then they are able to better determine how an organisation is creating a safe environment for their child.<sup>8</sup>

Another suggested:

Parents should be educated about what to look for when selecting a child safe organisation ... online videos and checklists would be a basic starting point.<sup>9</sup>



## Recommendation 9



It is recommended that the Department of Justice and Attorney-General:

- develops an education and community awareness strategy for parents, carers and the community to:
  - raise awareness about the role of the blue card system in keeping children safe
  - help parents and carers choose child safe organisations for their children
  - increase understanding about child safe standards and about the fact that the WWCC is only one component of a much broader strategy
- improves access to information about the blue card system that highlights the roles of parents, carers and the community in keeping children safe—including WWCC requirements.

Organisations also have a role in providing information about the child safe environment they have created. This not only increases public awareness of the policies and procedures in place, but also helps to make sure they keep their information up-to-date. Organisations are more likely to implement their policies when their clients ask about them or provide feedback.

## Recommendation 10



It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to require organisations to publish or display information about how they are meeting their child safe standards obligations.

It is acknowledged that the Royal Commission will release further recommendations in relation to child safe standards.<sup>10</sup> Further reforms must be considered by the Queensland Government once this occurs.

## Recommendation 11



It is recommended that the Queensland Government considers further reforms to include any recommendations of the Royal Commission to strengthen child safe standards.

## Scope of the blue card system

### At a glance

#### Findings



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Current laws are complex and confusing

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The community expects the law will cover all services targeted at children

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Workplaces for children should be child safe

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#### Reforms



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##### CHANGE

the law to include all services targeted at children in the blue card system

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##### CONSIDER

employment laws to better protect children in workplaces

---

##### CHANGE

the law to make it less complex and clarify it with legally binding guidelines

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#### Impacts



##### ORGANISATIONS

It will be easier for organisations to know if they are regulated



##### CHILDREN

There will be better safeguards for children in more places



##### COMMUNITY

This will meet community expectations about which services are in the system



##### NATIONAL CONSISTENCY

There will be consistency with the Royal Commission's recommendations about scope

## Current position

The scope of the blue card system determines which organisations need to meet child safe standards and whether or not the employees and volunteers of those organisations need blue cards if they meet the screening requirements.

The services the system currently regulates include:

- residential facilities and child accommodation services
- schools
- early childhood education and care services (for example, long day care, kindergarten, family day care and outside school hours care)
- community organisations (for example, churches, sporting and recreation clubs, providers of cultural activities, and religious representatives)
- health, counselling and support services
- private teaching, coaching and tutoring services
- school crossing supervisors
- child protection services.

### Royal Commission into Institutional Responses to Child Sexual Abuse

RC

The Royal Commission recommended expanding the scope of the blue card system to require WWCCs for the following child-related services:

- commercial services for children, including party services, gym or play facilities, photography services, and talent or beauty competitions
- immigration detention facilities
- transport services for children, including school bus services and taxi services for children with a disability
- overnight camps in all circumstances
- other activities that involve contact with children (that is more than incidental to the activity).

Other states and territories already regulate many of these services and activities, but Queensland does not always regulate them.

## Stakeholder views

Stakeholders overwhelmingly support the Royal Commission's recommendation to expand the scope of the system. However, they are concerned that the current requirements are already complex. They caution against making the system more complicated.

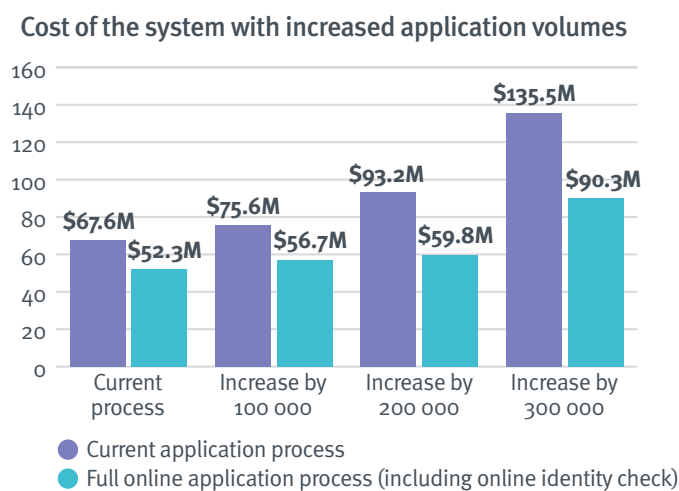
## Expanding the scope

The Royal Commission’s recommendation will expand the scope of the blue card system by regulating not only essential and developmentally-focused services, but also other services directed primarily at children.

Including additional services in the scope of regulation will increase the size of the blue card system. It will mean more organisations will need to comply with child safe standards. If those organisations’ employees and volunteers meet the screening criteria, they will need to have WWCCs.

As one example, the Department of Transport and Main Roads (DTMR) contracts 554 school transport operators in Queensland. They will all need to develop and implement child safe standards and apply for a WWCC where they do not currently. Including commercial entertainment services for children will also create new obligations to meet child safe standards and increase the volume of WWCCs.

Figure 4 outlines the impact on the cost of the system by increasing application volumes by different amounts.



**Figure 4:** Estimated cost of operating the blue card system over 15 years with increased application volumes using the current application process and an online application process.

It is not possible to predict what the increased obligations in relation to child safe standards will cost. It is also not possible to predict the expected number of new WWCC applications. However, it is clear that increasing application volumes will increase the cost of operating the system.

In order to meet the costs of increasing the scope, BCS will need to first streamline and simplify the WWCC application process (which will require up-front investment).

It is desirable to expand the scope of the system as suggested by the Royal Commission, as the additional environments suggested are currently unregulated. Including them within the scope of the system improves safeguards for children.

An increase in scope will impose a regulatory burden on organisations and services currently not within scope of regulation. It will be important to support them so they can understand and meet their obligations.

Many providers of transport services for children are already required to hold a driver authorisation, which includes a criminal history check. However, this process does not enable consideration of the same range of information as a WWCC. For example, information under the National Exchange of Criminal History Information for People Working with Children (ECHIPWC) is not considered under the driver authorisation check.

For this reason, it is desirable to implement the recommendation of the Royal Commission to include transport services for children within the scope of the blue card system. It will be important to define the types of services that will be within the scope of the system to ensure they are only those targeted at children. Careful consideration should be given to ways to minimise duplication of effort, processes and costs for those people affected.

### Recommendation 12

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to expand the scope of the blue card system in line with the recommendation of the Royal Commission by:

- including additional categories of child-related work
- allowing regulation to prescribe other activities that involve providing services primarily to children and that require contact with children.

### Recommendation 13

It is recommended that the Department of Justice and Attorney-General works with the Department of Transport and Main Roads to:

- define the types of child-related transport services that will be within scope of the system to ensure they are only those targeted at children
- consider ways to reduce duplication of effort, processes and costs for those people affected.

## Protecting children in workplaces

Some stakeholders are concerned the blue card system does not regulate environments where the organisation is not providing child-related services or activities, but children may be present—for example, workplaces supervising or employing children.

Protect All Children Today Inc. (PACT) provided information about the number of children and young people who have been victims of sexual assault perpetrated by an adult supervisor in a work environment. It identified that a professional relationship of this nature poses significant risks to young people given the position of authority of employers and the vulnerability of young workers.<sup>11</sup>

PACT advised:

In the 2015–16 financial year, PACT supported over 30 children who had been sexually assaulted by a person in a position of authority, often a supervisor in a fast food outlet, café, restaurant, etc.

The Royal Commission recommended not making workplaces for children subject to WWC requirements. The Royal Commission noted that industrial relations and anti-discrimination laws help to manage risks for children in workplaces. The *Child Employment Act 2006* and the Child Employment Regulation 2016 safeguard children working in Queensland. They prevent children from performing work that may be harmful to their health and safety or compromise their mental, social or moral development.

These safeguards include requiring an employer to make sure working children are not subject to deliberate or unnecessary social isolation or any behaviour likely to intimidate, threaten, frighten or humiliate them.

While these protections are important, there is opportunity to strengthen the safeguards for these children by requiring employers to include child safe standards in their policies and procedures. This does not mean requiring employees and volunteers to undergo WWCCs in those environments.



### Recommendation 14

It is recommended that the Queensland Government reviews the *Child Employment Act 2006* to ensure that organisations employing children are required to meet child safe standards.

## Simplifying the requirements

Stakeholders are concerned that current requirements are confusing and that it is hard to understand whether an organisation is a regulated service or if a person needs to have a blue card. They report spending a lot of time trying to understand the requirements. This uses resources and reduces the time organisations can spend on their policies and procedures for creating child safe environments.

The laws need to be clear and able to be understood by organisations and their employees that are regulated by the system. Stakeholders strongly support giving the Minister or chief executive power to provide legally binding advice about the scope of regulation.

The intention is not to allow for the WWC Act to be expressly or impliedly amended by subordinate legislation or executive action. It is to provide an administrative yet legally binding way to confirm whether the regulation includes certain services or activities.

## Recommendation 15



It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:

- have one consolidated list of regulated child-related services as recommended by the Royal Commission, which are:
  - accommodation and residential services for children, including overnight excursions or stays
  - activities or services provided by leaders, officers or personnel of religious organisations
  - child care or minding services
  - child protection services
  - sports, clubs and associations and other community activities
  - coaching or tuition services for children
  - commercial photography, entertainment or party services, including gym or play facilities and talent or beauty competitions
  - disability services
  - education and care services (including early childhood education and schools)
  - health services (including counselling)
  - justice and detention services, including immigration detention facilities where children are regularly detained
  - transport services for children, including school crossing services
  - other services prescribed by regulation, where the service is targeted at children and requires contact with children.
- provide that the following are not regulated services for the purposes of the WWC Act:
  - services provided to the general public, including children
  - friend or relative child minding arrangements
  - workplaces employing children but not providing services to children.

NOTE: Workplaces will be regulated under the *Child Employment Act 2006* and be required to meet child safe standards (see recommendation 14).

## Recommendation 16



It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow its agency's chief executive to issue legally binding advice declaring whether a service is regulated (for example, through a statutory instrument).

Appendix G provides an outline of the services that will be regulated following implementation of these recommendations.

# Working with children check requirements

## At a glance

### Findings



Making employees have an agreement to work before applying for a WWCC is a barrier to employment and makes the system complex

Commencing work while waiting for a WWCC increases risks to the safety of children

Current screening requirements are complex and inconsistent

### Reforms



#### CHANGE

the law to make it less complex and clarify it with legally binding guidelines

#### CHANGE

the law to let people apply for a WWCC without an agreement to work

#### CHANGE

the law so people cannot start regulated activities without a WWCC

#### CHANGE

the law to remove some exemptions, except those with levels of screening comparable to the WWCC

#### WORK

to allow mutual recognition of WWCCs from other states and territories

#### CHANGE

the law to stop people relying on an exemption if they already have a negative notice or a suspended WWCC

#### CHANGE

the law to make the volunteer parent exemption consistent

### Impacts



#### ORGANISATIONS

This will make WWCC requirements easier for organisations to understand



#### APPLICANTS

This will make it easier to access employment opportunities



#### CHILDREN

This will improve safeguards by requiring a WWCC before starting work



#### NATIONAL CONSISTENCY

This will promote consistency in screening across Australia



#### COSTS

Expanded screening requirements will increase the costs of operating the blue card system



## Screening requirements

### Current position

The current screening requirements are complex. Whether an employee or volunteer needs to have a blue card depends on:

- the environment in which they provide services to children
- how often they provide services to children
- the level of contact they have with children.

Employees and volunteers in most types of child-related employment need to have a blue card when the usual functions of their work or role involve services mainly directed to children or activities mainly involving children.

Table 2 lists the circumstances in which a person needs to have a blue card:

Management	A person who takes part in the management of a regulated organisation
Services directed to children	A person who provides services directed mainly to children at a school, in a church, club or association, or as part of sport or active recreation activities
Child-related environments	A person who works in a boarding school, residential facility, early education and care service, or a funded child-related disability service
Religious representatives	A person who provides religious services to children
Early childhood education and care services or child care services	A person who provides care to a child or lives in a family day care home
Health services	A person who provides services at a health facility for children, services targeted at children, or services that require physical contact with a child or where the person will be alone with a child
Counselling and support services	A person who is alone with children or provides services over the telephone or online
Teaching, coaching or tutoring children	A person who provides teaching, coaching or tutoring to one or more children on a commercial basis
Home stay services	A person who provides home stay and any adult residing in the home
Out-of-home care services	Foster and kinship carers and adult members of the household, and licensed care services
School crossing supervisors	A person providing services as a crossing supervisor
Emergency services cadet program	An adult member of the emergency services cadet program

**Table 2:** Circumstances in which a person needs to have a blue card

People will need to have a blue card if they work or volunteer for a regulated service and they meet the screening requirements.

## Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission found there is a lack of consistency in screening requirements across Australia. Work should only be considered child-related if it involves:

- physical or face-to-face contact
- oral, written or electronic communication with children regardless of whether it is supervised or unsupervised
- contact with children that is a usual part of, and more than incidental to the work.

The Royal Commission said that people should not need to have WWCCs if they are merely making decisions affecting a child or managing sensitive records.

It also recommended a simplified frequency test, which applies across all categories of child-related work except overnight camps. This means that people who engage in child-related work for seven days or less in a calendar year will not need a WWCC.

### Stakeholder views

Stakeholders overwhelmingly support adopting the Royal Commission's recommendations only to the extent that they do not reduce current safeguards.

Stakeholders also said that they find the current screening requirements complex and inconsistent.

### Contact with children

The Royal Commission's recommendation is that people should only need to have WWCCs when they have contact with children. This is the minimum standard.

Queensland has strong safeguards in this regard. These safeguards are not consistent with the Royal Commission's recommendations in that some people who may not have direct contact with children still need to have WWCCs. These include:

- people who are in management positions and make decisions that affect the safety of children. Most stakeholders agree these people should continue to have WWCCs. Leadership and governance are key to having child safe environments, and it is important that people in management positions do not pose a risk of harm to children
- people who may be present in child-related environments whose role may not involve direct contact with children, for example, cleaners and groundskeepers in schools, or administration staff in long day care centres.

Stakeholders want to keep these screening requirements. Removing them would reduce existing safeguards for Queensland children.

### Consistent and simple requirements

Stakeholders find the current requirements inconsistent. They also find it difficult to understand when a person needs to have a blue card.

There are different screening requirements depending on the category of services a person is providing.

Different rules also apply depending on whether a person is a paid employee or a volunteer. For example, paid employees must do a regulated activity regularly and frequently (this is subject to a frequency test) before they need to have a blue card. No frequency test applies to volunteers or business operators.

The Royal Commission has recommended consistent screening requirements and a simplified frequency test so that anyone employed in regulated activities for more than seven days in a calendar year will need to have a WWCC. The Royal Commission recommends no frequency test for overnight stays (that is, any overnight stay requires a WWCC). Implementing this will achieve a consistent and simplified approach in Queensland.

Home stay providers raised concerns that this will have implications for home stay arrangements. It will not cater for situations where a provider unexpectedly cannot conduct the home stay (for example, through illness of home stay providers or family emergency). In these situations, the child has to be placed with an alternate provider. Facilitating a replacement provider at short notice is often made difficult by the current processing timeframes.

The implementation of a more efficient application and assessment process (see recommendations 63 and 68), coupled with the ability to apply for a WWCC prior to having an agreement to work (see recommendation 19) should make it less problematic for home stay providers to cater for emergency situations.

The current screening requirements are complex because the rules are different depending on the type of child-related activity the person is involved with. Having a simple set of consistent requirements will help. It will also help if the BCS chief executive can clarify screening requirements using a legal instrument.

### Recommendation 17

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to require WWCCs for people who:

- operate a regulated service and make decisions that could impact on the implementation of child safe standards in the organisation
- provide regulated activities i.e.:
  - engaged by a regulated service for an overnight camp where they will have contact with children, and/or
  - engaged by a regulated service to work or volunteer for more than seven days in a calendar year and are:
    - in a position where they will have contact with children
    - in a specified child-related service while children are ordinarily present—this includes schools, boarding schools, long day care services or kindergarten services, residential facilities, child-related health services, child-related disability services and youth detention facilities
- are in a specified role—an adult member of a household where foster or kinship care, family day care or home stay is provided.

### Recommendation 18

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow its agency's chief executive to issue legally binding advice declaring whether a WWCC is required (for example, through a statutory instrument).

## Agreement to work

### Current position

A person must have an agreement to work or volunteer with a regulated organisation before applying to have a WWCC. This is to make sure a regulated organisation checks the person's identity and that the person actually needs to be screened. It also means that each blue card holder is 'linked' to a regulated organisation, so if there is a change in their criminal history BCS can notify the organisation.

### Stakeholder views

Most stakeholders believe that a person should be able to apply for a blue card without first being employed by (or linked with) an organisation. This could speed up the process for hiring staff and engaging volunteers. Stakeholders described the need to have an agreement to work with an organisation before applying as an unnecessary barrier to employment.

Stakeholders recognise the benefit of having a link between a WWCC holder and their organisation.



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As one stakeholder identified:

A key benefit of linking individuals with an organisation is the proactive notification to the organisation if the individual's blue card status changes. Without this link, the onus shifts to the organisation to somehow continually monitor the individual's card status. Noting the current blue card renewal period of three years, this would present a significant organisational risk ... at a minimum, blue card holders who work with community organisations must be required to link their cards to those organisations during the period of engagement.<sup>12</sup>

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### Removing the agreement to work

There is no obvious child protection benefit from having an agreement to work with an organisation before BCS considers a blue card application. The benefit of linking employees and volunteers to organisations is that if a card holder's criminal history changes, BCS is able to notify the organisation so it can prevent that person having access to children.

Stakeholder concerns can be addressed by:

- removing the need for people to be engaged by an organisation before applying to have a WWCC
- allowing people to apply for a WWCC before seeking child-related employment
- requiring organisations to check and register blue cards with BCS when employing people to make sure BCS can notify the organisation about changes to their employees' WWCC status.

However, there is a risk that application and screening volumes will increase. The New South Wales Office of the Children's Guardian has recently identified a large number of people obtaining a WWCC even when they do not need to. It impacts on the sustainability of the system if large numbers of volunteer applications are received as these are processed free of charge. There are a number of options that can be considered to manage this risk:

- restricting who can apply (for example, requiring volunteers to have an agreement to work in order to have an application processed free of charge)
- imposing a small cost-recovery fee on volunteer applications
- penalising employers who make employees and volunteers have a WWCC despite not being in child-related work.

Allowing organisations to use the WWCC process for purposes other than child-related screening is not desirable. It:

- reduces the system's sustainability over time
- increases over-reliance on the WWCC
- is contrary to Australia-wide agreements to exchange an expanded range of information to use for the purpose of screening people to work with children.

The following strategies are recommended to make sure the Queensland system remains sustainable and maintains focus on child-related screening:

- requiring regulated services to give their volunteers a unique code to have their application processed free of charge
- implementing a fee structure that allows paid applications to be processed on a cost-recovery basis
- allowing BCS to give a non-compliance notice to an organisation seeking WWCCs for employees who are not working in regulated activities.

### Recommendation 19

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to remove the requirement for a person to have an agreement to work with an organisation before applying for a WWCC. Consideration should be given to the following to make sure the system is sustainable and the focus remains on child-related activities:

- having an appropriate fee structure—with a new streamlined application process it may be possible to allow paid applications to be processed on a cost-recovery basis
- requiring volunteers to have an agreement with a regulated service in order to have an application processed free of charge
- allowing BCS to give a non-compliance notice to an organisation that does not provide regulated child-related services but is attempting to require employees or volunteers to obtain WWCCs rather than relying on alternative criminal history screening processes.

## Commencing work

### Current position

Paid employees are able to commence work after lodging their application. Volunteers, students and people with management responsibilities must not commence until BCS has conducted the WWCC and issued their blue card.

### Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission recommended allowing applicants (both paid and volunteer) to start child-related work while their application is processed, but with the following safeguards:

- the applicant must not previously have been denied a WWCC, or been convicted of sexual offences against children
- employers must check applications with the screening agency
- interim bars must be imposed on applications where records show a risk of harm to children
- contact between applicants and children must be supervised by a person who has had a WWCC.

## Stakeholder views

Most stakeholders believe people should not start work or volunteering until they have a blue card. They said they understand the reason for the Royal Commission's recommendation, given the current delays in processing. However, most stakeholders feel this issue would largely disappear if BCS processed applications within a shorter time. Stakeholders also feel that the Royal Commission's proposed conditions about supervision are not always practical.

## Changing the arrangements

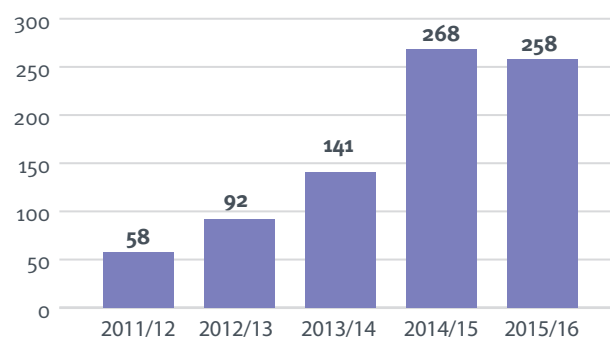
The ability to start work while a WWCC is processed varies across Australia as:

- applicants in the Northern Territory, the Australian Capital Territory, and South Australia cannot start working or volunteering until their WWCC is finalised and approved
- most applicants in New South Wales, Western Australia, Tasmania and Victoria can start working or volunteering while waiting for their WWCC to be processed. These states can impose interim bans on some applicants until their applications are finalised.

Allowing people to work while BCS processes their WWCC application is of benefit to regulated organisations. It means their volunteers and managers can start work straight away. This is consistent with the current position for paid employees. However, it does increase risks to the safety of children.

In some cases, complex applications concerning serious offences take time to assess because more information needs to be gathered. Between July 2011 and June 2016, the average processing time for applications that resulted in a negative notice was 208 calendar days. Figure 5 shows the number of people in paid employment who were issued with a negative notice.

**Negative notices issued following an application by a paid employee**



**Figure 5:** Number of negative notices issued to paid employees following an application for a WWCC.

On average, 163 people each year have been able to begin working with children before they were given a negative notice. It is not acceptable that people with concerning histories are able to work with children for significant periods of time while their application is being assessed.

The recommendations in this report to streamline the blue card system should help to reduce the impact on organisations waiting for their employees and volunteers to be issued with a blue card. With improved processing times for applications with no or simple criminal history, people with complex histories are likely to be the only applicants with extended processing times.

People with these complex histories will be unable to access child-related employment while their application is being processed. There is a risk that this may have a particular impact for Aboriginal and Torres Strait Islander peoples who ‘experience contact with the criminal justice system at much higher rates than non-Indigenous Australians’.<sup>13</sup>

Implementation of recommendation 73 will increase the support provided to Aboriginal and Torres Strait Islander applicants and minimise the impact of this change.

## Recommendation 20

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:

- require organisations to make sure their employees and volunteers do not start regulated activities without a WWCC
- prevent people who are independent from an organisation and who need a WWCC from starting regulated activities without one.

## Exemptions

### Current position

In Queensland, a person can undertake child-related work without a blue card if they are exempt. They are exempt if they:

- have been screened under another specified process
- are a volunteer parent, in certain circumstances
- are a volunteer under the age of 18.

The Royal Commission recommended removing most exemptions. Table 3 shows what the impacts of the Royal Commission’s recommendation would be on the Queensland position.

Category	Queensland position	Royal Commission's recommendation	Impact of Royal Commission's recommendation
<b>Current exemptions based on other screening processes</b>			
Registered teachers	Exempt for professional duties  Exemption card for other child-related services	Not exempt	All teachers need a WWCC
Police officers	Exempt for professional duties  Exemption card for other child-related services	Exempt in all circumstances	No change
Registered health practitioners	Exempt for professional duties	Not exempt	All registered health practitioners providing child-related services need a WWCC
Lawyers	Exempt for professional duties	Not exempt	All lawyers providing child-related services need a WWCC
<b>Current exemptions that exclude certain types of people</b>			
Volunteer parents	Exempt in some categories e.g. if child attends educational facility or participates in similar services to those provided in a church, club or association	Exempt—except for overnight excursions and providing services to children with disabilities	A broader exemption except for overnight camps
Children	Volunteers are exempt unless they are a trainee student doing a practical placement. Paid children need a blue card	Exempt in all circumstances	Remove screening for trainee students and paid employees under 18

**Table 3:** Impacts of the Royal Commission's exemption recommendations in Queensland

Teachers and police officers are exempt for their professional duties and can apply for an exemption card for child-related work outside these professional duties.

This reduces screening duplication and makes sure there is a link between people screened through another system and the blue card system when they are involved in child-related activities outside of their professional duties. This allows organisations to remove people from child-related activities if their criminal history changes. While the intent of the exemption card process is valid, it is confusing and imposes an administrative burden.

## Stakeholder views

Stakeholders generally support removing all categories of exemptions for people providing services to children except those with comparable screening and monitoring, for example, teachers and police officers. The majority advocated strongly for not reducing Queensland's existing safeguards.



## Registered teachers

The Royal Commission recommended that teachers have WWCCs for their professional duties. The policy intent of this recommendation is to ensure that teachers are subject to a check that is comparable to a WWCC.

Removing the exemption for teachers would be a significant change in Queensland. Currently, the Queensland College of Teachers' (QCT) registration process is comparable to the WWCC. A person who has been sentenced to a period of imprisonment because they have been convicted of a child-related sex offence, including offences related to child exploitation material, is automatically excluded under both systems. The same offences are identified as 'serious offences' under both systems. The teacher registration system includes a broader assessment of whether the person is of good character to be a registered teacher.

A comparison of a small selection of the QCT teacher registration files with their BCS exemption card files identified some issues with having separate systems.

### Barriers to information sharing

Confidentiality requirements in the WWC Act create barriers to information sharing between BCS and the QCT. Neither agency shares their reasons for their decisions with the other. The file review found cases where the QCT had asked for information but BCS was unable to share it. It also found that sharing information would have improved decisions.

### Differences in the information assessed

BCS and the QCT did not have the same information in some of the files reviewed. For example, in some cases, BCS had information that was important to the decisions BCS made and would have been important for the QCT to know.

### Differences in decision-making processes and outcomes

BCS and the QCT give different weight to different factors. For example, in the small selection of files reviewed, the QCT found the following to be strong protective factors when assessing an applicant's suitability to teach:

- the length of time since the applicant had offended
- no pattern of behaviour
- the offence did not involve children
- lenient court penalties.

The file review found that BCS placed weight on whether person was a good role model for children. It also considered the maturity of the applicant to be a risk factor. The QCT did not place as much weight on these factors.

This review was only of a small number of files. Therefore, it does not necessarily indicate a widespread problem. However, the decisions BCS had made generally appeared to be more risk averse than the QCT's. This may be because BCS can only give a positive or negative notice. The QCT has a range of options, including the ability to issue a reprimand. However, a number of applicants successfully appealed BCS's decision in the Queensland Civil and Administrative Tribunal (QCAT). This suggests that the decisions may have been too risk averse.

## Case study 1—Decision-making outcomes

A teacher was convicted of assault occasioning bodily harm and disobeying police directions. The offence was committed at a licensed premises against another adult. No conviction was recorded for the offences. The teacher had no other assessable information. The teacher made submissions to both the QCT and BCS.

The QCT Professional Practice and Conduct Committee found grounds for minor disciplinary action because of the conviction and issued a reprimand. However, the QCT did not suspend or cancel the teacher's registration. The QCT was not concerned about a pattern of behaviour, as this was the teacher's first offence.

BCS cancelled the teacher's positive exemption notice and gave a negative notice. BCS took into account:

- the seriousness of the assault and injury caused
- the teacher's inability to act appropriately and lack of conflict resolution skills
- the teacher's age at the time of offending
- how recent the offence was and that a period of probation was ongoing
- that the behaviour was considered to be inconsistent with a person's ability to safeguard the best interests of children under care
- the teacher's displacement of responsibility.

Both the QCT and BCS expressed concern about the nature of the offences and the involvement of alcohol. The QCT gave more weight to the fact that this was the teacher's only offence and there was no pattern of behaviour. It did not find relevant the same factors that BCS relied on to issue a negative notice.

This report includes recommendations for broad reform of the current WWCC process in Queensland, including to the decision-making processes and the information BCS assesses in carrying out WWCCs. These will change the way the teacher registration process conducted by the QCT compares to the WWCC process.

To keep the exemption, the registration process must be comparable to the WWCC process and the issues with the intersection of the two systems must be addressed. If these issues cannot be resolved, the exemption for registered teachers should be removed.

The advantages of removing the exemption are:

- achieving consistency—the same information would be assessed and a consistent decision-making process would apply because BCS will be making the decision
- less complexity—teachers would need to have a blue card for their professional duties, which they could then use for activities other than teaching.

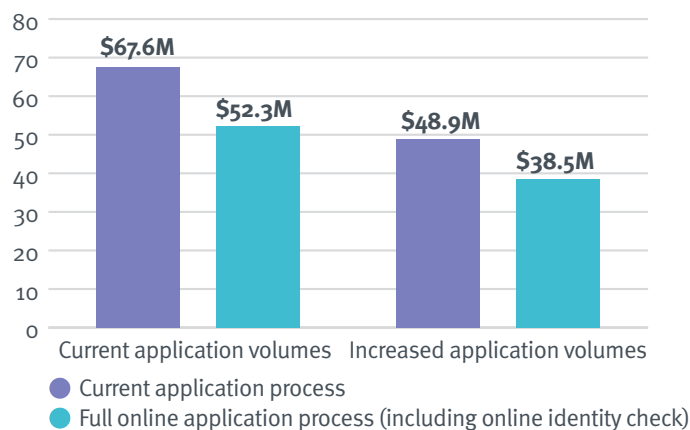
However, it is important to also consider whether there might be unintended consequences of removing the exemption.

The teacher registration process is well established and effective in assessing the suitability of people to teach. It allows the QCT to assess a broad range of information, including interstate and international teacher registration information. The QCT would still need to assess whether a person is suitable to teach. This means duplicating the process and assessing the same information that BCS will assess for the WWCC.

This also means that registered teachers would need to go through a WWCC and a teacher registration process and pay the fees associated with both processes.

Removing the exemption would also increase WWCC volumes. At 31 December 2015, there were 104 216 registered teachers in Queensland. In the same year, there were 6 773 new applications for teacher registration and 51 438 renewals of teacher registration.<sup>14</sup> Despite this increase, preliminary analysis indicates that including teachers in the blue card system would decrease the cost of operating the blue card system.

**Cost of the blue card system including registered teachers**



**Figure 6:** Estimated costs of operating the blue card system over 15 years with the exemption for registered teachers removed.

However, this preliminary analysis does not consider any financial impacts for the QCT. A full cost-benefit analysis should be undertaken by the Queensland Government to ensure the most cost-effective approach to achieving comparable screening for teachers is adopted.

## Recommendation 21

It is recommended that the as part of the review of screening processes across government (recommendation 1), consideration is given as to whether removing the exemption for registered teachers is the most effective way to achieve a comparable level of screening. The following must be considered:

- whether the reforms recommended for implementation in the blue card system, in particular those about the range of information considered and the decision-making framework, can be adopted so that the teacher registration process remains comparable with the WWCC
- whether it is more cost-effective to maintain separate screening functions or consolidate them
- whether the issues with the operation of the current separate systems can be resolved, namely
  - barriers to information sharing
  - differences in the information considered
  - differences in decision-making processes and outcomes.

## Police officers

The Royal Commission also recommended that police officers be exempt from needing to have a blue card. The Queensland Police Service (QPS) requires people applying to be police officers to meet very high standards of behaviour and conduct. When assessing a person’s suitability to be, or continue to be, a police officer,

the QPS considers an extensive range of information—more than BCS uses for a WWCC. As police officers are currently exempt, Queensland already meets the Royal Commission’s recommendation—there is no need for change.



## Recommendation 22

The exemption for police officers should remain in the WWC Act.

### Removing the exemption card process

A registered teacher or police officer currently has to apply for an exemption card to be entitled to an exemption for activities they undertake outside of their professional duties. This requirement should be removed. If a person is a registered teacher with no conditions on their registration or is a police officer, they should not need to have a blue card or an exemption card for child-related work outside their professional duties.

However, people who are exempt from needing a WWCC because of comparable screening processes still need a link to their organisation to make sure the organisation receives notifications about changes in criminal history. Therefore, there needs to be a way for the QPS and or the QCT to inform BCS about these people. This could be done, for example, when an organisation links a person to their service. They could use the police (or teacher) registration number to do this instead of a WWCC number.

Removing the exemption card process would simplify and streamline processes for the QCT, the QPS and BCS. For example, since 2010, the QCT has received an average of 3 120 requests per year from BCS to confirm a teacher’s registration. In the majority of cases, the QCT confirmed the person was a registered teacher and needed no further screening.<sup>15</sup>



## Recommendation 23

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:

- remove the exemption card process for police officers and registered teachers (if the exemption remains) and instead identify automated ways to link an exempted person with BCS when they are engaging in child-related work outside of their professional duties
- provide that a person should not be entitled to an exemption if there are conditions placed on their registration or employment that are relevant to a risk of harm to children.

### Registered health practitioners and lawyers

The WWC Act currently exempts registered health practitioners and lawyers on the basis that other agencies have already assessed their suitability for those professions.

There are significant differences between these registration processes and a WWCC (see Appendix H):

- the range of information considered as part of the registration processes is not as extensive as the information assessed as part of a WWCC
- a person with a conviction for a child-related sex offence is not automatically disqualified as part of the registration process.

In addition, while there are self-disclosure obligations, health practitioners and lawyers are not subject to daily monitoring of changes in criminal history. This means that health practitioners and lawyers are not subject to a comparable check, even if they work with children.

The Royal Commission recommended removing the exemptions for health practitioners and lawyers and requiring them to have a WWCC when they provide child-related services.

Removing the exemptions for registered health practitioners and lawyers providing child-related services will improve safeguards for Queensland's children, as it will ensure a consistent and comparable level of checking.

However, it is important to also consider whether there might be unintended consequences of removing the exemption.

Requiring registered health practitioners and lawyers providing child-related services to have a WWCC will result in some duplication of process as their registration body will still be required to assess the same information to determine whether they are suitable to be registered.

There will also be multiple processes and fees for the people affected.

Removing the exemptions will also affect the volume of applications for WWCCs. In 2015–16, there were 12 927 new registrations, and a total of 127 376 registered health practitioners in Queensland. Not all registered health practitioners would need to have a WWCC if the exemption were removed. However, those providing services targeted at children—for example, working in a children's hospital and on wards providing child-related health services—would need to.

Queensland Health estimates that, as at March 2017, over 5 000 registered health practitioners were providing child-specific health services in the public health system. This does not include those in the private sector.

There have been between 900 and 1 000 applications each year for the admission of new legal practitioners in Queensland since 2011–12. The Queensland Law Society reports that in 2015–16, there were 9 971 full members.<sup>16</sup>

There is no doubt that a comparable level of screening must be achieved in order to provide sufficient safeguards for children. To keep the exemption, the registration processes must be comparable to the WWCC process. If this cannot be achieved, the exemptions for registered health practitioners and lawyers should be removed.

As part of the review undertaken in accordance with recommendation 1, specific consideration must be given to the most cost-effective way to achieve comparable screening for these registered health practitioners and lawyers.

## Recommendation 24

It is recommended that as part of the review of screening processes across government (recommendation 1), consideration is given as to whether removing the exemption for registered health practitioners and lawyers is the most effective way to achieve comparable screening for individuals providing child-related services.

## Ambulance officers and corrective services officers

Ambulance officers are also currently exempt from needing a blue card for their professional duties. They will no longer need a specific exemption as the environments in which they work will not be regulated services and they will not carry out regulated activities. This means blue cards will not be needed.

Currently, people employed by Queensland Corrective Services (QCS) working in adult correctional centres are also exempt from requiring a blue card. This does not include people working in Queensland's youth justice system, who do need to have a blue card.

Corrective services officers who may have incidental contact with children as part of their role are outside the scope of regulation. This is because they do not provide services targeted at children. Also, QCS has a robust pre-employment screening process to assess a person's suitability. These officers will no longer need a specific exemption as the environments they work in will not be regulated services and the officers will not carry out regulated activities. This means blue cards will not be needed.

## Volunteer parents

The Royal Commission recommended that volunteer parents remain exempt. Currently in Queensland, some volunteer parents are exempt when providing services or undertaking activities related to their own children. The exemption applies differently in different sectors.

Volunteer parents are not subject to comparable screening processes by another government agency, but are exempt because of the desire to encourage parental involvement in their children's lives.

Stakeholders expressed concerns that the current exemption for volunteer parents is confusing and complex to administer. Their views differ about continuing to exempt volunteer parents from having WWCCs.

Some stakeholders support the complete removal of the exemption to strengthen safeguards—as long as processing times for WWCCs improve. Other stakeholders expressed concern about the risk that parents will not volunteer if they have to have a blue card to do activities with their own children.

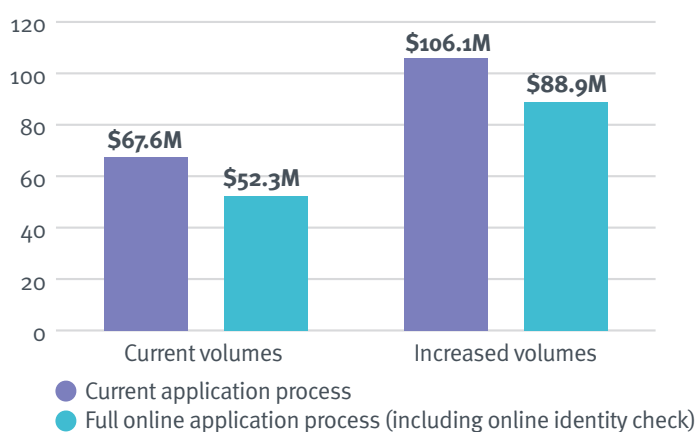
There are competing factors when considering the exemption for volunteer parents. These include the following:

- Requiring all volunteer parents to have a WWCC increases safeguards for children by making sure that people who can be identified as posing a risk of harm cannot be involved in child-related activities.
- Parents and guardians should be encouraged to be involved in activities with their children. Many community-based organisations that provide valuable services for children rely on volunteers to operate effectively. It is possible that imposing additional requirements would reduce volunteering rates.
- There are other ways for regulated organisations to manage risks. Child safe standards can set expectations to help reduce risks.
- Expanding the scope of screening to volunteer parents is likely to have a large impact on the numbers of WWCCs that need to be carried out. Sport/physical recreation and education/training are the two most common types of organisations in which people volunteer.

In Queensland, over 442 000 people volunteered in sport and physical recreation organisations.<sup>17</sup> In this context, parents with children aged between 5 and 17 are more likely to volunteer than people without children.<sup>18</sup> Given that BCS processes volunteer applications free of charge, the financial implications are likely to be significant.



Estimated cost of the system including all volunteer parents



**Figure 7:** Estimated cost of operating the blue card system over 15 years with the exemption for volunteer parents removed.

When parents and guardians look after other children where their own parents are not present (for example, on overnight camps), they are responsible for their care and protection. This increases opportunities for harm due to the nature of the activity and the environment.

Most stakeholders agree that volunteer parents should need to have a blue card if they are in a position where they become responsible for the care of a child (as in the overnight camp example).

### Recommendation 25



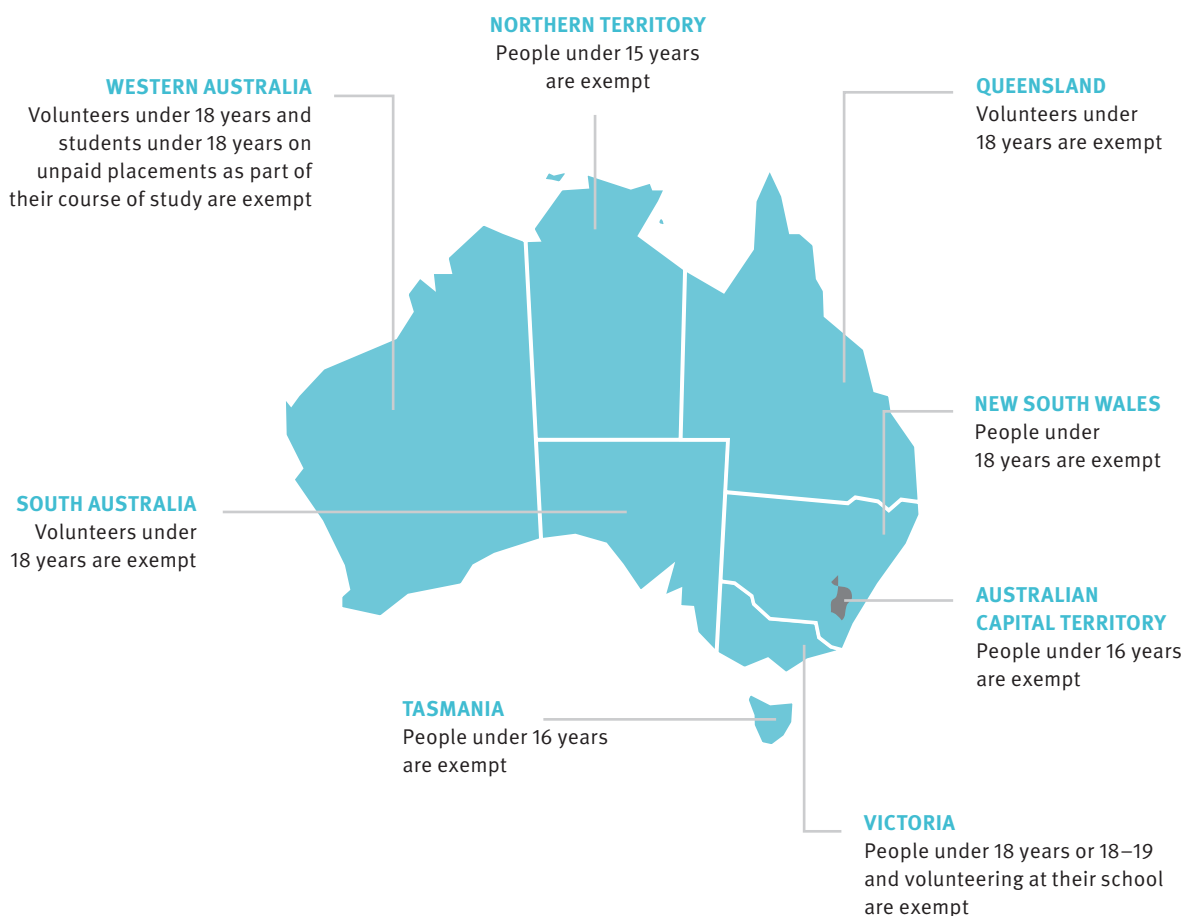
It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to have a consistent exemption for volunteer parents when they are engaged in activities that are regulated. Volunteer parents who are in a position where they are responsible for the care of a child or children (for example, on and overnight camp) should not be exempt.

### People under the age of 18

In Queensland, children need to have a WWCC if they are in paid employment or are a trainee student. Children who volunteer do not. The Royal Commission recommended that no children should need to have a WWCC. Stakeholders do not support this, as it would reduce another of Queensland’s existing safeguards.

Stakeholders do not agree on whether children who are volunteering should continue to be exempt from the blue card system. Some raised the risk of peer-to-peer offending among children. They said that children can and do pose a risk of harm to other children.

There is a diverse approach to exempting children across Australia:



**Diagram 1:** Comparison of exemption of children approaches in Australia

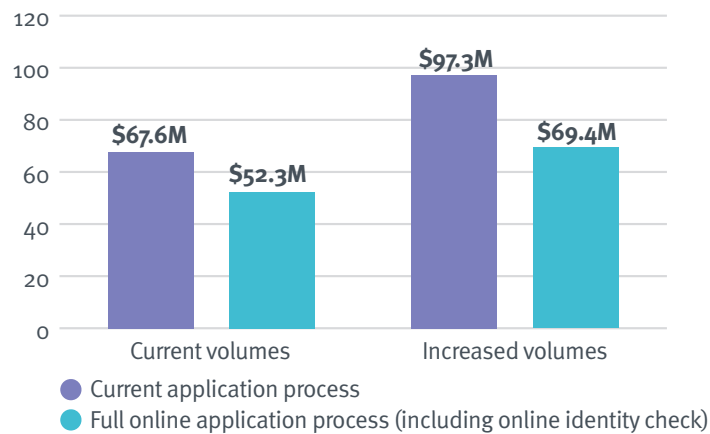
Research shows that sexual abuse of children by young adolescents (also children) is a matter of concern.<sup>19</sup> To date, there have been no negative notices issued to a child convicted of a child-related sex offence in Queensland. This is consistent with the view of the Royal Commission that it is unlikely that WWCCs will assist in addressing concerns about protecting children from sexual abuse by other children.

There are also potential unintended consequences with screening children. Research shows that a child in the youth justice system is likely to have also been in the child protection system.<sup>20</sup> Making them have a blue card may mean that a child who has already experienced significant difficulties in their life may have limits placed on their volunteer opportunities.

Expanding screening to include all children is also likely to significantly increase screening volumes and costs. Forty-two per cent of all 15–17 year olds do some form of volunteering.<sup>21</sup>



### Estimated cost of the system including all volunteers under 18 years of age



**Figure 8:** Estimated cost of operating the blue card system over 15 years with the exemption for volunteers under the age of 18 removed.

On balance, given the ability to manage risks through child safe standards, the limited effectiveness of WWCCs in managing risks of harm posed by other children who are volunteering, and the costs and potential unintended consequences of screening children, it is preferable to maintain the current position that children who are volunteering do not require a blue card.

If a child is engaged in paid employment or undertaking a placement as a student it is more likely they will be placed in a position of responsibility for other children (for example, a 17 year old who is employed as an educator in a long day care centre). For this reason, it is preferable to maintain the current requirement for a person under the age of 18 to be screened if they are a paid employee or trainee student.

### Recommendation 26

It is recommended that paid employees under 18 years and students under 18 years on placement continue to need a WWCC for regulated services; and that children who are volunteering remain exempt.

### Exemptions for people who have been screened in other states and territories

National consistency in WWCCs across Australia is a key element in creating safe environments for children. The Royal Commission found that greater consistency across Australia is important in addressing gaps and reducing the risk of people being able to obtain a card in one jurisdiction where it may be refused in another. It also provides an opportunity to recognise decisions that other states and territories make.

Most stakeholders strongly support moving towards national consistency. However, they do not want to reduce Queensland’s existing safeguards. Queensland could only recognise WWCCs from other states and territories if they had comparable screening requirements.

Exempting people who another state or territory has already screened means sharing personal information about WWCC outcomes. It also means states and territories will need to notify each other when they suspend or cancel a WWCC.

Currently, there is no easy way to share this information across Australia. One way to do it would be to have a central database that all states and territories use to record WWCC decisions.



## Recommendation 27

It is recommended that the Department of Justice and Attorney-General works with other states and territories to consider whether issues about mutual recognition of WWCCs can be resolved, namely:

- the comparability of screening processes
- the establishment of a centralised database
- barriers to information sharing about WWCC decisions.

If these issues can be resolved, the Attorney-General and Minister for Justice and Minister for Training and Skills should propose amendments to the WWC Act to allow people screened in another Australian state or territory to be exempt from screening in Queensland. BCS will need to be able to do any additional checks necessary in Queensland, for example, disciplinary information.

## Other exemption categories

A person can currently rely on an exemption even if they have a negative notice.

Stakeholders overwhelmingly agree with the Royal Commission's finding that allowing a person with a negative notice to rely on an exemption is unacceptable.

The following people should be prohibited from relying on an exemption:

- a person who is subject to reporting obligations or a prohibition order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*<sup>22</sup>
- a person who has a suspended blue card
- a current negative notice holder.



## Recommendation 28

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to remove the ability for people to rely on an exemption if they:

- are subject to reporting obligations or a prohibition order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*
- have a suspended WWCC
- have a current negative notice.

Appendix I provides an outline of the revised proposed screening requirements.



## Working with children check decisions

### At a glance

#### Findings



The current range of disqualifying offences does not meet community expectations
Current risk assessments are broad and include consideration of whether a person is a good role model
There is scope to improve the quality and consistency of decisions
Applicants need more support in the risk assessment process
Applicants have no right to an internal review of an adverse decision

#### Reforms



<b>CHANGE</b> the law to expand the range of disqualifying offences	<b>CHANGE</b> the law so BCS can consider more information as part of a WWCC
<b>INTRODUCE</b> a new decision-making model focused on risks of harm to children	<b>IMPLEMENT</b> multi-disciplinary assessment processes
<b>ESTABLISH</b> a complex case review committee and appoint a multi-disciplinary panel of advisors	<b>DEVELOP</b> a statutory instrument with contemporary risk assessment guidelines
<b>IMPROVE</b> processes to support applicants	<b>UNDERTAKE</b> regular independent audits and establish a internal review mechanism

#### Impacts



##### CHILDREN

This will strengthen existing safeguards by ensuring holistic assessments focused on risks of harm to children



##### APPLICANTS

This will improve support



##### COMMUNITY

Public confidence in the system will improve through consistent and fair decisions



##### NATIONAL CONSISTENCY

This will focus decisions on risk of harm to children, consistent with the Royal Commission's recommendations

## Disqualifications

### Current position

Under the WWC Act, it is an offence for a person convicted of a disqualifying offence (a disqualified person) to apply for a blue card. Disqualifying offences are:

- serious child-related sex offences
- offences related to child exploitation material
- murder of a child.

All applicants for a blue card must declare they are not a disqualified person on the application form. There is a maximum penalty of 500 penalty units or five years imprisonment if a disqualified person applies for a blue card. The purpose of this offence is to stop people with convictions for serious child-related offences from working with children while their blue card application is processed.

A different process allows people previously convicted of a disqualifying offence to ask BCS to declare them eligible to apply for a blue card. The person cannot work with children while BCS assesses the application. This means the chief executive of BCS can identify exceptional cases where a person is not a risk to children. An example is a person with a historical conviction for unlawful carnal knowledge due to a teenage relationship with a peer.

BCS cannot declare a person eligible if they were:

- convicted of a disqualifying offence, and
- sentenced to a period of imprisonment (including a suspended sentence).

Disqualified persons have no right to ask the QCAT to review a decision made by BCS.



The Royal Commission recommended a range of reforms about disqualifications. Table 4 outlines the impacts of those recommendations in Queensland:

Issue	Queensland's position	Royal Commission's recommendation	Impact of Royal Commission's recommendation
Disqualifying offences	Limited to serious child-related sex offences, including offences related to child exploitation material and murder of a child.	Disqualifying offences to include abduction or kidnapping of a child and animal-related sexual offences.	Will expand the range of offences that automatically disqualify a person from getting a WWCC.
Ability to exercise discretion in exceptional circumstances	BCS can decide if there is an exceptional case unless a court sentenced the applicant to a period of imprisonment for a disqualifying offence.	Remove the discretion but allow an appeal to decide if there is an exceptional case.	Will require a person to appeal to the QCAT to decide if the person's case is exceptional.
Pending charges	BCS withdraws an application if there is a pending charge for a disqualifying offence and the person must not work with children until he or she has a positive WWCC.	Will be automatically disqualified and get a negative notice.	The applicant gets a negative notice because of the pending charges rather than BCS making the decision once the court finalises the charge.
Appeals	No appeal right for a disqualified person.	An appeal right for disqualifying offences except if: <ul style="list-style-type: none"> <li>the person was sentenced to a period of imprisonment for certain disqualifying offences</li> <li>an order prohibits the person from engaging with or working with children.</li> </ul>	Will introduce a new appeal right and transfer decision-making from BCS to the QCAT.

**Table 4:** Impacts of the Royal Commission's recommendations in relation to the disqualification framework in Queensland

## Stakeholder views

Stakeholders support the intent of the Royal Commission's recommendations, which is to ensure that people with convictions for serious child-related offences cannot work with children.

## Eligibility declaration process

In Queensland, people are currently allowed to start paid employment while their WWCC is being processed. This is why there is a process in place to disqualify some people from applying for a WWCC and another process to allow people to ask BCS to declare them eligible to apply (eligibility declaration application).

This report recommends removing the ability for people to start work while their application is being processed. This means there will be no need for people to seek eligibility to apply for a blue card from the chief executive of BCS.

However, some people should not be able to apply for a blue card. Individuals who have been issued with a negative notice or are subject to offender reporting obligations or an offender prohibition order under the *Child Protection (Offender Reporting and Offender Prohibition) Act 2004* should be disqualified from applying for a blue card. The current penalty provisions relating to disqualified persons should also remain if these people apply for a blue card.

## Additional disqualifying offences

Under the WWC Act, bestiality, kidnapping, kidnapping for ransom, child stealing and abduction of a child under 16 are all serious offences, but not disqualifying offences. At present, the WWC Act does not automatically exclude the person from applying for a blue card, but BCS must give a person a negative notice unless it is an exceptional case.

The Royal Commission's recommendation to expand the range of disqualifying offences to include these serious offences will improve safeguards for children by automatically excluding more people.

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

## Current pending charges

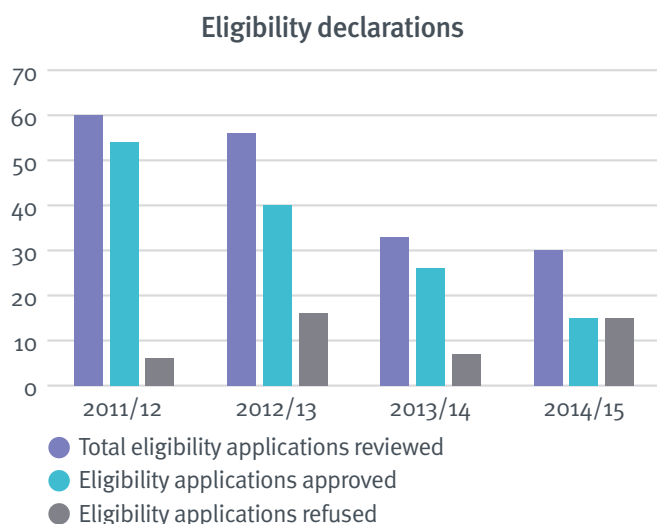
In Queensland, if a person has a current pending charge for a disqualifying offence, BCS does not need to finalise the WWCC until the court has finalised the charge. This means that BCS does not give a person a negative notice before a court has decided if he or she is guilty of the offence charged. This is because the presumption of innocence underpins our criminal justice system.

The way the system works in Queensland meets the policy intent of the Royal Commission's recommendation, which is to stop a person from doing child-related work until the charge is finalised.

This means there is no need to change the current system. BCS can continue to withdraw an application without giving a negative notice, and suspend an existing blue card when police charge a person with a disqualifying offence.

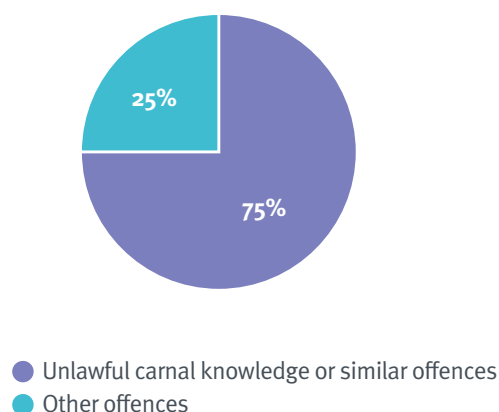
## Exceptional cases

The Royal Commission recommended that only appeal bodies should decide whether a person's case is exceptional. In Queensland, the chief executive of BCS can make this decision.



**Figure 9:** Outcomes of 179 eligibility applications between July 2011 and June 2015.

**Offence types for approved eligibility declarations**



**Figure 10:** Breakdown of offence types for eligibility declarations approved by BCS between July 2011 and June 2015.

The vast majority of applications approved have been for a historical unlawful carnal knowledge conviction or similar. An average of 34 people each year (who BCS believes do not pose a risk of harm to children) would need to appeal to the QCAT if BCS could no longer decide these applications.

### Case study 2—Discretion in decision-making

An applicant for an eligibility declaration had a conviction for unlawful carnal knowledge.

At the time of the offence, the applicant was 16 years old and the complainant was the applicant’s 15-year-old girlfriend. The applicant and complainant continued to be romantic partners after the offence. They were married for over 45 years. The offence was committed 50 years before the applicant asked for an eligibility declaration. The applicant had no other concerning criminal history.

BCS gave the applicant an eligibility declaration allowing him to apply for a blue card.

The Royal Commission recommends allowing people to work while their WWCC application is processed. The Royal Commission also recommends that people with convictions for disqualifying offences must apply to an appeal body to decide if they have an exceptional case. The intention of this recommendation is to stop people with disqualifying offences working while a WWCC application is processed.

In Queensland, there is no benefit in making people apply to the QCAT to decide if they have an exceptional case. This is because this report recommends that people not be allowed to commence work while BCS processes their blue card application. In fact, involving the QCAT at this stage in the process makes the system harder for people to use. There is no reason BCS should not continue to make these decisions as it means that the best decision will be made at the earliest opportunity.

### Appeals

A person cannot apply to the QCAT for a review of a decision to give them a negative notice if he or she:

- has been convicted of a disqualifying offence
- is under current reporting obligations
- is under a current prohibition order, disqualification order or sexual offender order.

There should continue to be no appeal right to the QCAT for a disqualified person.



## Recommendation 29

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce a new disqualification framework to:

- remove the current eligibility declaration process
- expand the range of offences that will result in the issue of an automatic negative notice as recommended by the Royal Commission, but consider excluding kidnapping offences that arise in the context of a family law dispute
- require the automatic issue of a negative notice to a person over the age of 18 who has been convicted of a disqualifying offence and sentenced to a period of imprisonment (including a suspended sentence)
- continue the agency's chief executive's discretion about all other applications involving a conviction for a disqualifying offence.

## Information considered

### Current position

Table 5 outlines the information that BCS considers as part of a WWCC. It also outlines the information that is not routinely considered by BCS.

Information BCS always considers	Examples of further information BCS can obtain	Information BCS does not consider
<ul style="list-style-type: none"> <li>• all national criminal history including juvenile records, charges, spent convictions, and convictions not recorded by a court</li> <li>• investigative information held by the QPS about disqualifying offences where it did not lay charges because the complainant was unable or unwilling to proceed</li> <li>• disciplinary information about registered teachers, early childhood education and care workers, and foster and kinship carers.</li> </ul>	<ul style="list-style-type: none"> <li>• details of the offence from the QPS</li> <li>• information from the Director of Public Prosecutions, including evidence or reasons for charges not proceeding</li> <li>• mental health assessments by a registered health practitioner, in some circumstances</li> <li>• child protection information</li> <li>• details of decisions made by the Mental Health Court or Mental Health Review Tribunal</li> <li>• information from the applicant in support of their application.</li> </ul>	<ul style="list-style-type: none"> <li>• international criminal history</li> <li>• domestic violence information (other than breaches of domestic violence orders)</li> <li>• disciplinary information for health practitioners</li> <li>• outcomes of WWCC processes from other Australian states and territories</li> <li>• outcomes of other Queensland risk assessments, for example, foster or kinship care risk assessments and teacher registration applications.</li> </ul>

**Table 5:** Information BCS does and does not consider in conducting WWCCs

The QPS continuously monitors all WWCC holders' and applicants' criminal histories. BCS assesses any changes in Queensland police information relevant to child-related work.



## Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission recommended:

- checking disciplinary information for all WWCC applicants—for all findings of misconduct against, or involving a child—regardless of whether this information arises from a reportable conduct scheme or other systems responsible for disciplinary and misconduct proceedings
- bodies responsible for relevant disciplinary and or misconduct information be required to notify screening agencies of the information.

The Royal Commission did not make any recommendations about using child protection and domestic violence information. However, it noted that this information is likely to be relevant in assessing risks to children.

### Stakeholder views

Stakeholders believe that BCS should consider international criminal history. However, they noted that considering this information for every application would increase processing times and application costs.

There is also strong support for:

- monitoring interstate police information
- considering child protection and civil domestic violence history
- considering WWCC outcomes from other states and territories.

Stakeholders did not support a tiered screening approach where BCS assesses different information depending on the type of child-related work the person is doing.

### International criminal histories

BCS does not currently consider applicants' international criminal histories as part of a WWCC. Applicants do not have to disclose whether they have a criminal history overseas.

The QFCC's report: *Recommendation 28 Supplementary Review: A report on information sharing to enhance safety of children in regulated home-based services* identified opportunities to improve the sharing of information held by the QPS. This report recommended that if the QPS becomes aware of an individual's international criminal history it should proactively share this information with BCS. The review of the WWC Act (recommendation 2) should ensure that the QPS have the ability to provide this information. This will make sure BCS obtains all relevant information to assess a person's eligibility to hold a blue card.

Border protection policies and procedures stop people coming into Australia if they are identified as a risk of harm to the community, including children.

### **Department of Immigration and Border Protection current practices**

- A person, other than an Australian citizen, wanting to come into Australia must have a pre-approved visa.
- All visa applicants are required to declare criminal history information. The requirements differ depending on the type of visa.
- If an applicant declares a criminal history, he or she must give full details of the offence. In some cases, applicants must provide an overseas police check.
- Applicants for some types of visas also need an overseas police check.
- All applicants must satisfy health, character and national security requirements.
- A person will not pass a character test for several reasons, including if:
  - they have a substantial criminal record (sentenced to prison for 12 months or more)
  - their past and present criminal or general conduct shows they are not of good character
  - they have been convicted of, found guilty of, or had a charge proven for one or more sexually based offences involving children.
- This means a person will not pass the character test if they have been convicted of a disqualifying offence under the WWC Act.
- The character statutory declaration involves self-disclosure. To mitigate the risk that a person does not disclose their criminal history, the Department of Immigration and Border Protection accesses a number of other systems, profiles and databases including the Movement Alert List.
- The Movement Alert List is a database that stores details of people of concern to immigration bodies. Many nations contribute information to INTERPOL on criminal convictions, including the United States of America, Canada, New Zealand and the United Kingdom. This information is included in the Movement Alert List.

### ***Requirements for New Zealand citizens***

- Most New Zealand citizens do not have to apply for a visa before travelling to Australia. They get a temporary Special Category Visa on arrival in Australia, as long as they meet certain health and character requirements. A Special Category Visa allows them to remain and work in Australia indefinitely.
- New Zealand citizens can apply for one of Australia's permanent visas or Australian citizenship and they will be subject to the standard assessment.
- A New Zealand citizen with criminal convictions (no matter when the conviction occurred, what country the conviction occurred in or whether the conviction is spent) must get approval from the Department of Immigration and Border Protection before travelling to Australia.<sup>23</sup>

International criminal history information is not readily available for WWCCs.

Other screening authorities manage risks associated with international criminal histories by requiring applicants who have lived or worked in another country for a specific time to provide a clearance or details of their international criminal history. For example, the QCT requires applicants who have lived overseas for twelve months or more in the last 10 years to provide this information.

However, some applicants (mainly asylum seekers and refugees) face difficulties getting information from some other countries.

Assessing international criminal history for all applicants would add complexity to the system. This is because it is hard to validate and interpret information received from overseas. It would also increase processing times and add cost.

The best option is for applicants who have lived or worked overseas for a specified time to have to disclose any criminal history when applying for a WWCC. BCS should have the discretion to request more information from the applicant to inform its decision.

The Department of Immigration and Border Protection has confirmed that there is potential for information to be shared between it and BCS. Where it has relevant information to assist in carrying out a WWCC, this could add value to the process.

## New Zealand criminal history

Information about New Zealand criminal histories is readily available through an already established process with the New Zealand Police under the Offshore Approved Agency Arrangement.

Some Queensland Government agencies already use this arrangement.

Table 6 outlines how the scheme works.

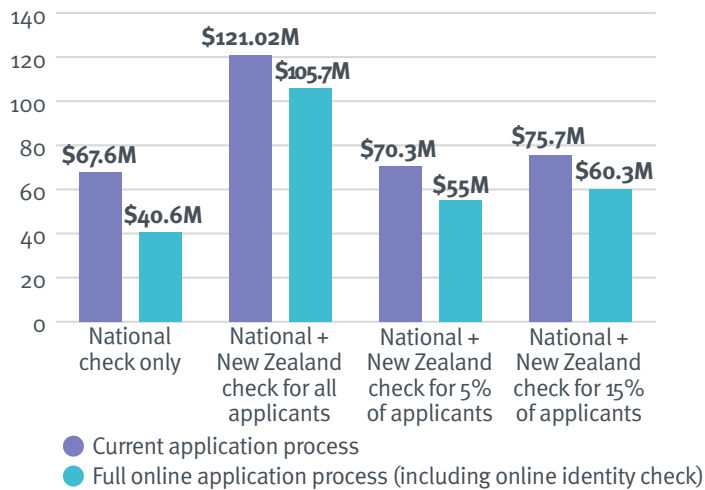
Information released	Administration of the scheme
<ul style="list-style-type: none"> <li>• The Clean Slate Scheme operates in New Zealand. Under this scheme, criminal history information is not released in certain circumstances.</li> <li>• People’s criminal history is not protected if they have been convicted in the last seven years, and:               <ul style="list-style-type: none"> <li>– they received a custodial sentence, or</li> <li>– the conviction was for a disqualifying offence (regardless of the sentence).</li> </ul> </li> <li>• If the Clean Slate Scheme does not apply, a person’s conviction history, active charges and warrants for arrest will be released.</li> <li>• The Clean Slate Scheme does not apply if the check is for a person engaged in a role that involves the care and protection of a child or young person.</li> <li>• It may be possible to obtain the release of a full history by asking the person to provide an authenticated record. This will be a more complex and lengthy process.</li> </ul>	<ul style="list-style-type: none"> <li>• A check can take up to 20 working days.</li> <li>• Standard checks are processed at a cost of NZ \$23.00.</li> <li>• Volunteer checks are processed at a cost of NZ \$8.50.</li> <li>• The system already supports bulk transactions and checks.</li> </ul>

**Table 6:** Obtaining New Zealand police information

There is a need to balance the potential benefit of accessing this information with the extra cost and complexity it would add to the process. Relevant factors include the following:

- information about a range of disqualifying offences is likely to be provided but some information will not be released
- making applicants provide the check themselves could result in more information being released
- the check will add to the processing time and cost of a blue card
- there are potentially significant financial implications associated with including a New Zealand criminal history check.

### Cost of the system with New Zealand criminal history checks



**Figure 11:** Estimated cost of operating the blue card system over 15 years, with and without obtaining New Zealand criminal history for different percentages of WWCC applicants.

Obtaining a New Zealand criminal history check for every application will nearly double the cost of operating the system.

BCS could ask applicants to provide a copy of their New Zealand criminal history. However, this will make the system more complex and it may be difficult to confirm the information is correct.

The Department of Justice and Attorney-General (DJAG) will need to consider the most cost-efficient way to obtain a New Zealand criminal history check as part of a WWCC where a person declares they have lived or worked in New Zealand for a specified time. The time normally ranges from six months (Queensland Health and the Australian Health Practitioner Regulation Agency) to 12 months (the QCT and Public Service Commission). The DJAG may need to review WWCC fees for this type of check.



### Recommendation 30

It is recommended that the Department of Justice and Attorney-General consults with the Australian Department of Immigration and Border Protection on opportunities for sharing information about international criminal histories.



## Recommendation 31

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:

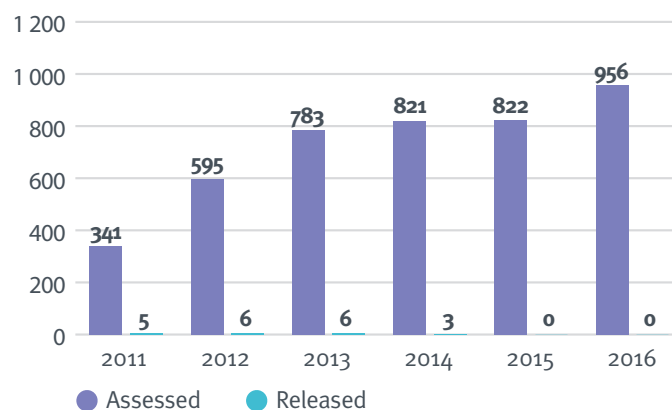
- require applicants to disclose if they have been convicted of a crime or any other offence, or charged with any offence in a country other than Australia
- require applicants to disclose if they have lived or worked in New Zealand for six months or more
- require BCS to obtain a New Zealand criminal history for applicants who disclose they have lived or worked in New Zealand for six months or more
- enable BCS to require applicants to provide criminal history records from the relevant country and/or further information in relation to their criminal history.
- enable BCS to seek further information from applicants (including statutory declarations) where they have disclosed international criminal history or cannot provide information.

## Investigative information

The QPS can give BCS investigative information about a person when it has decided not to charge that person with a child-related sex offence. This information can only be provided if the person has been interviewed and was not charged because it was not in the best interests of the child or the child is deceased.

Between 2011 and 2016, the QPS assessed, on average, 719 investigations each year to decide whether it could give information to BCS. Between 2011 and 2014, the QPS actually released investigative information to BCS in only 20 cases. It has not given BCS any information in the last two years.<sup>24</sup> This is because the information does not meet the criteria for release under the WWC Act. The WWC Act sets a high threshold for the release of investigative information and the QPS undertakes a rigorous process when reviewing matters to identify investigative information.

Investigative information assessed and released by the QPS



**Figure 12:** Number of cases for which the QPS identified potential investigative information compared to the number of cases assessed as suitable for release to BCS.

Investigative information adds value to the assessment of a WWCC application.

### Case study 3—Investigative information

BCS conducted a WWCC for an applicant with no criminal history or disciplinary information. The QPS later gave BCS investigative information about the applicant, who was a suspect in an investigation into a child-related sexual offence. The police investigator believed there was enough evidence to prosecute, but the child withdrew the complaint.

BCS cancelled the applicant's blue card and gave a negative notice, which stopped the applicant from working with children.

There is benefit in BCS and the QPS reviewing the criteria for sharing investigative information to check that the balance is right and meets community expectations.



### Recommendation 32

It is recommended that the Queensland Government reviews the criteria for giving investigative information to BCS to see whether they are sufficient to allow the QPS to share the information the BCS needs to assess risks of harm to children.

## Suspect information

The QFCC's report: *Recommendation 28 Supplementary Review: A report on information sharing to enhance safety of children in regulated home-based services* found that sharing information earlier about people who may pose a risk to children improves response to these risks. The report recommended that the QPS share information about people earlier—as soon as the QPS has told the person that he or she is a suspect in a disqualifying offence. This recommendation was referred to this review to consider if any legislative changes were necessary.

The WWC Act does not currently allow BCS to reassess a person's eligibility to hold a WWCC if the person is a police suspect. The WWC Act should be changed to make it clear that the QPS can provide this information and BCS can action it by suspending a blue card.

Releasing suspect information is a complex issue. Government needs to make sure there is a balance between keeping children safe and the fundamental principles that underpin the development of legislation. Similar to when investigative information is released, the QPS needs to make sure a rigorous process is undertaken when assessing matters to identify suspect information. This must include being satisfied that an individual poses a risk of harm to children.

There is benefit in BCS and the QPS developing criteria for sharing suspect information. The primary purpose for allowing this information to be shared is to allow action to be taken where a blue card holder becomes a suspect for a disqualifying offence and there is an identified potential risk of harm to children that needs to be managed while the investigation is finalised.

## Recommendation 33

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:

- allow the QPS to share information about a suspect with BCS to allow any risk to be managed while an investigation is finalised
- develop criteria for giving information about suspects, including that the QPS has told a person that they are a suspect in a disqualifying offence
- enable BCS to suspend a blue card to manage risks of harm to children while an investigation is finalised.

## Disciplinary and misconduct information

BCS currently considers a limited range of disciplinary information as part of a WWCC, but a broader range of disciplinary information is already available:

- about public servants (under the *Public Service Act 2008*)
- about certain professionals under other regulatory schemes, for example, health practitioners (under the national health practitioner registration scheme) and disability workers (under the yellow card screening process).

The Royal Commission highlighted the significant risk of regulatory agencies not sharing information. Although allegations of abuse and misconduct are often difficult to prove, sharing disciplinary information can help to identify concerning patterns of behaviour. This can then assist regulatory agencies in making consistent decisions that take into account all relevant information.

Case study 4 shows the value of sharing disciplinary information with BCS.

### Case study 4—Disciplinary information

The Department of Communities, Child Safety and Disability Services (DCCSDS) cancelled an individual's carer authority due to substantiated risk of emotional harm to children in her care. The DCCSDS also found that the applicant failed to provide children in her care with adequate medical treatment. The cancellation of a carer authority amounts to disciplinary information under the *Child Protection Act 1999*, which the DCCSDS must share with BCS.

On receiving the DCCSDS's advice that it had taken disciplinary action, BCS reassessed the applicant's eligibility to hold a blue card. The applicant had no other assessable information. BCS cancelled the applicant's blue card based on the DCCSDS's disciplinary action.

Under reportable conduct schemes, designated agencies or individuals must report allegations of reportable conduct to the relevant agency. New South Wales has one and similar schemes commenced in Victoria and the Australian Capital Territory on 1 July 2017. Queensland is also now considering a reportable conduct scheme.

If the government decides to introduce a reportable conduct scheme in Queensland, BCS should have access to all relevant information to assess and reassess WWCCs.

Sharing a greater range of disciplinary information and information under a reportable conduct scheme will strengthen the blue card system. This will align with the recommendations of the Royal Commission and help with national consistency in the future.



## Recommendation 34

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:

- enable BCS to use information from a reportable conduct scheme, if introduced in Queensland, for WWCCs
- in the absence of a reportable conduct scheme, enable BCS to consider disciplinary information under the *Public Service Act 2008* and other regulatory frameworks as part of the risk assessment process, including for:
  - Queensland Health employees
  - police officers
  - youth workers
  - child safety officers
  - Department of Education and Training employees
  - disability workers
  - health practitioners
  - corrective services officers.

## Child protection information

Currently, BCS asks the DCCSDS for child protection information on a case-by-case basis. This is generally only if the nature of the criminal offence suggests child protection involvement, for example, if there are charges about neglect or a failure to provide medical attention to a child.

BCS writes to the DCCSDS and requests the information. The DCCSDS assesses the information it has, summarises it and gives to BCS what it considers relevant. This includes a summary of both substantiated notifications and harm reports and unsubstantiated notifications and harm reports where a concerning pattern of behaviour is identified.

The WWC Act needs to provide a clear process for this exchange of information and needs to enable BCS to assess such information when received.

A review of a small number of BCS risk assessment files shows that the process for asking the DCCSDS for child protection information is inconsistent. In some cases:

- an applicant's offending was against their own children or children in their care, but BCS did not always ask for further information
- there was information to suggest the applicant had a child protection history but BCS only asked for this information once the applicant appealed the negative notice to the QCAT.



Like Queensland, all jurisdictions can access child protection information, if required. The majority of states and territories do not access this information for every application but agree that child protection information is relevant and useful to consider where it gives context to criminal offences. It also helps to ensure that all available information is considered in assessing risk.

### Case study 5—Child protection information

An applicant had several charges and convictions for offences involving violence. This included a recent charge of common assault of the applicant's own child. The charge did not proceed to court because the police had no evidence to offer. The offences were not 'serious offences'. BCS asked the DCCSDS for the child protection information. This showed the applicant had several concerning, recent, substantiated and unsubstantiated notifications.

The applicant gave submissions and references, but they did not mitigate the identified risks. BCS issued a negative notice.

### Case study 6—Child protection information

An applicant had an extensive criminal history over 15 years. This included charges and convictions for violent and drug related offences, but they were not 'serious offences'. BCS became aware of and asked for child protection information, and noted a number of recent substantiated and unsubstantiated notifications.

BCS decided that the offending, when considered in the context of the child protection information, showed a concerning pattern of behaviour, and a negative notice was issued.

These case examples show the value of considering child protection information. However, there are also concerns about using child protection information as part of a WWCC check. These include:

- privacy concerns, due to the sensitive nature of the information
- the fact that the DCCSDS creates the information for child protection purposes. It is not recorded with the intention that it will be used for a WWCC. Significant time and resources may be required to review the information to enable it to be provided and used for a WWCC purpose
- the specialist expertise that is needed to assess the information and understand its relevance.

Despite these concerns, there is still value in BCS checking for child protection information when it has other information that suggests there may be a risk of harm to children. This will make sure that BCS can undertake a full assessment of the risks. BCS should continue to be able to use discretion in accessing information in all other cases.

Increasing the number of cases for which child protection information is requested will have resourcing implications. To minimise the impact and enable the DCCSDS and BCS to exchange information quickly and easily, they will need automated processes, such as data matching. This new technology will take time to build and should be able to be expanded so BCS can obtain child protection information for all applicants in the future.

As mentioned, BCS will need skilled officers to assess the information. This may mean having a DCCSDS officer working in BCS to help officers access and understand the child protection information. BCS has a similar arrangement with the QPS, which works well.

The statutory review (see recommendation 77) should consider how effective the increased exchange of child protection information has been and whether it is useful and feasible to use it for all applications. By this time, there should be automated processes in place to support the exchange in order to minimise resourcing implications.



### Recommendation 35

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to enable BCS to assess relevant child protection information as part of a WWCC. Relevant child protection information is:

- information about a substantiated allegation of harm
- information about unsubstantiated allegations of harm showing a pattern of concerning behaviour.



### Recommendation 36

It is recommended that the Department of Justice and Attorney-General develops relevant policies to make sure that BCS:

- checks for child protection information wherever there is information to suggest there may be a risk of harm to children
- has staff with expertise in assessing child protection history as part of a multi-disciplinary approach to risk assessments.



### Recommendation 37

It is recommended that the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services identify the most efficient way to exchange child protection information so as not to adversely affect processing timeframes.



### Recommendation 38

It is recommended that the Queensland Government considers the use of child protection information for WWCCs as part of the statutory review of the system recommended in this report (see recommendation 77). The review should determine if BCS should assess child protection information for all WWCC applications.

## Domestic and family violence information

In Queensland, a person can apply to a court for a temporary or final domestic violence order. These orders do not form part of a person's criminal history unless the person breaches the order. These applications and court orders are referred to in this report as 'civil domestic and family violence history'.

No Australian state or territory considers all applicants' civil domestic and family violence history as part of WWCCs. Some currently gather that information if they know or suspect it exists, as it gives context to an applicant's criminal history.

Considering civil domestic and family violence information as part of a WWCC check is complex. It can help to assess risk, but specialist officers must do the assessment. They need to understand the unique nature and dynamics of domestic violence and associated court processes. For example, parties may consent to an order, which means a court has not found that domestic violence has occurred. This means it would not be accurate to infer that because a court has made an order, there is risk to children.

Accessing information about civil applications for domestic violence orders where there is other criminal history will strengthen the blue card system by enabling a holistic risk assessment.

BCS should be able to obtain information about civil applications if there has been a breach of a domestic and family violence order or there have been other criminal offences involving domestic and family violence. This information will give context to the related criminal offence or breaches. This is useful when an applicant has only technical breaches recorded on their criminal history, but information in the application for a domestic violence order shows a pattern of ongoing violent behaviour.

### Recommendation 39

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow BCS to obtain applications for domestic violence orders and all documents related to orders made where:

- the applicant for a blue card is named as a respondent, and
- the applicant has a charge or conviction related to a breach of a domestic violence order or another domestic violence offence as defined under the Criminal Code.

### Recommendation 40

It is recommended that the Department of Justice and Attorney-General puts in place relevant policies to make sure that:




- BCS has staff with sufficient expertise in assessing information about domestic violence as part of a multi-disciplinary approach to risk assessments
- the most efficient way to exchange information about domestic violence applications and orders is identified so that it does not adversely affect processing timeframes.

## Decision-making model

### Current position

BCS must decide WWCC applications on the basis that the safety and wellbeing of children is paramount—particularly their right to be cared for in a way that protects them from harm and promotes their wellbeing.

The WWC Act outlines how BCS must decide applications:

No police or disciplinary information		Blue card <b>MUST</b> be issued
A conviction (other than for a serious offence), charges, investigative information or disciplinary information		Blue card <b>MUST</b> be issued, unless it is an <b>exceptional case</b> and <b>will not be in the best interests of children</b>
Conviction for a serious offence		Blue card <b>must NOT</b> be issued unless it is an <b>exceptional case</b> and <b>will not harm the best interests of children</b>

**Table 7:** How applications must be decided under the WWC Act

The WWC Act does not define an exceptional case. BCS takes into account:

- type, number and seriousness of offences
- recency of any offending or alleged offending
- relevance of past criminal or concerning behaviour to child-related activities
- penalty imposed for relevant offences
- veracity of the evidence available
- evidence of attempts to change/address behaviour or triggers for initial offending
- any pattern of behaviour or a breach of trust
- any identified risk or protective factors.

## Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission recommended that:

- the paramount consideration must be the best interests of children, having regard to their safety and protection
- an applicant should automatically get a WWCC if there is no relevant criminal history or disciplinary information
- except where a person is disqualified, an assessment should consider:
  - the nature, gravity and circumstances of the offence and/or misconduct, and how it is relevant to children or child-related work
  - the length of time that has passed since the offence and/or misconduct occurred
  - the age of the child
  - the age difference between the person and the child
  - the person's criminal and/or disciplinary history, including whether there is a pattern of concerning conduct
  - all other relevant circumstances about the history and the impact on their suitability to be engaged in child-related work
- risk assessments should be based on risk to children. Applicants should not be precluded from child-related work because of offences that do not indicate a risk.

### Stakeholder views

Stakeholders raised concerns about current decision-making, including the fact that:

- offences that result in negative decisions are not always relevant to risks about working with children
- decisions are inconsistent and not in line with the seriousness of offending
- the processes do not consider well enough the cultural issues unique to Aboriginal and Torres Strait Islander applicants.

Stakeholders also raised concerns that they cannot stand down an employee or volunteer who has had their card suspended.

Stakeholders support a fair, quick and free right of internal review that is promoted in decision letters and on the BCS website.



For example, one stakeholder suggested:

The current review process would be improved if applicants had a right to apply for an internal review of a decision, prior to applying to the Queensland Civil and Administrative Tribunal (QCAT) for review. This would be particularly beneficial given that both parties are able to provide additional evidence when the matter is being considered by QCAT, which could have been considered through an internal review process.

An internal review step would enable any other relevant information to be considered by the Blue Card decision maker, potentially reducing the need for external review.

An internal review step would also relieve pressure on QCAT, provide for a more collaborative and informed approach to decision making and assist in reducing the number of external appeals.<sup>25</sup>

## Assessing risks to children

Since 2011–12, checks of an average of 12 per cent of applicants per year returned police information that needed risk assessment.

A review of a small number of BCS risk assessment files gave context to some of the stakeholder concerns. It showed that decision-making was consistent with the WWC Act and considered whether it was in the best interests of children for an applicant to have a WWCC. It also showed that in some cases, BCS did not focus solely on risks of harm to children—the assessment also included consideration of whether the applicant was a good role model for children.

### Case study 7—Assessing risks to children

**CASE A:** An applicant had two convictions, one for assault of an adult with a disability. BCS gave the applicant a blue card. Six years later, the QPS advised BCS that the person had a change in police information, which involved an assault against a child (not currently a ‘serious offence’). BCS acknowledged that the violent offence against the child raised serious concerns about the applicant’s ability to respond appropriately to a child’s behaviour issues and also about the lack of prioritisation of the physical and emotional wellbeing of the child that was in the care of the applicant. Irrespective of these concerns, BCS did not revoke the applicant’s blue card as there were strong risk mitigating factors, which were supported by strong references.

**CASE B:** An applicant had two minor historical convictions. BCS gave the applicant a blue card. The QPS later advised BCS that the person had a change in police information for three drug offences. BCS cancelled the blue card and gave the person a negative notice. None of the offences involved children either directly or indirectly. One of the reasons for the issue of a negative notice was that drug use and other drug-related offending may affect the applicant’s ability to provide a protective environment for children in his care and be an appropriate role model to them.

**Observations:** In both cases, the offences were not serious offences. The presumption in both cases was for a blue card unless there was an exceptional case. Both provided detailed submissions and references. Case A involved an applicant who caused recent physical harm to a child whereas Case B did not involve any offences directly involving children, yet the applicant in Case A was able to retain their blue card and the applicant in Case B was given a negative notice. This raises concerns about whether decision-making is adequately focused on risks of harm to children.

No other Australian state or territory considers whether a person is a good role model or ‘of good character’ for a WWCC. They all use a test that refers to safety or risk of harm to children, or similar. Table 8 shows a comparison of the decision-making tests.

Jurisdiction	Decision-making principles/tests
QLD	Whether it is in the best interests of children for the applicant to be issued with a WWCC <sup>26</sup>
ACT	Whether there is an unacceptable risk of harm to a vulnerable person <sup>27</sup>
NSW	Whether the applicant poses a risk to the safety, welfare and/or wellbeing of children <sup>28</sup>
NT	Whether there is an unacceptable risk of harm or exploitation to children <sup>29</sup>
SA	Whether the applicant may pose a risk to the safety of children <sup>30</sup>
TAS	Whether the person poses an unacceptable risk of harm to vulnerable persons <sup>31</sup>
VIC	Whether there is an unjustifiable risk to the safety of children <sup>32</sup>
WA	Whether it is in the best interests of children and whether on <i>all</i> the information and other material properly before the decision-maker, there is an 'unacceptable' risk that the applicant might, in the future, cause sexual or physical harm to children, in the course of carrying out child-related work <sup>33</sup>

**Table 8:** Comparison of fundamental juristicational WWCC decision-making principles/tests

Queensland has a higher rate of negative notices than other jurisdictions. For example, over the last two financial years, BCS issued an average of 1 484 negative notices (0.67 per cent of all applications). In contrast, Western Australia issued 150 (0.13 per cent of all applications). This may be partly because Queensland uses the broadest test to decide on applications.

The WWC Act needs to change to implement the recommendation of the Royal Commission that screening agencies base WWCC assessments on risk of harm to children and/or to the safety of children.

A number of other issues were identified in relation to the current decision-making model in the WWC Act. These also relate to whether the current legal framework is adequately focused on risks of harm to children:

Issue	Example
<b>Serious offences</b>	
<ul style="list-style-type: none"> <li>The WWC Act lists some offences as serious and requires BCS to give a negative notice unless there is an exceptional case.</li> <li>The current list of serious offences does not reflect community expectations about conduct that shows a risk of harm to children.</li> </ul>	<ul style="list-style-type: none"> <li>The offence of assault occasioning bodily harm to a child, domestic violence offences and the offence of strangulation are not serious offences.</li> <li>They do not result in a presumption that a person gets a negative notice unless there is an exceptional case. However, the presumption is that an historical conviction for robbery in company results in a negative notice, unless there is an exceptional case.</li> </ul>
<b>Legislative test</b>	
<ul style="list-style-type: none"> <li>The WWC Act directs whether a person should be issued with a positive or negative notice depending on whether an exceptional case can be determined.</li> <li>These presumptions do not reflect community expectations.</li> </ul>	<ul style="list-style-type: none"> <li>A person with multiple charges (but no convictions) for child-related sex offences, or with investigative or disciplinary information that shows a clear risk of harm to children, must get a positive notice unless they are an exceptional case.</li> </ul>
<ul style="list-style-type: none"> <li>BCS must issue a negative notice to an applicant with a conviction for a serious offence unless an exceptional case can be demonstrated.</li> <li>This makes it quicker and easier for BCS to issue negative notices without gathering all of the information relevant to assessing if there is a risk of harm.</li> </ul>	<ul style="list-style-type: none"> <li>If BCS has sufficient information to issue a negative notice and an applicant fails to respond to submissions, additional information is not requested to test if there may be mitigating factors that would indicate the person does not pose a risk of harm to children.</li> </ul>
<b>Restrictions on decision-making</b>	
<ul style="list-style-type: none"> <li>There are limits on the types of information that BCS can consider as part of the risk assessment.</li> </ul>	<ul style="list-style-type: none"> <li>If BCS becomes aware of concerning information, which is not police or disciplinary information (such as child protection information), it is not a trigger for an assessment. This may result in BCS being required to give a WWCC to a person who may pose a risk of harm to children.</li> </ul>
<b>Changes in assessable information</b>	
<ul style="list-style-type: none"> <li>BCS has limited flexibility in the actions it can take to remove risks to children as a result of a change in assessable information.</li> <li>BCS can only suspend a blue card if police charge a person with an offence that is a disqualifying offence.</li> <li>On average, half of the negative notices issued relate to circumstances where a person's criminal history has changed while they held a current blue card.</li> </ul>	<ul style="list-style-type: none"> <li>If BCS becomes aware of a change of assessable information that may indicate a risk to children, it must reassess the person's eligibility to hold a blue card. The person maintains their blue card while this reassessment occurs.</li> </ul>

**Table 9:** The current WWC Act decision-making model

A new decision-making framework is needed to identify these issues and focus decision-making on risks of harm to children.



## Recommendation 41

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce a new decision-making framework, to include:

- a requirement to assess whether there is a risk of harm to the safety of children without the use of legislative tests that direct decision-making based on the type of information known about a person
- a review of the list of serious offences (in order to focus on those offences that indicate a risk of harm to children)
- the ability to conduct an assessment based on any information that is relevant to considering risk of harm to children
- specific criteria for assessing risks to children as outlined by the Royal Commission
- an ability to suspend (rather than giving a negative notice) a blue card where there is a change in criminal history or other assessable information that suggests a risk of harm. (Consideration will need to be given to the feedback received from organisations about the difficulties associated with not being able to stand down an employee when a blue card is suspended.)

## Decision-making process

All members of the risk assessment team in BCS are lawyers. The majority of other Australian states and territories use a multi-disciplinary team to assess whether there is a risk of harm to children. This approach improves decisions by using the experience and knowledge of people from a range of disciplines. This is particularly important given the wide variety of information that can form part of a WWCC assessment.

## Recommendation 42

It is recommended that the Department of Justice and Attorney-General implements a multi-disciplinary structure within the risk assessment unit in BCS so it includes people with expertise in, for example:

- administrative law
- child protection
- domestic and family violence
- mental health
- social work
- drug and alcohol abuse
- criminal law
- youth justice.

The structure should also include people with experience in working with culturally and linguistically diverse communities, and identified positions for Aboriginal and Torres Strait Islander risk assessment officers.

A number of other states and territories appoint and consult a range of experts for advice on specific cases. They support decision-makers in complex risk assessment—both at the time of the original decision and on appeal. Some advisory groups have at least one Aboriginal and Torres Strait Islander person. Advisors include experts in:

- child protection
- law enforcement
- forensic or clinical psychology
- mental illness
- drug and alcohol dependency.

Most other states and territories also have formal or informal processes for reviewing complex cases. For example, the Australian Capital Territory’s model includes referring complex cases to a review committee when needed. This committee has executive-level government officers from a cross-section of different departments. The committee can also refer matters for expert advice.

There are risks associated with this approach, including increasing cost and timeframes. However, there are also substantial benefits. A complex case review committee with representatives from relevant agencies across government will bring a range of expertise to the decision-making process and help in making decisions that are more consistent. This is because those government representatives have experience using similar risk assessment processes in their own agencies.

Only complex cases need this level of scrutiny, which should limit potential costs. The need to ensure there is thorough consideration of these cases outweighs any concerns about timeframes. BCS can identify and refer these cases to the committee as needed.

Appendix K provides an outline of the new proposed decision-making model.



### Recommendation 43

It is recommended that the Department of Justice and Attorney-General:

- appoints a multi-disciplinary panel of advisors, including an Aboriginal person and a Torres Strait Islander person, with relevant expertise to advise on complex cases and more generally
- establishes a complex case review committee to review proposed decisions and make recommendations. This should include appropriate representation to ensure the interests of Aboriginal and Torres Strait Islander peoples are heard and considered.

## Consistency

Stakeholders are concerned that decision-making is inconsistent and that applicants with similar offence histories have different outcomes.

BCS makes each WWCC decision on a case-by-case basis. This is valid, as a number of factors can change the outcome. For example, applicants with similar criminal histories may have different outcomes if one provides detailed information that mitigates a concern about risk and the other does not. However, a review of BCS files showed some inconsistent decisions.

## Case study 8—Consistency in decision-making

**CASE A:** An applicant had over 40 convictions (over 25 years) including multiple violent offences, breaches of domestic violence orders, drug offences and aggravated assault against a 16-year-old child (who was the applicant’s relative). The applicant had a five-year period of non-offending before the decision and the last offence of violence occurred 15 years prior. BCS gave a positive notice on the basis the applicant showed insight into past behaviours and triggers for those behaviours through submissions.

**CASE B:** An applicant had two offences, one of which resulted in a conviction. Of concern was an assault against a 17-year-old sibling, less than a year before the application. It was an isolated incident involving a family member of similar age. The applicant was 18 years old at the time of the offence. The applicant provided positive references, but did not provide any personal submissions to mitigate the risks identified by the recent criminal history. BCS gave a negative notice.

**Observations:** None of the offences in either case was a ‘serious offence’ so the presumption was for a positive notice.

Consistency in decisions is crucial to fairness and public confidence in the system. BCS has developed an evidence-based risk assessment guide and published a decision-making guide on its website. However, it has not reviewed these in several years.

All other states and territories have decision-making guidelines, most of which are not published. Some give a copy of the guidelines to applicants when asking for submissions.

The Australian Capital Territory must produce its guidelines as a statutory instrument. The benefit of this approach is that the guidelines are then a formal part of the decision-making model. Decision-makers must follow them at all stages of the process, including, for example, during any internal review or an appeal process. This promotes consistent, transparent and accountable decision-making.

Other options to help in making consistent decisions are:

- keeping a database of decisions and using them to guide decisions in new cases with similar facts
- having regular independent audits of decisions.

BCS does not currently use either of these options.

### Recommendation 44

It is recommended that the Department of Justice and Attorney-General:

- engages a consultant with relevant expertise to develop new risk assessment guidelines based on current research
- establishes a process for regular independent audits of risk assessment decisions and processes
- establishes a database to record decisions to support consistency and analysis of trends and statistical data.



## Recommendation 45

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to make the risk assessment guidelines a statutory instrument and subject to annual review.

### Engaging with applicants

If BCS plans to give an applicant a negative notice, it sends a letter asking the applicant to make a written submission within a certain timeframe. A review of BCS risk assessment files found that the average timeframe given for those files was 16 calendar days. BCS gives the applicant a copy of all relevant material at this time, but provides no explanation about why the negative notice is proposed.

Stakeholders are concerned that the process is difficult and the timeframes too short. The reason for the short timeframes is that people in paid employment can begin work while their application is being processed or can continue to work if they hold a blue card and their criminal history changes. The process needs to be quick to reduce the potential risks of harm to children.

Recommendation 20 in this report requires a person to have a WWCC before starting regulated activities, which will reduce the need for a risk assessment to happen with such urgency. In addition, once BCS has broader suspension powers where there is a risk of harm to children, it will have more time for a thorough assessment (see recommendation 41).

While a review of a small number of BCS risk assessment files is not conclusive, it did confirm stakeholders' concerns about some aspects of the process. The review found that the submission process is in line with the WWC Act. However, it is a written and legalistic process. The information provided to applicants needs to be clearer and easier to understand.

There is an opportunity for BCS to provide more support to applicants through the process. Data confirms that many people do not complete the process despite BCS attempting to contact them to explain what they need to do.


In 2015–16, 49 per cent of applicants did not respond to BCS when it requested a submission. Their applications were later withdrawn or BCS gave them a negative notice. Over the last five years, this happened on average in 33 per cent of cases where BCS asked the applicant to make a submission.

### Case study 9—Support for applicants during the decision-making process

One applicant's criminal history included 40 offences over 18 years. They were not serious offences or directly related to children. The applicant gave BCS a one-page handwritten submission that lacked quality and detail. The applicant's literacy was poor.

Part of the reason BCS gave the applicant a negative notice was because his submission did not satisfactorily mitigate the risks presented by his criminal history. BCS decided the applicant did not show insight into the offending behaviour.

Despite the obvious problems with the submission, BCS did not try to gather further information about the applicant's criminal history before giving the applicant a negative notice.



The review of a small number of files identified similar concerns about the way BCS manages applicant's referee reports. BCS gives applicants a fact sheet advising them that a referee should comment on the applicant's police, investigative or disciplinary information if known. BCS gives limited weight to references where referees do not make it clear that they are aware of applicants' histories. BCS does not usually follow up with applicants about their referees' reports.

The review of files identified that BCS do not give applicants enough information to enable them to respond to its concerns. While BCS gives applicants a copy of all relevant information, it does not outline the specific concerns or risk factors that have been identified.

The QCAT overturns many BCS decisions on appeal (since 2011–12, 25 per cent of the negative notices have been overturned). The file review found that one reason for this may be that applicants provide new information to the QCAT once they understand the issues they need to address.

### Case study 10—Support for applicants during the decision-making process

BCS gave an applicant a negative notice due to a conviction 20 years earlier for importation of a large amount of cannabis. The applicant spent a long time in prison.

During the QCAT compulsory conference, the applicant replied to specific questions showing insight into the offending behaviour and explained the strategies the applicant used to avoid a repeat.

As a result, BCS changed its initial decision after consideration of the more extensive information, and gave the applicant a blue card.

To improve the process, BCS could:

- provide applicants with details of the reasons for the proposed negative notice and the types of information they need to provide
- contact applicants at all stages of the process to assist them to understand it
- ask applicants for more information if they do not provide enough during the process. For example, if a submission states an applicant has had counselling to address the offending behaviour, BCS could ask for a letter from the counselling service confirming this.

BCS can only offer applicants more support if it has the resources to do so. The recommendations in this report that deal with streamlining risk assessment processes are designed to help BCS take a more client-focused approach to decision-making. However, BCS will need up-front investment to implement these recommendations.



## Recommendation 46

It is recommended that the Department of Justice and Attorney-General:

- engages a consultant with relevant expertise to review the suite of materials BCS currently uses to communicate with applicants during the risk assessment process to make them easier to understand and less legalistic
- makes sure all risk assessment staff are adequately trained in communicating with applicants
- establishes a new process for requesting submissions, including giving applicants:
  - advice about the process before sending requests for submissions
  - details of the types of information needed in submissions and referee reports
  - details of the risk factors they need to address
  - reasons for a proposed negative notice
  - enough time to make submissions and gather related information
  - ongoing support during the process, with the ability to make submissions orally.

## Reviews and appeals

If BCS gives an applicant a negative notice, it also gives reasons for that decision. The applicant then has 28 days to apply to the QCAT for a review. To apply for a review, the applicant must state the grounds for the review and provide supporting evidence about why the decision is wrong.

The QCAT will decide whether BCS made the correct decision. It assesses all relevant materials and any new evidence the applicant or BCS presents. The QCAT can confirm the negative notice, change the decision so the applicant gets a blue card, or refer the decision back to BCS. While a review is in progress, the negative notice remains in effect.

As mentioned earlier, since 2011–12, approximately 25 per cent of appeals resulted in the QCAT overturning the negative notice. BCS advise that in nearly every case, this was because applicants provided new information during the appeal.

BCS does not currently offer all applicants a right of internal review. The WWC Act allows BCS to reconsider an application if there is new information. BCS tells applicants about this option if it gives them a negative notice because of a current charge. It is unclear whether most applicants are aware of this option.

The current Administrative Review Policy<sup>34</sup> of the Department of Justice and Attorney-General states that agencies should always consider requiring applicants to apply for an internal review of an administrative decision before applying for an external review. Internal review has many benefits, including:

- it is more timely, cost-effective and informal than a court or tribunal process
- it provides the agency with the opportunity to correct a decision, if necessary
- it highlights training opportunities
- it adds an extra layer of internal oversight and improves the consistency and quality of decisions.

This report makes a number of recommendations designed to make sure WWCC decisions are based on risk of harm to children and to improve consistency in decision-making. This will assist BCS in making the right decision at the earliest opportunity.

To strengthen this, BCS should implement an internal review process. An internal merits review process generally involves a complete review of the decision by a person who is more senior than the original decision-maker, from the same agency. In combination with the other recommendations in this report, an internal merits review will make sure applicants have every available opportunity to provide all relevant information to BCS before an external review mechanism is used. It will also provide a layer of internal oversight to assist with improving the quality and consistency of decisions.

BCS must make sure this process is not complicated and that appropriate support is given to applicants.

### Recommendation 47

It is recommended that the Department of Justice and Attorney-General implements an internal review process and generally requires applicants to use it before applying to the Queensland Civil and Administrative Tribunal. This process must be designed to:

- simplify the current appeal process
- provide an opportunity to ensure that the best decision is made at the earliest available opportunity
- promote early engagement by applicants before a formal appeal process
- promote consistency of decision-making.

Stakeholders gave feedback that they find the current QCAT process for review of WWCC decisions legalistic and complex. It is worth considering if changes to the appeal process could improve the experience for applicants.

### Recommendation 48

It is recommended that the Department of Justice and Attorney-General reviews the current QCAT process to identify opportunities to provide more support to applicants.

# Capacity building and compliance

## At a glance

### Findings



- There is not enough education and capacity building
- There is no clear compliance plan or coordination of compliance effort across government
- There are no strategies to evaluate effectiveness of compliance activities
- There are reported high levels of non-compliance
- There is a function to monitor compliance, but it has no associated powers

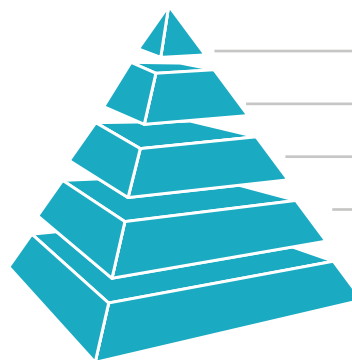
### Reforms



#### EDUCATION AND CAPACITY BUILDING

- Annual strategies for education and compliance across government
- Training resources
- Accreditation process for training providers
- A new function to educate and build capacity

#### NEW COMPLIANCE MODEL



- Prosecution
- Compliance order
- Penalty infringement notice
- Directions notice
- Capacity building and continuous improvement

Escalating compliance and enforcement model      Review of resourcing requirements

#### ENFORCEMENT

- Cross-government compliance strategy
- Evaluation framework
- Review of penalties and offences

### Impacts



#### COMMUNITY

There will be greater public confidence that laws are being enforced



#### CHILDREN

There will be improved safety for children—risks are identified and managed



#### ORGANISATIONS

There will be more support for organisations and certainty about compliance activities



#### NATIONAL CONSISTENCY

It will be consistent with the Royal Commission's recommendation for compliance powers



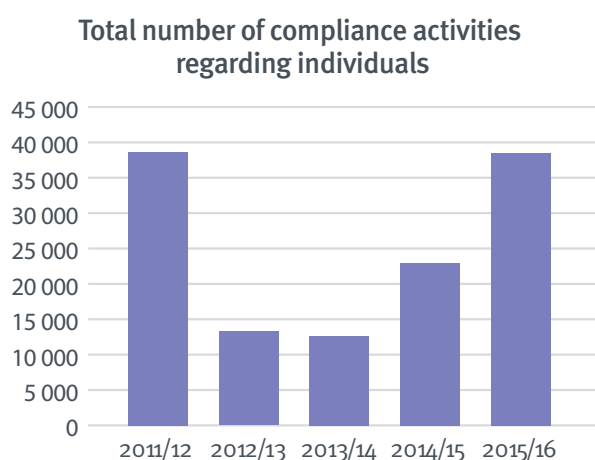
## Current position

Since 2005, one of the functions of BCS has been to audit and monitor compliance with the risk management and WWCC obligations under the WWC Act. However, BCS has no specific powers to do this.

BCS performs a range of capacity building, auditing and monitoring activities. It also undertakes community engagement, including:

- developing and providing information about the blue card system through the BCS website, videos and call centre contacts (telephone, email and written correspondence)
- going to meetings, forums and workshops.

Over the last 12 years, BCS has used a compliance model based mostly on education, capacity building and the goodwill of organisations.



**Figure 13:** Number of people for whom BCS checked WWCC status, not including action taken on complaints



**Figure 14:** Number of BCS audits of organisations and checks on people following identification of a high-risk person within an organisation

### Case study 11—Capacity building and compliance

BCS received several complaints about two people involved in child-related coaching. BCS worked with the organisation, reviewed its child and youth risk management strategy, and indicated where the policies and procedures could be improved or strengthened.

As a result, the organisation developed a new statewide training package to help make sure its staff follow the policies and show commitment to protecting the safety and wellbeing of children.

### Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission recommended statutory powers to monitor compliance with WWCC laws, including powers to obtain relevant information.

RC

## Stakeholder views

Stakeholders agree that BCS should have statutory powers to monitor compliance. However, most also noted the critical importance of education and training to build organisational capacity to comply with the system.

Some stakeholders said that, at the very least, BCS should be able to obtain information from an organisation for compliance purposes.

## Education and training

Research suggests a good compliance model has education, training and capacity building as the first approach.<sup>35</sup> Capacity building promotes a compliance culture and supports ongoing improvement.

Organisational capacity to keep staff trained to meet requirements varies greatly. It is critical that BCS helps to build organisational capacity. It is also important that BCS understands any reasons that organisations do not comply.

Chapter 6 includes recommendations to improve the support BCS provides to organisations.

However, a truly responsive compliance model does not stop at education. It uses an escalation model for enforcement that aims to prevent and, where necessary, identify and respond to breaches of the law, regulations, codes or standards.

## Compliance model

BCS does not have a current compliance and enforcement strategy. As mentioned, it also does not have any specific powers under the WWC Act.

Without powers to obtain information or documents, or enter a premises to investigate, it is difficult to gather the evidence needed to determine whether any offence has been committed.

The current compliance arrangements fall well short of other regulatory compliance models in Queensland and of WWCC compliance systems in other Australian states and territories.

Table 10 includes a number of best practice elements that are worth considering in developing a compliance model for the blue card system.

Key element	Reason
Authorised officers	<ul style="list-style-type: none"> <li>enables people to identify authorised compliance officers</li> <li>enables the regulator to authorise other officers, mainly police, to perform compliance functions.</li> </ul>
Ability to compel information	<ul style="list-style-type: none"> <li>enables the regulator to collect evidence by either written submission or interview. Also enables desktop compliance action without on-site investigations.</li> </ul>
Ability to enter a premises	<ul style="list-style-type: none"> <li>enables the regulator to collect evidence through an on-site investigation</li> <li>can be used by the regulator when a person or organisation continues to be non-compliant</li> <li>can be used by the regulator for prearranged inspections.</li> </ul>
Ability to seize documents	<ul style="list-style-type: none"> <li>enables the regulator to collect evidence during an on-site investigation, particularly when a person is not willing to supply.</li> </ul>
Ability to assess the adequacy of an organisation's or person's child safe standards	<ul style="list-style-type: none"> <li>enables capacity building and continuous improvement to reduce risks of harm to children.</li> </ul>
Powers to require a person's name and address	<ul style="list-style-type: none"> <li>enables officers to identify a person found in breach of the law as well as persons present during investigations or providing evidence.</li> </ul>
Directions notices (no direct penalty for non-compliance)	<ul style="list-style-type: none"> <li>can be used as a capacity building tool, particularly for community-based organisations</li> <li>can be a deterrent for non-compliance but also an opportunity to assess a risk and direct an organisation to rectify a situation without penalty</li> <li>may not necessarily relate to a breach of law; can relate to improving education and training, and improving inadequate policies.</li> </ul>
Compliance order (direct penalty for non-compliance)	<ul style="list-style-type: none"> <li>can be used as a capacity building tool, with stronger enforcement action for continued non-compliance</li> <li>can be used when the regulator detects a breach of the law, including non-compliance with a directions notice, providing an opportunity to rectify the situation before giving a penalty.</li> </ul>
Penalty infringement notices	<ul style="list-style-type: none"> <li>enables the regulator to give on-the-spot fines</li> <li>can be a fast and effective enforcement action for minor breaches of the law</li> <li>reduces the number of court based prosecution actions</li> <li>can be a deterrent for non-compliance.</li> </ul>
Prosecution powers for regulator officers	<ul style="list-style-type: none"> <li>enables a more responsive compliance regime</li> <li>enables the regulator to operate independently of the police and reduces the burden of prosecutions on the police.</li> </ul>

**Table 10:** Best practice compliance model elements

Other options for a compliance and enforcement model include the:

- ability to suspend a service by court order when non-compliance poses a risk of harm to children that requires immediate action
- ability to publish a register of non-compliant organisations (this is discussed further in this report at 'Accreditation of regulated organisations' and in recommendation 52).



## Recommendation 49

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce an escalating compliance and enforcement model. This should include:

- a focus on capacity building, education and training with the ability to enforce compliance as necessary
- a new function for the agency's chief executive to facilitate compliance with the WWC Act through effective and appropriate compliance and enforcement measures
- consideration of provisions to support:
  - authorised officers
  - the ability to compel provision of verbal and written information
  - the ability to enter a premises
  - the ability to seize documents
  - the ability to assess the adequacy of an organisation's or person's child safe standards
  - powers to require a person's name and address
  - directions notices, with actions to be taken (no direct penalty for non-compliance)
  - compliance orders, with actions to be taken (direct penalty for non-compliance)
  - penalty infringement notices
  - prosecution powers for the Department of Justice and Attorney-General officers
  - the ability to suspend a service by court order when non-compliance poses a risk of harm to children that requires immediate action.

Any further recommendations of the Royal Commission in relation to compliance frameworks should be considered.



## Recommendation 50

It is recommended that the Department of Justice and Attorney-General develops, publishes and implements an annual compliance and enforcement strategy and evaluates the strategy each year.

## Recommendation 51

It is recommended that the Queensland Government undertakes a review of the resourcing requirements necessary to support an enhanced compliance and enforcement function.

## Accreditation of regulated organisations

Stakeholders raised concerns about a lack of accountability in the system. Organisations complying with the WWC Act and implementing extensive child safe policies and practices want to be able to differentiate themselves from organisations not complying with the law. Suggestions included an accreditation system for organisations and either a register of accredited organisations or a register of non-compliant organisations.

Stakeholders generally supported these options, but raised concerns about:

- the regulatory burden they may place on organisations
- the potential for community members to perceive an accredited or listed organisation as being safe for children without any further investigation
- whether it is more effective to further build capacity and improve compliance with the requirements before moving to a full accreditation approach.

At this time, it is more appropriate to concentrate on developing a fully functioning compliance model and on building organisational capacity and community awareness. Potential accreditation options should be re-examined during the initial statutory review of the reforms (see recommendation 77).

Likewise, as part of the statutory review, consideration could be given to establishing a public register of organisations found to be non-compliant with the legislation.

## Recommendation 52

It is recommended that the following should be considered as part of the statutory review (see recommendation 77):

- introducing accreditation frameworks as potential ways to improve the levels of compliance across organisations
- introducing a public register of non-compliant organisations.

## Managing compliance activities

BCS has no capacity at this time to manage compliance activities electronically. As compliance activities increase, it will need efficient systems and processes to manage them.

## Recommendation 53

It is recommended that the Department of Justice and Attorney-General explores options to implement an electronic case management system for compliance activities.

## Other Queensland regulatory regimes

Many stakeholders are concerned that some organisations are already subject to compliance and monitoring under other legislative regimes, creating some duplication. Examples include the following:

- Organisations recognised as charities are subject to regulation by the Australian Charities and Not-for-Profits Commission.
- Non-state schools are subject to the Education (Accreditation of Non-State Schools) Regulation 2001.
- Education and care providers are subject to the *Education and Care Services National Law (Queensland)* .

Blue card holders and organisations have to meet a number of other regulatory obligations that intersect with the blue card system requirement to maintain child safe environments.

To avoid increasing the regulatory burden and over-regulation in certain sectors, there may be opportunity for state regulators to co-ordinate regulation efforts. For example, an authorised officer attending the premises of a licensed education and care provider could retrieve a suspended or cancelled blue card.

This could involve staff in some agencies acting as authorised officers under the WWC Act or certain parts of the WWC Act for specific purposes. It could also involve increasing information sharing in other sectors where agencies could notify BCS of potential breaches for it to investigate.

This will not cater for all sectors affected by WWCC regulation in Queensland. However, it could reduce duplication of enforcement action in many sectors.



### Recommendation 54

It is recommended that the Queensland Government considers whether authorised officers under compatible regulatory models could become authorised officers under the WWC Act for the exercise of all or some of the WWC Act enforcement powers.



### Recommendation 55

It is recommended that in developing the compliance strategy identified in recommendation 50, the Department of Justice and Attorney-General develops an annual compliance strategy for government regulatory bodies operating in child safe regulated environments. This should include processes for sharing information about compliance breaches and actions.

## Penalties and offences

There are a range of current offences and associated penalties under the WWC Act.

RC

### Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission recommended changing WWCC laws to include a consistent and simple list of offences, including:

- engaging in child-related work without holding, or having applied for, a WWCC
- engaging a person in child-related work without them holding, or having applied for, a WWCC
- providing false or misleading information in connection with a WWCC application
- applicants and/or WWCC holders failing to notify screening agencies of relevant changes in circumstances
- unauthorised disclosure of information gathered during the course of a WWCC.

Stakeholders note that the current low penalty for non-compliance with current risk management strategy requirements (20 penalty units) does not motivate organisations to comply.

They support a review of this to make sure current offences and penalties reflect the importance of child safe policies and procedures and, where possible, achieve national consistency. However, they were adamant that Queensland's safeguards should not be reduced.



### Recommendation 56

It is recommended that the Queensland Government reviews offences and penalties in the WWC Act to:

- make sure offences for non-compliance with child safe standards requirements are kept and strengthened, including increased penalties, to emphasise the critical importance of creating and maintaining child safe environments
- consider whether the remaining offences relate to one of the categories of offences recommended by the Royal Commission and if they remain necessary under the new regime. Current safeguards in Queensland should not be reduced
- create national consistency in relation to penalties where possible
- introduce new penalties to support the new compliance and enforcement model as required.

# Sharing information

## At a glance

### Findings



Current laws do not support sharing information between agencies to allow holistic risk assessments

Confusion about privacy laws contributes to a reluctance to share information

ICT systems limit timely information sharing between agencies

Queensland cannot share information with other states and territories for WWCCs

### Reforms



#### CHANGE

laws to allow information sharing for child safe standards and screening purposes

#### CONSIDER

broader changes to laws once the Royal Commission releases final recommendations

#### DEVELOP

a whole-of-government ICT information sharing strategy

#### CHANGE

laws to allow information-sharing with other states and territories for WWCCs

### Impacts



#### CHILDREN

There will be stronger safeguards through more holistic risk assessment



#### COMMUNITY

There will be greater confidence in timely and efficient information sharing between agencies



#### NATIONAL CONSISTENCY

This will support a more nationally consistent approach to information sharing



## Current position

BCS receives information from a range of government agencies as part of assessing a WWCC application. It can also notify a range of government and non-government organisations about the outcome of a WWCC.

The WWCC Act otherwise imposes strict confidentiality requirements on BCS. BCS can only share criminal history information with the person's consent or if required by law. BCS can only share information (other than criminal history) about a WWCC holder or applicant in limited cases, for example, for a purpose directly related to a child's protection or welfare.

BCS has no general power to ask other agencies for information, even when it may help in assessing a WWCC or managing risks of harm to children. BCS also has no general power to provide information to another screening agency.

### Royal Commission into Institutional Responses to Child Sexual Abuse

RC

The Royal Commission found complex, fragmented information-sharing laws cause confusion, affect the timeliness of risk assessment processes, and can be detrimental to the culture of information sharing within and between organisations.

## Stakeholder views

Almost all stakeholders agree that government agencies should be able to share information to assess and manage risks of harm to children. This includes sharing information with other states and territories as well as within the Queensland Government.

Some stakeholders spoke of confusion about the requirements of the *Information Privacy Act 2009*. They described competing priorities between releasing relevant information and potentially breaching privacy obligations.

Stakeholders support simplifying the law. Government agencies also want clarity about information sharing and the relationship with confidentiality and privacy laws as well as about their roles and responsibilities.

Stakeholders generally support sharing all relevant information with other states and territories.

One suggested:

At the very least, there should be a centralised national database to facilitate easy access to relevant information by screening agencies. This could be established with appropriate safeguards to protect people's privacy however the overriding concern must always be what is in the best interests of children.<sup>36</sup>

## Improving information-sharing laws

There are several laws that affect information sharing, including in relation to blue cards. Queensland does not have a general information-sharing power to allow agencies to share information to protect children.

The laws all contain confidentiality provisions that prevent agencies from sharing information except in certain circumstances. This means it is hard for agencies to know what information they can share, and when. This is not in the best interests of children. It is also at odds with community expectations that government will make holistic and well-informed decisions about matters that impact on the safety of children.

There are legal barriers in Queensland that prevent BCS:

- being able to access the information it needs to undertake a fully informed assessment for a WWCC and monitor compliance with child safe standards
- sharing information with other agencies to assess and manage risks of harm to children.

New South Wales has separate legislation for sharing information about children's safety, welfare or wellbeing. It allows all government departments and authorities, including the police, to work together and share any information they believe would assist in making a decision, or managing a risk, for a child (or a class of children).

Each agency can ask another for information to help with decisions, assessment or investigation processes about children's safety, welfare and wellbeing. Agencies can only refuse to help in limited cases, for example, to avoid prejudicing an investigation or endangering a person's life.

Most stakeholders support having dedicated information-sharing laws allowing all Queensland government agencies to share information for the safety and wellbeing of children.

The Royal Commission identified a range of concerns through case studies and research about complexities, barriers and limitations to information sharing.<sup>37</sup>

The Royal Commission's final recommendations are due in the second half of 2017. Once these are released, the Queensland Government should consider developing separate legislation to allow information sharing for the purpose of assessing and managing risks of harm to children. This should include considering who needs to be able to share information and for what purpose.

In the meantime, it is necessary to address the legal barriers to information sharing for the effective operation of the blue card system.

The WWC Act needs new information-sharing provisions to allow BCS and other relevant agencies to exchange information, including criminal history information, for the purposes of:

- a WWCC assessment or other screening process (see Appendix J for an outline of the relevant systems that intersect with the WWCC process)
- monitoring and enforcing compliance with child safe standards.

These provisions should include penalties for:

- misuse or unauthorised disclosure of information
- protection from liability for people who share information in good faith.

It should also be clear that these provisions generally override confidentiality provisions in other legislation. It is not appropriate for this to occur in some circumstances. For example, notifier information under the *Child Protection Act 1999* should remain protected.

The WWC Act should also make it clear that BCS can share information, other than specific assessable information, with regulated services if the information is relevant to a risk of harm to children. For example, if BCS reasonably suspects that a person with a negative notice is working in an organisation, it should be able to tell the organisation so it can take action.

Any new laws to increase information sharing must ensure that the information that is able to be shared is necessary and proportionate to the purpose for which it is being shared. It will also be necessary for agencies to have robust mechanisms in place to protect the security of the information against unauthorised access, use and disclosure.

It will be important that key stakeholders, such as the Privacy Commissioner, are consulted in developing the appropriate information-sharing framework.

### Recommendation 57

It is recommended that, once the Royal Commission releases its final recommendations, the Queensland Government considers developing separate legislation to allow information sharing for the purpose of assessing and managing risks of harm to the safety, welfare or wellbeing of children.

### Recommendation 58

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce new information-sharing provisions to allow BCS and other relevant agencies to exchange information for the purposes of:

- completing a WWCC assessment or other screening process
- monitoring and enforcing compliance with child safe standards.

Key features should include:

- allowing agencies to share information for specific purposes
- penalties for misuse of information or unauthorised disclosure
- protection from liability for individuals where information has been shared in good faith.

## Information-sharing guidelines and governance

The Royal Commission found evidence that information sharing has improved since separate legislation was introduced in New South Wales allowing the sharing of information about children's safety, welfare or wellbeing.<sup>38</sup> However, it also found that people can still be reluctant to share information if there is not enough guidance about when and how they can share it.<sup>39</sup>

Agencies need practical guidance about the current range of different laws and their intersection with privacy principles, confidentiality and natural justice requirements. This includes guidelines and training about the recommended new information-sharing provisions in the WWC Act—to achieve the cultural change needed to support the sharing of information. Fears about sharing information cannot override the need to safeguard and promote the welfare of children.<sup>40</sup>

### Recommendation 59

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to require BCS to develop information-sharing guidelines.



## Recommendation 60

It is recommended that the Department of Justice and Attorney-General works with other relevant agencies to develop guidelines to provide:

- practical guidance about the new information-sharing provisions
- a change management strategy to achieve the necessary cultural change.

## Automating information sharing

Government agencies' various information and communication technology (ICT) capability also limits timely and efficient information sharing. Stakeholders reported that:

- officers have to retype information rather than transfer it from one system to another
- databases cannot extract information easily
- systems require manual handling of confidential information, without any scope for electronic transfer.

As agencies with responsibility for the safety, welfare or wellbeing of children update their ICT systems, they need to consider compatibility with other systems across government. This is to make sure they can transfer data efficiently in the future. Systems also need safeguards so agencies can share information securely under the information-sharing provisions.



## Recommendation 61

It is recommended that the Department of Justice and Attorney-General works with relevant agencies to develop an information and communication technology strategy to identify the technical solutions needed to automate information sharing. This is to maximise efficiencies and minimise the risk that agencies cannot share information quickly and easily.

## Information sharing across Australia

BCS cannot currently share information with WWCC operators in other Australian states and territories.

The Royal Commission found there is support for a nationally consistent approach to WWCCs, including a central database of WWCC outcomes to facilitate information sharing between states and territories.<sup>41</sup>



## Recommendation 62

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow BCS to share risk assessment information with screening agencies in other states and territories and work with other state and territory screening agencies to identify ways to automate data matching and information exchange.

# Chapter 5

## Streamlining working with children checks

### Timeframes

#### At a glance

#### Findings



Manual and paper-based processes extend application timeframes

There are limited online services for applicants

The current identity check process needs strengthening

#### Reforms



##### IMPLEMENT

an online application process

##### IMPLEMENT

an online service function

##### STRENGTHEN

the identity check

#### Impacts



##### APPLICANTS

There will be faster processing times and better client experience



##### CHILDREN

There will be stronger safeguards through better quality identity checks



##### COMMUNITY

There will be improved public confidence in the efficiency of the system

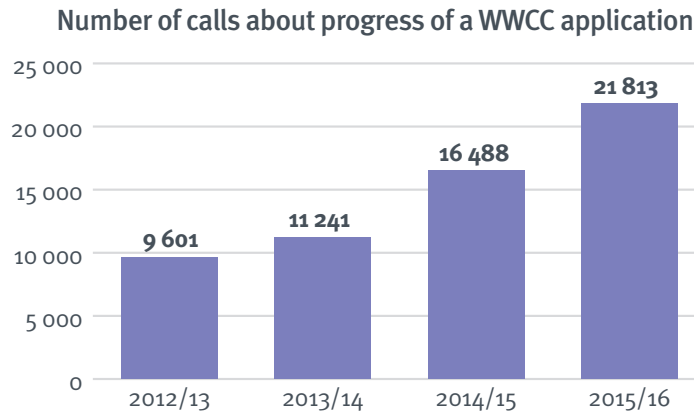


##### NATIONAL CONSISTENCY

There will be consistency with the Royal Commission's recommendation for faster processing times

## Current position

The most common concern stakeholders raised with the Queensland Family and Child Commission (QFCC) during this review was about delays in the application process. Delays in the process increase risks to children, as paid employees are already working with children while waiting for their working with children check (WWCC) to be completed. It also means people contact Blue Card Services (BCS) to follow up on their WWCC progress.



**Figure 15:**  
Number of calls made by individuals and organisations to BCS to enquire about the progress of a WWCC application.

On average over the last four years, people made 14 786 calls per year (17 per cent of all calls) to BCS to enquire about the progress of WWCC applications. In the same period, complaints about timeliness of processing applications ranged between 11 per cent and 35 per cent of all complaints.

RC

### Royal Commission into Institutional Responses to Child Sexual Abuse

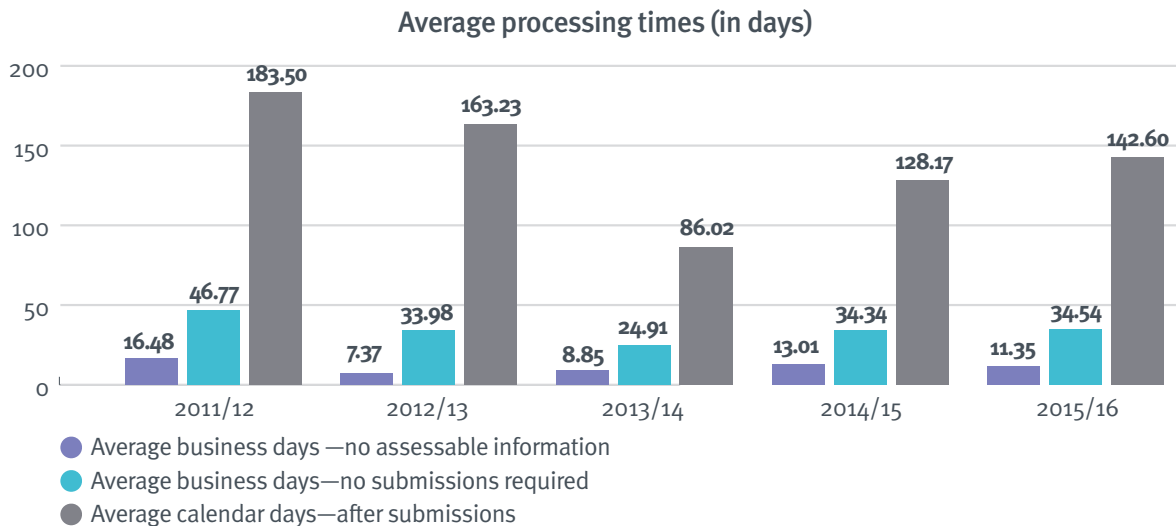
The Royal Commission recommended streamlining WWCCs systems nationally. This includes:

- having online WWCC processing systems
- reducing processing times to five business days for people without assessable information, and no longer than 21 business days for more complex applications.

The average processing times over the last five years in Queensland were:

- 11 business days for applicants with no police information
- 35 business days for applicants with less complex police information
- 141 business days for applicants with complex police information.

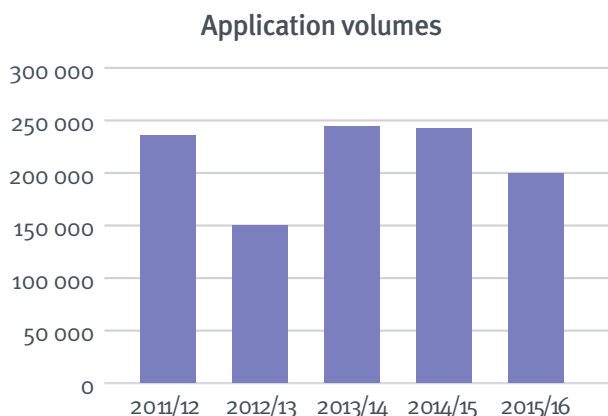
The average processing times for each of the past five years for a WWCC application are outlined in Figure 16.



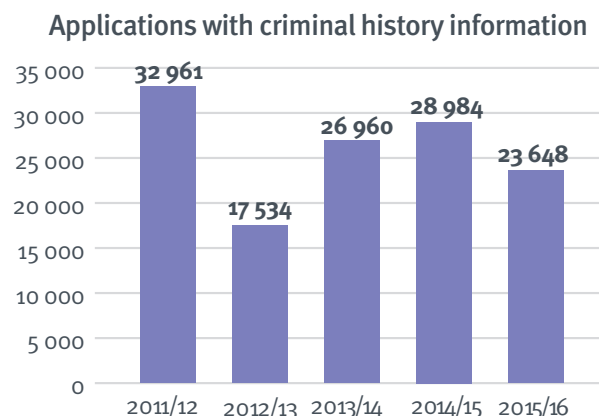
**Figure 16:**  
Average processing times for WWCC applications since 2011–12.

Processing time for applicants with assessable information is affected by the need to gather information from other sources to inform the decision and the need to provide natural justice to an applicant if BCS is proposing to issue a negative notice.

The average number of applications received in Queensland over the last five years was 214 338 per year. Application volumes for this period are outlined in Figures 17 and 18:



**Figure 17:**  
Application volumes since 2011–12.



**Figure 18:**  
Volumes of files requiring risk assessment since 2011–12.

The processing times in other states and territories are much shorter:

- Western Australia—average processing time in 2015–16 was five days where there was no assessable information
- New South Wales—80 per cent of applications with no assessable information are processed within one day.

The application volumes in Western Australia are significantly lower (an average of 117 744 applications over the last two years). The application volumes in New South Wales are higher (an approximate average of 360 000 applications over the last two years).

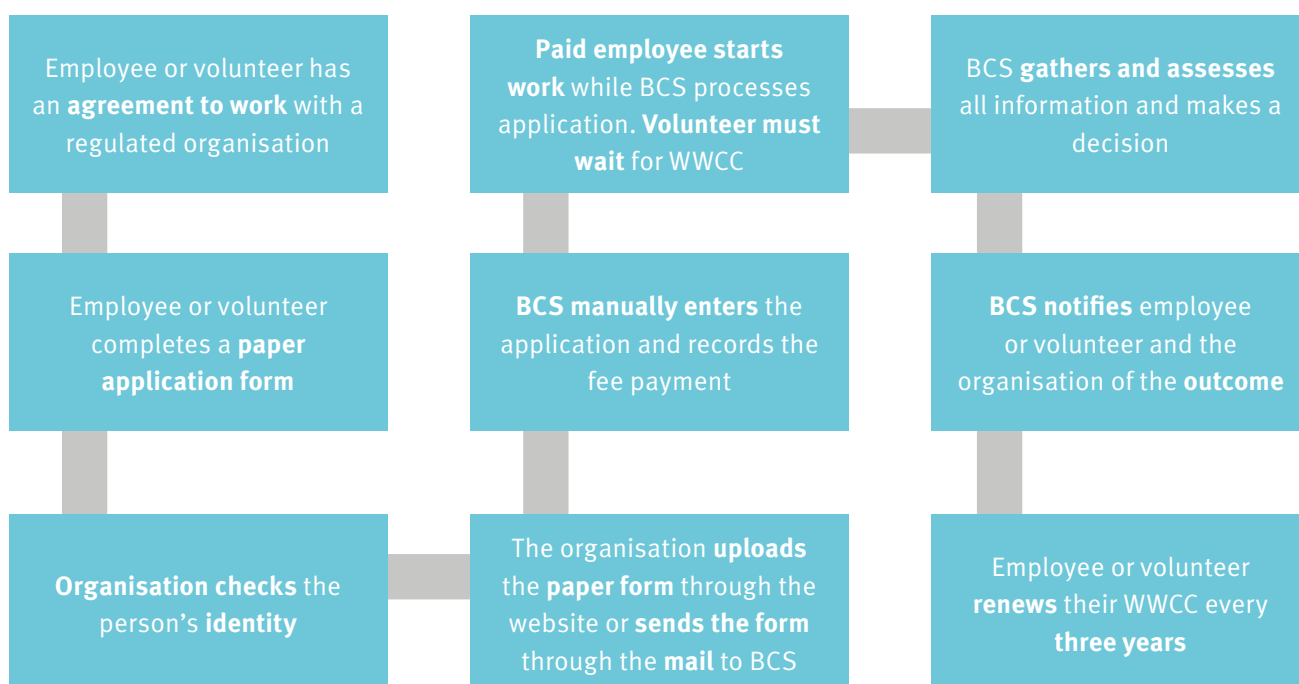
All states and territories advise that when they need to do a detailed risk assessment, the timeframe may be much longer. For example, in Western Australia for applications with a criminal history:

- the average time to finalise an application in 2015–16 was 19 calendar days
- 90 per cent are finalised in 30 days, 98 per cent are finalised in 90 days and one per cent take six months or more.

Processing times for WWCC applications and risk assessment need to be shortened. There are significant opportunities to streamline processes during the application process and risk assessment stage.

## Application process

### Current position

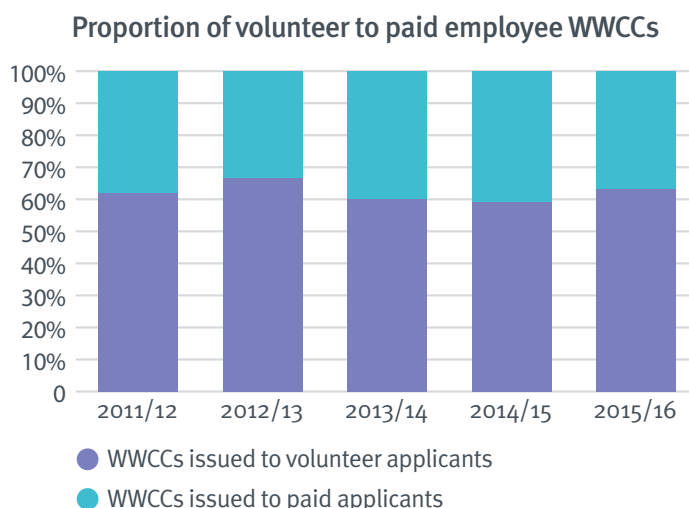


**Diagram 2:** Current application process

The processes are mainly manual and paper-based. All other Australian states and territories have some component of the application process online, such as the initial application or renewal application.

Paid employees pay a fee with their application. The same fee applies for eligibility declarations (the process a disqualified person undertakes to be able to apply for a WWCC) and renewals. Volunteers do not pay a fee. BCS processes a higher proportion of volunteer applications than paid applications, as shown in Figure 19:





**Figure 19:**  
Proportion of WWCCs issued to volunteers compared to paid employees since 2011–12.

In 2013, the Queensland Child Protection Commission of Inquiry found that the blue card system needed streamlining and automating.

As a result of a machinery of government change, BCS was moved to the Public Safety Business Agency on 1 July 2014. In 2016, the Public Safety Business Agency commissioned a review of BCS. That review confirmed that application and renewal processes were still paper-based with resource intensive manual processing. The review highlighted a range of opportunities to modernise work practices and streamline processes. Work was undertaken to identify options for streamlining the system, including implementing an online application process and developing an organisation portal.

From 1 October 2016, the Department of Justice and Attorney-General (DJAG) became responsible for BCS and the administration of the blue card system. It is now considering streamlining opportunities.

## Stakeholder views

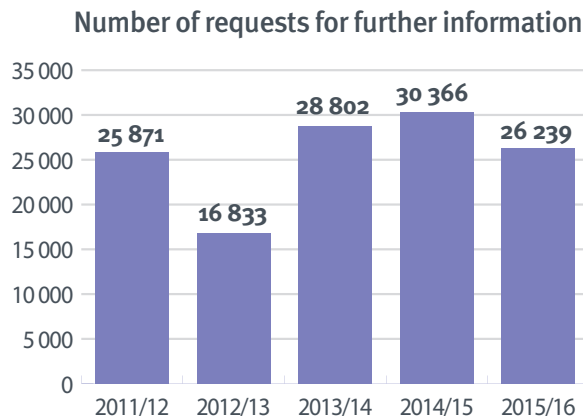
Stakeholders raised concerns about difficulties they have with WWCC applications. They support moving to an online application process, although many said BCS needs to keep some paper-based applications for people with limited access to technology or limited ability with it.

## Application forms and online services

Many stakeholders said the current form is hard to follow and complete correctly and that BCS returns the forms for any error, no matter how simple. These returns increase costs, contribute to delays and result in people dropping out of the process.

BCS only prints the application forms in English. They are not always suitable for Aboriginal and Torres Strait Islander peoples or for people who are from culturally and linguistically diverse communities.

On average over the last five years, BCS requested further information for 25 622 applications per year. The average cost to process these requests was \$273 388 each year.



**Figure 20:**  
Number of times BCS requested further information from applicants.

Over the last five years, when BCS asked applicants to give more information, approximately 27 per cent did not respond. BCS withdrew their applications because of this.

An online application form will speed up the process and reduce costs. However, as mentioned earlier, BCS will need to keep a manual application form for people who cannot or do not wish to lodge their application online. BCS must consult with stakeholders to develop new paper-based application forms to make sure they are user-friendly and address the concerns they have with the current forms.

As well as having access to an online application process, people should be able to conduct all transactions with BCS through an easy to use online service. This will streamline and simplify the blue card system by:

- significantly reducing the resources needed to manually process WWCC transactions and request further information from applicants
- reducing the risk of errors from manual data entry
- improving processing timeframes
- improving the client experience and reducing the need to respond to progress enquiries.



### Recommendation 63

It is recommended that the Department of Justice and Attorney-General urgently develops and implements:

- an efficient online application process
- a new manual application form to be used as an exception. In doing so, it should consult stakeholders to make sure the new forms are user-friendly.

## Recommendation 64



It is recommended that the Department of Justice and Attorney-General develops and implements an integrated online service for WWCC applicants, including, at a minimum, the ability to:

- submit a WWCC renewal
- update an applicant's or a card holder's details (for example, name and contact details)
- transfer from a volunteer blue card to a paid blue card
- replace or cancel a blue card
- pay card-related costs
- link or unlink an individual with different regulated organisations
- view the progress of a pending application
- obtain reminders, notifications or communications from BCS (for example, upcoming card expiry dates) in many ways (including email or text message)
- provide customer experience feedback directly to BCS
- view history of linked organisations, including the current and actively linked organisations.

## Identity check

Currently, an applicant's employing organisation is responsible for checking their identification documents and signature, which BCS then prints on their blue card. There are other processes if a person cannot meet the normal identification requirements.<sup>42</sup>

Stakeholders support a different identity check process to reduce the administrative burden on organisations.

BCS has not assessed the current identity check process against the mandatory Queensland Government Authentication Framework. There are opportunities to strengthen the current identification process. It is essential that the identity check is robust so that BCS can collect and assess the right information about applicants.

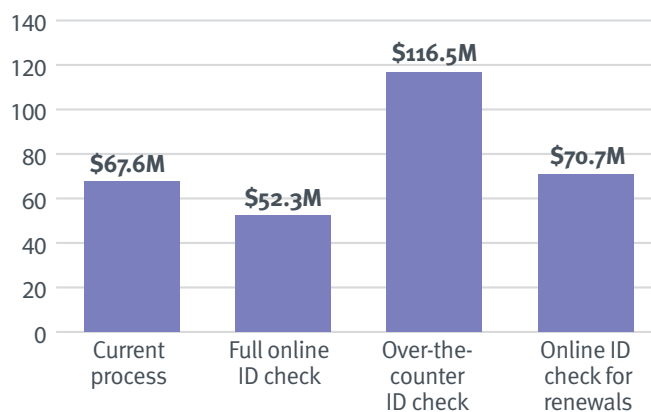
BCS should consider using an online identity check process to achieve maximum streamlining of the process. For example, an arrangement with the Department of Transport and Main Roads could allow an applicant to rely on the over-the-counter identity check already undertaken for their driver licence by establishing they are the same person through an online verification process. BCS could then use their licence photo on their WWCC to minimise risk of fraudulent activity.

There are other possibilities. Australia Post has recently released its Digital Identity Solution, which allows people to create a fully online and verified digital identity. This system uses identity check services such as the Commonwealth Attorney-General's Document Verification Service. It will also link with the GovPass digital identity project (currently in development), which aims to simplify the process of checking a person's identity when engaging in online government services.

Another option to strengthen the identity check is to require an applicant for a WWCC to attend at a physical location to undertake a new over-the-counter identity check. (This is different to the Department of Transport and Main Roads example where an applicant would utilise a prior over the-counter identity check and verify they are the same person.)

There are different costs for each type of identity check used. Figure 21 compares some of these options.

Cost of system with different identity checks (3-year renewal period)



**Figure 21:**

Estimated costs of running the blue card system over 15 years with the implementation of different identity checks for applicants.

*Note: These are the approximate costs of BCS working with the Department of Transport and Main Roads for an online or over-the-counter check. This is not the only option available but is one example of the cost implications.*

It is cheaper and faster to use an online identity check as part of a fully automated and online application system. However, online identity checks must comply with the Queensland Government Authentication Framework, which sets out the minimum requirements.

Consideration will need to be given to how any new identity check process may impact on Aboriginal and Torres Strait Islander applicants, and specific strategies must be put in place to minimise adverse impacts on participation in the system.



### Recommendation 65

It is recommended that the Department of Justice and Attorney-General undertakes a full risk assessment against the Queensland Government Authentication Framework to determine the best way to check identities. This must strengthen the identity check process and, as far as possible, support a fully online application process.

# Risk assessment

## At a glance

### Findings



- Risk assessment processes are not automated—this extends timeframes
- There is no electronic case management system for managing files
- Information exchange needs to improve

### Reforms



- DEVELOP**  
capacity to electronically receive criminal history data from the QPS in an integrated way
- ESTABLISH**  
ways to automate requests for information and manage responses
- MANAGE**  
all risk assessment files electronically and automate less complex risk assessments

### Impacts



#### CHILDREN

This will improve safeguards for children by assessing risks more quickly



#### COMMUNITY

There will be increased public confidence in the efficiency of the system.



#### COSTS

Electronic information management will reduce administration costs



#### NATIONAL CONSISTENCY

There will be national consistency in processing times

## Current position

BCS assesses each new application and decides whether to give a blue card or a negative notice. An assessment involves gathering more information about the applicant and managing the file to assess the information and decide the outcome.

## Information gathering

Once BCS has entered new applications into its database, it starts to gather extra information to assess whether a blue card can be issued. This includes a range of police and disciplinary information.

The Queensland Police Service (QPS) has recently undertaken a review to identify issues and opportunities for improvements to criminal history screening and monitoring processes. Work has begun to improve the timeframes for the return of clear results.

### Current process:

BCS sends applicants' information to the QPS Police Information Centre (PIC) every 24 hours for a national criminal history check on each applicant. The PIC then sends this information to the Australian Crime and Intelligence Commission (ACIC) to identify people who may have criminal histories in other Australian states and territories. Following the ACIC check, PIC conducts another check to identify any recent offences that have occurred in Queensland before providing final advice to BCS.

If an applicant's details do not match any records in the ACIC database, it sends a clear result back to the PIC. The PIC then sends this result back to BCS. Seventy percent of these checks are returned within 24 hours. Currently, 85 per cent of all checks that BCS requests return a clear result. In other words, most applicants do not have a criminal history in Queensland or anywhere in Australia. These clear results are provided electronically in a format that integrates with the BCS database and allows these files to be managed with minimal intervention.

For people with a potential criminal history match, the PIC assesses and confirms the potential match and then confirms it is accurate. It also checks whether it can legally release the person's criminal history to BCS. In complex cases, it can take the PIC up to 28 days to complete a matched criminal history information release to BCS. These delays generally occur when archived history needs to be requested from interstate police.

While criminal history screening and monitoring is electronic, until recently the QPS has sent criminal information to BCS in hard copy. The QPS has recently initiated electronic information sharing with BCS, but it is not currently possible to integrate this with the BCS database. This means files are not managed electronically and BCS still has to enter the information manually into its database.

The integration of criminal history information within the BCS database is important in reducing timeframes for the WWCC application process.

Currently, New South Wales and Victoria go straight to the ACIC rather than using their state police service for criminal history checks. This means these states can give some applicants a WWCC within two hours of their lodgement of the application (if they do not have a criminal history). This option could be explored but it would be necessary to consider how daily monitoring could continue to occur.

As a priority, BCS and the QPS need to work together to identify the most cost-efficient way to integrate electronic criminal history information into the BCS database. The services the ACIC offers directly should be considered. Any impacts on current monitoring functions must be thoroughly investigated, because this is a critical function that must continue.

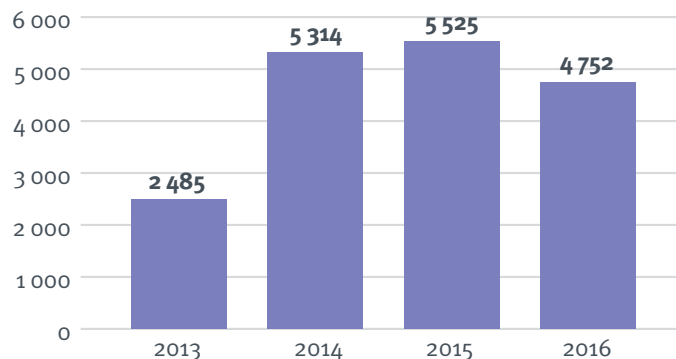
There is scope for a whole-of-government approach to criminal history information exchange. The QPS also provides criminal history information to other agencies. Given the likely significant investment needed to achieve the relevant functionality between BCS and the QPS, there is value in looking at the arrangements more broadly than just WWCCs.

Risk assessment officers currently manually review criminal histories to decide whether they need more information (second tier information) about any offences. This second tier information can include:

- QP9 court briefs and court briefs from other states and territories
- records from the Director of Public Prosecutions
- sentencing remarks
- child protection information.

Most information requests and returns are manual processes, usually by mail, fax or email (although a few sources have electronic access to information). This is a huge administrative burden. For example, BCS can request second tier information from the QPS, such as information about why a charge did not proceed (no evidence to offer (NETO) briefs) and QP9s. The QPS processes these requests manually and advises that the processing timeframe is approximately two weeks. Those marked urgent are processed within one to two business days.

**Number of cases where BCS received second tier information from the QPS**



**Figure 22:**  
Number of cases in which second tier information (for example, NETO and QP9 court briefs) was provided to BCS since 2013.

As the QP9 court brief (the document prepared by the QPS for the court, including a summary of the offence) has the most commonly required information, it is particularly important that BCS can request and receive it electronically.

Electronic triage and sorting of criminal history data to identify where further information is needed would reduce administrative inefficiencies. It would also be beneficial to be able to request and receive further information electronically.



## Recommendation 66

It is recommended that the Department of Justice and Attorney-General works with the QPS to:

- provide advice to the Queensland Government about the most efficient way to achieve electronic returns of police information that can be integrated into the BCS database. This should include advice about:
  - the services the Australian Criminal Investigation Commission (ACIC) currently provides
  - the timeframes for implementation
  - any implications for the role of the QPS in providing criminal history screening services across government.
- establish the automated exchange of other police information, including QP9 court briefs.

In addition to the cost and effort needed for manual requests for information, the review of risk assessment files found delays in information sharing between agencies. This included the provision of disciplinary information from the Department of Communities, Child Safety and Disability Services (DCCSDS) to BCS. The DCCSDS advises that the processes to share information with BCS were reviewed in 2011. New systems and processes have been implemented since then to assist with timely information sharing with BCS.

Since 2013, the DCCSDS has also implemented a monthly proactive reporting process, and information is provided by email. This is a significant improvement on the previous process. However, there is still no continuous sharing of DCCSDS information regarding possible risks to children. For example, a person could continue to provide services to children for up to one month following disciplinary action by the DCCSDS before information is shared with BCS.

The QFCC also reviewed a very small number of cases where the Queensland College of Teachers (QCT) was required to share information with BCS about disciplinary information for teachers. This review indicated that there were short delays in the provision of information in a number of cases.

Currently, the QPS shares information with BCS on a daily basis. This continuous sharing of information should be standard across all government agencies who share information with BCS. Information-sharing processes between government agencies need to be streamlined and automated to make sure BCS has all the relevant information to assess the risks individuals may pose to children in regulated service environments.



## Recommendation 67

It is recommended that the Department of Justice and Attorney-General works with all relevant agencies to automate and streamline information sharing to support the WWCC process.

## File management and delays

BCS stores some information used in the risk assessment process in each applicant's physical file and some on an electronic database. The QFCC's review of the files found issues with the current approach to file management. The files do not follow standard record-keeping practices.



BCS creates physical files for all risk assessments, regardless of the complexity of the assessment. This has cost and resourcing implications. The processing of criminal histories in an electronic and integrated way will provide an opportunity for BCS to manage less complex risk assessments electronically. A number of Australian states and territories already use this approach successfully.

The review of BCS's risk assessment files also identified unnecessary delays in decision-making.

## Case studies—Delays in decision-making

### Case study 12:

BCS gave an applicant a blue card in May 2011 because the applicant had no assessable information.

In October 2011, the QPS advised BCS that the person's criminal history had changed. Police had charged the person with a breach of domestic violence order offence. The person pleaded guilty to the charge, which was finalised in court in November 2011.

In December 2011, BCS asked the QPS for additional information about the person's conviction. BCS received this information two days later. There was nothing in the material to show the offence involved children.

In June 2012, BCS decided to let the applicant keep the blue card. This decision took six months.

### Case study 13:

BCS gave an applicant a blue card in May 2011 because the applicant had no assessable information.

In December 2011, the QPS advised BCS that the person's criminal history had changed. Police had charged the person with four drug-related offences. The person pleaded guilty to the charges, which were finalised in court in December 2011.

In February 2012, BCS asked the QPS for additional information about the person's conviction. BCS received this information two days later. There was nothing in the material to show the offence involved children.

In June 2012, BCS decided to let the applicant keep the blue card. This decision took four months.

**Observations:** In both cases, the reason for the delays was unclear from the files. BCS did not ask the applicants or other agencies for more information before making the decisions.

The current manual processes for information gathering, risk assessment and file management in such a high-volume environment contribute to delays.

## Recommendation 68

It is recommended that the Department of Justice and Attorney-General reviews the risk assessment process to identify and implement ways to:

- automate the process for less complex risk assessments
- manage all risk assessment files electronically.

# Working with children check—the product

## At a glance

### Findings



A photograph will strengthen identity check processes

There are benefits in considering a digital blue card

There are potential benefits to extending the renewal period

### Reforms



#### INCLUDE

a photograph on the blue card

#### DEVELOP

solutions for digital blue cards in the future

#### CHANGE

the law to extend the renewal period once daily interstate criminal history monitoring is possible

### Impacts



#### CHILDREN

There will be stronger safeguards for children by minimising the fraudulent use of blue cards



#### COMMUNITY

A photo meets community expectations



#### APPLICANTS

There will be less frequent renewal applications once daily interstate monitoring is achieved



#### NATIONAL CONSISTENCY

There will be consistency with the Royal Commission's recommendations for renewal periods

## Current position

When BCS approves an application, it sends the applicant a positive notice letter and a plastic blue card. The card includes the blue card number, expiry date, the applicant's identifying details and signature but does not include a photograph of the WWCC holder.

If BCS refuses an application, it sends the applicant a negative notice letter in the mail.

## Photographs

Some of the options to strengthen the identity check include having a photograph on the card for security. The photograph may form part of the online identity checking process.

Stakeholders largely support including a photograph on the blue card as long as it does not cause delays in the process.

The QFCC agrees that blue cards should have photographs as long as they do not substantially increase costs or processing times. This will reduce the chance of a person fraudulently using another person's blue card.

## Replacement of physical card

Stakeholders also support replacing the physical card in the future with an online register or 'digital licence'.

There are benefits to having a digital licence rather than a plastic card. It would allow simple and fast issue of outcomes to eligible people and later cancellation, if needed. It would remove delays and costs associated with processing, printing and posting a physical card. It also provides an opportunity to increase security and minimise fraud through the use of biometric technology.

However, stakeholders advise that many processes within their organisations still need a physical card, and the culture of having a physical blue card is still important to the wider community. If BCS introduces a digital card in the future, it will be important to manage the change for stakeholders.

### Recommendation 69

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to:

- remove the positive notice letter as an outcome of a WWCC application
- include a photograph on the WWCC product.

Any solutions developed should enable the:

- ability to issue a digital rather than a physical card at a point in the future
- use of biometric technology as it continues to develop.

## Product renewal

### Current position

Applicants must renew their WWCC every three years to continue in child-related work or activities. BCS processes renewal applications in the same way as new applications.

Renewal periods in other jurisdictions vary from two years in the Northern Territory to five years in New South Wales and Victoria.

RC

### Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission recommended increasing the renewal period to five years.

### Stakeholder views

Stakeholders do not agree on whether to extend the renewal period. Those who do not support the recommendation are concerned that BCS can currently monitor changes on a daily basis only with regard to Queensland criminal history. Changes in interstate history are only identified at the time of renewal.

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For example, one stakeholder advised:

There is an administrative benefit for regulated organisations by extending the renewal period, by virtue of decreased renewal applications. The clear risk is the monitoring of a blue card-holder over a greater period if this continues to be limited to changes in Queensland criminal history only. For the renewal period to be extended, more comprehensive monitoring of changes in criminal history would be required, including monitoring at a national level.<sup>43</sup>

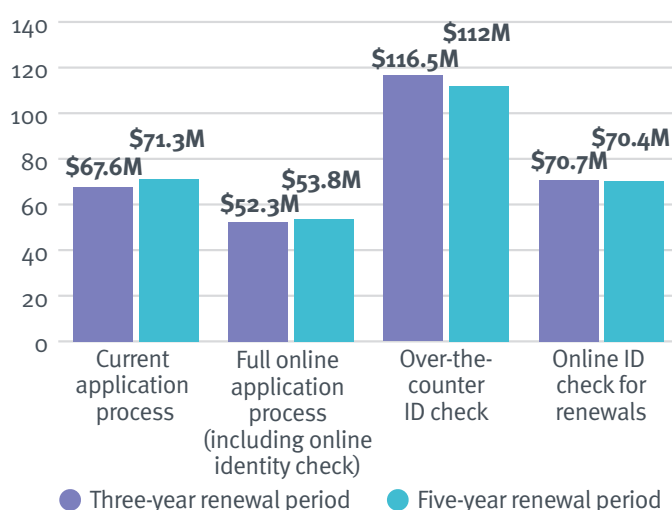
A number of stakeholders think it is unnecessary to have to make a fresh application every three years and provide proof of identity again, given that BCS checked it with the original application.

### Renewal period

There are obvious benefits to extending the renewal period. For example, people would no longer have to re-apply every three years. Financial modelling shows that once BCS streamlines the system, changing the renewal period would have minimal impact on operating costs.



Cost of the system with different renewal periods



**Figure 23:** Estimated cost of operating the blue card system over 15 years with three-year and five-year renewal periods.

Moving to a five-year renewal period produces no significant savings in operating the system because it reduces revenue from paid applications. However, a five-year renewal period may result in lower costs to operate the system if an adjusted fee structure is considered.

Applicants who do not need a WWCC for the full five years will be worse off if they have to pay a higher fee. One option is to allow applicants to nominate their renewal period, for example, two, three or five years, with different fee rates. This is similar to how the driver licence system works.

While extending the renewal period to five years has benefits, there are also risks. No state or territory monitors interstate changes in criminal history in between renewal periods.

BCS has identified nine cases in the last five financial years where police charged a blue card holder with a serious offence in another state or territory. BCS did not know of these charges until the person renewed their WWCC, at which point it carried out a full national criminal history check. In all nine cases, BCS suspended or cancelled the person's WWCC.

### Case study 14—Changes in interstate criminal history

BCS gave an applicant a blue card because the applicant had no criminal or disciplinary information. While the applicant's blue card was still current, police in another state charged the person with a child-related sexual offence.

BCS only became aware of the change in interstate police information when the person applied to renew their blue card. BCS immediately suspended the applicant's blue card, which stopped them from working with children.

## Case study 15—Changes in interstate criminal history

BCS gave an applicant a blue card because the applicant had no criminal or disciplinary information. A new national police check during the renewal process showed that police in another state had charged the applicant with an adult-related sexual offence.

Following re-assessment, BCS gave the applicant a negative notice.

RC

## Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission recommended the Australian Government enhance the ability of the Australian Criminal and Intelligence Commission (ACIC) to continuously monitor interstate criminal histories.

Once a national monitoring system for changes in criminal history is operational as a safeguard for children, it will be reasonable to extend the renewal period for WWCCs to five years and consider a revised fee structure.



## Recommendation 70

It is recommended that, once daily national interstate monitoring of criminal history is operational, the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to extend the WWCC renewal period to five years. Consideration should be given to the appropriate fee structures to support a change in the renewal period and the potential to offer applicants a choice in the renewal time period.

# Chapter 6

## Improving support and maintaining public confidence

### Supporting organisations and communities

#### At a glance

#### Findings

Organisations lack support to manage their obligations

There is no targeted community education and support for culturally and linguistically diverse communities



#### Reforms

##### DEVELOP

an organisational portal that supports organisations in managing their obligations

##### PROVIDE

targeted education to culturally and linguistically diverse communities



#### Impacts



##### CHILDREN

There will be stronger safeguards as organisations can spend more time focused on child safe standards



##### ORGANISATIONS

Supported organisations can manage their obligations more efficiently



##### COMMUNITY

There will be improved participation by culturally and linguistically diverse communities

## Current position

Regulated organisations need assistance to become child safe and to comply with working with children check (WWCC) obligations. They are responsible for checking that new employees and volunteers have a valid WWCC or exemption card. They must also notify Blue Card Services (BCS) of each new person's employment with them. They must keep a written record or register of the details of all WWCCs and of people who are exempt.

Organisations must also notify BCS about a range of issues, for example, when an employee or volunteer with a blue card:

- leaves the organisation
- advises the organisation of a change in police or disciplinary information.

BCS provides advice to organisations about the WWCC status of people linked to their organisation.

## Stakeholder views

Stakeholders called for an automated system and said that having an online organisation portal to assist them in managing their obligations would:

- strengthen safeguards for children by providing organisations with up-to-date information
- simplify the regulatory burden on organisations by assisting them to meet their obligations.

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One stakeholder advised:

[We have] on several occasions requested a list of the Blue Card holders associated with our organisation, but have been told that Blue Card Services are unable to provide this report. Reports of this nature would assist organisations to ensure that the necessary paperwork is submitted for people who have resigned or ceased their association.<sup>44</sup>

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Stakeholders want to spend more time concentrating on making sure their organisations are child safe, and less time managing paperwork.

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For example, one stakeholder suggested:

Regulated organisations should have an interface with this system through secure access. This approach would potentially remove the administrative demand of maintaining complex blue card 'registers', and organisations could link/unlink blue card holders in a more streamlined manner.<sup>45</sup>

## Organisation portal

Currently, the blue card system does not help organisations to manage their obligations in an automated way. Communication between regulated organisations and BCS is generally manual and letter-based. There is no online portal or system.

An online organisation portal would support regulated organisations in managing their obligations.





## Recommendation 71

It is recommended that the Department of Justice and Attorney-General develops an organisation portal with the following minimum functions:

- card holder management, including allowing an organisation to:
  - maintain an up-to-date register of blue card holders and their expiry dates
  - validate, link and unlink a blue card holder or pending applicant (using a mobile or tablet device)
  - view the status of a person’s application that is linked to their organisation
  - update organisation-specific details (such as name, address, contact details and delegated portal management users)
- notification management, including:
  - providing notifications from BCS to organisations when a linked card holder has a change in status
  - allowing organisations to acknowledge receipt of notifications
  - recording the metadata of notifications for audit purposes
  - allowing organisations to receive notifications to channels outside of the online service (such as a mobile telephone or email address)
  - allowing organisations to report a change in disciplinary or police information for card holders or pending applicants linked to their organisation
- compliance management, including allowing organisations to upload documents about their child safe standards on request.

## Supporting culturally and linguistically diverse communities

People from culturally and linguistically diverse communities may require extra support to participate in the WWCC process. BCS does not help these applicants enough to understand and progress through the system. For example, while it provides translating and interpreting services when requested, it does not produce resources in languages other than English. It also does not have a focus on educating the culturally and linguistically diverse community about the blue card system.



## Recommendation 72

It is recommended that the Department of Justice and Attorney-General supports culturally and linguistically diverse communities by:

- promoting and advising applicants of the availability of interpreting services
- providing resources on the BCS website that are translated into multiple languages
- developing and undertaking targeted education about the blue card system in culturally and linguistically diverse communities.

# Supporting Aboriginal and Torres Strait Islander applicants and communities

## At a glance

### Findings



There are no culturally appropriate community education strategies

There is a lack of culturally appropriate information and resources

Insufficient support contributes to high rates of withdrawal from the WWCC process

There is a need to build cultural capability

### Reforms



#### DEVELOP

specific strategies for community education and support

#### ESTABLISH

a culturally competent reference group to co-design a strategy and action plan to improve support for Aboriginal and Torres Strait Islander peoples

#### ESTABLISH

community-based support to assist with the WWCC process

#### DEVELOP

guidelines to embed appropriate consideration of culture in decision-making

#### BUILD

cultural capability, including identified positions, tools and guidelines and training

#### ESTABLISH

culturally appropriate information and resources

### Impacts



#### CHILDREN

There will be better outcomes for children through greater participation by Aboriginal and Torres Strait Islander peoples in the system



#### APPLICANTS

There will be less barriers to employment and kinship care arrangements



#### COMMUNITY

There will be better understanding of the WWCC process

## Current position

Currently, BCS has a number of strategies to support Aboriginal and Torres Strait Islander peoples. However, feedback from stakeholders strongly indicates that this does not go far enough, particularly for Aboriginal and Torres Strait Islander peoples living in remote communities.

## Stakeholder views

There was also strong feedback through the review that the operation of the blue card system has an adverse impact on Aboriginal and Torres Strait Islander peoples. In particular, there are concerns that:

- the system is a significant barrier to employment and kinship care arrangements for Aboriginal and Torres Strait Islander peoples
- there is limited support in, and engagement with, communities to assist across every stage of the WWCC process
- negative outcomes are based on old, irrelevant offences and not on a risk of harm to children
- current BCS 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.

Some stakeholders identified the need to consider the ability to issue conditional cards to Aboriginal and Torres Strait Islander peoples to address some of the barriers to obtaining a blue card.

However, other stakeholders advocated that the safety of children must be the primary consideration and there should not be different levels of protection.

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A peak stakeholder representing the rights, safety and wellbeing of Aboriginal and Torres Strait Islander children, young people and their families stated:

The Aboriginal and Torres Strait Islander child protection sector is strong and committed to working together to achieve better outcomes for our children and families and working alongside the Queensland Family and Child Commission. Our position, while clearly privileging the legitimate role of our families, organisations and communities in growing our children up, strong in culture, does not in any way support a lowering of standards or safeguards that our children have equitable rights to expect of the adults in their lives and the services and systems with whom they interact.<sup>46</sup>

## Investment to provide support and improve participation

Stakeholders believe the blue card system stops Aboriginal and Torres Strait Islander peoples from getting jobs in their community and becoming carers for kin.

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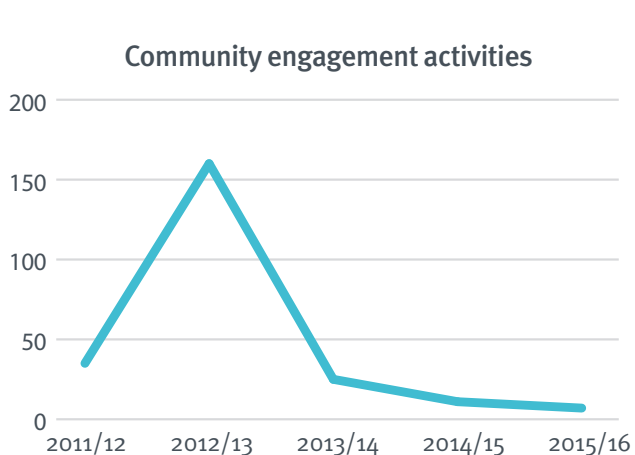
One stakeholder stated:

The blue card and criminal history check process can be a particular barrier when identifying Aboriginal and Torres Strait Islander carers. This is partly due to limited community knowledge of the blue card system and the nature of offences that disqualify someone. So when a family member is needed to look after children, they might not volunteer because they will be unsuccessful in obtaining a blue card due to a past offence.<sup>47</sup>

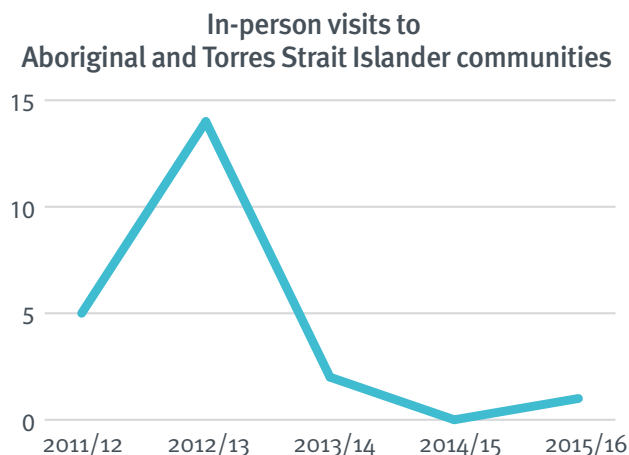
Stakeholders pointed out there are limited employment opportunities within some communities. Inability to obtain a blue card has serious effects and contributes to unemployment and other social disadvantage. These are critical issues that the Queensland Government is focusing on addressing in order to improve outcomes for Aboriginal and Torres Strait Islander peoples.

One reason that the blue card system has an adverse impact is that there is a significant amount of misinformation in communities about the likelihood of successfully obtaining a WWCC.

BCS has limited ability to address the levels of misconceptions in Aboriginal and Torres Strait Islander communities because it does not have a dedicated education strategy for those communities. For example, over the last four years, the targeted engagement BCS has carried out in Aboriginal and Torres Strait Islander communities has decreased (see Figures 24 and 25). It also has no culturally appropriate information and resources that are easily accessible by Aboriginal and Torres Strait Islander peoples.



**Figure 24:** Number of community engagement activities targeted to Aboriginal and Torres Strait Islander peoples undertaken by BCS since 2011–12.



**Figure 25:** Number of in-person visits to Aboriginal and Torres Strait Islander communities undertaken by BCS since 2011–12.

More community-based support would help to increase participation in the system and reduce withdrawal from the process.

The Department of Justice and Attorney-General has advised that since it took on responsibility for BCS in October 2016, it has recommenced visits to Aboriginal and Torres Strait Islander remote communities to provide face-to-face support practical assistance and to actively encourage individual and community participation in the blue card system.

BCS has also recently commissioned a range of video and radio material specifically designed for broadcasting in remote Aboriginal and Torres Strait Islander communities to ‘demystify’ the blue card system and increase engagement. The materials are being developed by an Aboriginal and Torres Strait Islander-owned creative agency.

These initiatives are a positive step forward.



Another critical issue is the rates of disengagement from the WWCC process. Stakeholders report that Aboriginal and Torres Strait Islander peoples experience difficulty across every stage of the WWCC process. This is evident in the data. In the last five years, applicants who identified as an Aboriginal person, a Torres Strait Islander, or an Aboriginal and Torres Strait Islander person, withdrew from the WWCC process at twice the rate of the total applicants in the same period.

Approximately 53 per cent of the applications were withdrawn because the applicant did not respond to a request for information. It is not always clear why applicants do not respond to requests for information. Stakeholders advise that the likely reasons are:

- lack of appropriate support
- rigid timeframes
- the fact that the only promoted way to make a submission is in writing.

Stakeholders also raised concerns about the ability of Aboriginal and Torres Strait Islander applicants to use the appeal process through the Queensland Civil and Administrative Tribunal (QCAT) without legal support. Some Elders described an appeal right as ‘illusory’ or a ‘mirage’.

The data supports these views, as 48 per cent of Aboriginal and Torres Strait Islander applicants’ appeals to the QCAT of negative notice decisions over the last five years were withdrawn. This compares to a 38 per cent withdrawal rate for all applicants’ appeals against an adverse decision, in the same period.

In many remote communities, there is no easily identifiable person or government officer to provide support to an applicant through the WWCC process. In some communities, people such as school principals provide assistance as best they can.

Other Australian states and territories offer more tailored support to Aboriginal and Torres Strait Islander applicants. The WWCC agency in the Northern Territory uses state government employees in Aboriginal communities to help provide support.

A number of other states and territories also have Aboriginal and Torres Strait Islander staff in the WWCC agency who are able to provide culturally appropriate support to Aboriginal and Torres Strait Islander applicants.

Stakeholders provided feedback that they were not aware of any Aboriginal and Torres Strait Islander staff within BCS. Currently, BCS does not have any identified positions to provide specific support to Aboriginal and Torres Strait Islander applicants through the process.

When BCS has focused on providing greater levels of support, it has had positive impacts.

### Case study 16—Support for Aboriginal and Torres Strait Islander applicants

BCS implemented a system of directly contacting organisations to help them to complete forms when needed. This initiative resulted in a decrease in the number of applications being withdrawn during the application or assessment process from 17.8 per cent to 5 per cent.

## Building cultural capability

Stakeholders believe that decision-makers do not understand the realities of life in Aboriginal and Torres Strait Islander communities. Participants attending forums said that communities are over-represented in the criminal justice system. They described a negative notice as a ‘secondary penalty for life’. Communities provided feedback that they would like to have greater input into how BCS makes decisions.

It is evident that there is a lack of cultural capability in the system. There is no recognition in existing decision-making guidelines of:

- the importance of understanding and considering different cultures and histories
- the impact that trauma, which many Aboriginal and Torres Strait Islander peoples have experienced, can have on offending behaviour.

Stakeholders report a high level of dissatisfaction with, and inconsistencies in, decisions as well as a lack of cultural perspective as part of the decision-making process.

Similarly, there are no policies or procedures to make sure that Aboriginal and Torres Strait Islander peoples’ perspectives inform the system. While BCS has attempted to build partnerships and relationships in some communities, it has not often managed to establish processes that provide support to, or allow input from, communities.



### Recommendation 73

It is recommended that the Department of Justice and Attorney-General develops and implements a specific strategy and action plan to provide more support for Aboriginal and Torres Strait Islander peoples and build cultural capability in the blue card system, including:

- identifying ways to partner with other agencies for consistency with other Queensland Government initiatives designed to improve outcomes for Aboriginal and Torres Strait Islander peoples
- establishing a reference group made up of Aboriginal and Torres Strait Islander stakeholders to co-design the strategy and action plan
- developing a specific community engagement plan to address common misconceptions about the blue card system, build understanding and improve participation in the process
- developing a suite of culturally appropriate information and resources
- funding and providing community-based support to assist with all stages of the WWCC process in all discrete communities
- funding and establishing identified positions in BCS to provide greater support to Aboriginal and Torres Strait Islander peoples and provide regular cultural capability training for all BCS staff
- developing guidelines to embed an appropriate consideration of culture in WWCC decisions
- considering ways to empower communities to be involved in decisions about their community
- establishing appropriate governance structures—led by Aboriginal and Torres Strait Islander stakeholders—to implement the strategy and action plan
- developing an evaluation strategy to measure the effectiveness of the strategy and action plan.



## Conditional cards

The use of conditional cards was considered during the review, but is not recommended. The Royal Commission does not support the use of conditional cards or different types of clearances. This is because conditional cards:

- create challenges for monitoring and enforcing compliance
- create barriers to the transferability of WWCCs across different child-related services and activities.

Most importantly, conditional cards would allow people to work with children in circumstances where they would not otherwise be given a blue card.

In addition to the reforms outlined in recommendation 73, this report recommends wide-ranging reform of the blue card system. These changes are designed to improve participation outcomes for Aboriginal and Torres Strait Islander peoples. For example:

- new automated systems will improve processing times
- a new decision-making model will focus decisions on whether there is a risk of harm to children
- more support will be provided to applicants throughout the risk assessment process
- new risk assessment guidelines, a new multi-disciplinary approach to risk assessment and the establishment of complex case review committees and expert panels with Aboriginal and Torres Strait Islander representatives will support active consideration of cultural issues during decision-making.

The range of reforms recommended in this report will achieve change that will address many of the concerns which underpin a desire for conditional cards.

# Maintaining public confidence in the blue card system

## At a glance

### Findings



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Data is not systematically used

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There is no regular review of the system

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There is no regular involvement of stakeholders to promote continuous improvement

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### Reforms



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#### ALLOW

more systemic data analysis

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#### REQUIRE

a statutory review five years after the review of the WWC Act

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#### ESTABLISH

a panel of key stakeholders

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### Impacts



#### COMMUNITY

There will be more information about the operation and impacts of the system



#### CHILDREN

There will be greater safeguards through more transparency



#### ORGANISATIONS

There will be greater involvement in the system





The recommendations in this report aimed at strengthening, streamlining and supporting the blue card system will go a long way towards improving public confidence in it. This is critical if the system is to have the support of the people who use it and of the broader community.

This report also includes recommendations intended to increase awareness about the blue card system through a community education strategy. This will help parents, carers and the community understand the limits of WWCCs and of their own role in choosing child safe organisations for their children.

The review identified several other opportunities to raise levels of confidence in the blue card system by strengthening governance and making the processes clear and open.

## Transparency

### Reporting on performance

As one stakeholder noted, the public often sees anything to do with child protection as ‘shrouded in secrecy’, so suppressing or failing to provide information only increases the public’s suspicion that the system is not working effectively. Comprehensive, regular reporting on the blue card system’s performance will help to improve public confidence.

Over the last few years, there has been a decline in public reporting about the blue card system. Until July 2014, annual reporting provided data on performance and trends in the functioning of the blue card system. That reporting included data on a range of variables organised under the objectives of:

- maintaining strong safeguards
- keeping high risk people out
- improving processing capability
- improving compliance with WWCC requirements
- using stakeholder feedback to inform continuous improvement
- collaborating to create safe service environments for children
- engaging with the community, rural and remote Aboriginal and Torres Strait Islander peoples, and key stakeholders
- keeping stakeholders informed about the blue card system
- working with the Queensland Police Service.

This level of public reporting no longer occurs. There is little information published about the operation of the blue card system, or about trends and patterns in the data it collects. As a result, the blue card system is now less transparent than it was previously. This undermines public confidence in the system.

Improvements to public reporting of data against a framework of important indicators will increase clarity. It is critical to have indicators that measure the value and contribution of the blue card system and of child safe standards in increasing the safety of children. Thorough and regular reporting will help build public confidence and provide a basis for the continual improvement of the system.



## Recommendation 74

It is recommended that the Department of Justice and Attorney-General:

- establishes a comprehensive reporting framework of key indicators and benchmarks
- commences regular public reporting on performance against the framework of indicators
- includes specific measures on participation by Aboriginal and Torres Strait Islander peoples, as well as by other culturally and linguistically diverse applicants and blue card holders.

## Using data for research

Another way to improve transparency is to allow researchers to access data to conduct research and improve the evidence base about the blue card system. Stakeholders highlighted the benefits of comprehensive research and data analysis in identifying trends or potential risks in particular environments. This data can also help in developing new and better ways of assessing risks to children.

The QFCC's report: *Recommendation 28 Supplementary Review: A report on information sharing to enhance the safety of children in regulated home-based services* also identified improvements to data systems that could enhance information sharing about risks to children.

This included:

- classifying and analysing WWCC and child safe standards data to identify trends or patterns relevant to risks of harm to children
- providing data to relevant people or organisations to conduct genuine research.

The proactive release of data aligns with the Queensland Government's open access data policy and demonstrates openness and transparency. Again, this can help to build public confidence.



## Recommendation 75

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to allow genuine researchers to access data (with identifying details removed) about the blue card system.



## Recommendation 76

It is recommended that the Department of Justice and Attorney-General:

- promotes the benefits of analysing the data
- reports on research partnerships.

## Governance

### Monitoring customer satisfaction

Before July 2014, BCS regularly sought feedback from customers, stakeholders and the public to improve the blue card system. It captured data on an extensive range of satisfaction measures. These included measures of the satisfaction of people who had made written enquiries and calls requesting information, and of people who had received community education. It also surveyed organisations that had been given feedback on their risk management strategies.

Importantly, the data did not only focus on simple satisfaction measures, but also included outcomes, such as changes to organisational policies and practices after advice. It included examples of specific cases to illustrate the main findings. This level of customer satisfaction feedback no longer occurs.

The Department of Justice and Attorney-General has advised that it is developing a client satisfaction survey in order to gather feedback to:

- improve service delivery
- provide data to use in improving BCS's performance reporting and system.

Publicly reporting performance measures known to be important to stakeholders helps to improve public confidence in the blue card system.

### Ongoing review and system improvement

There is no formal requirement for any periodic review of the operation of the blue card system and its underlying legislation. Despite continued improvements and reform to the blue card system, the last holistic review was in 2005.

Reviewing legislation provides an opportunity for evaluation and for identifying opportunities for reform of the policy objectives of an Act. It also assists to bring legislation in line with current conditions and make sure it meets the current needs of the community.

Most stakeholders agreed it is important to review the blue card system on a regular basis to continue to identify opportunities for improvement.

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One stakeholder noted:

Regular reporting on the effectiveness of the WWCC system and Act will ensure accountability, transparency, and that contemporary best practice is maintained—ensuring the WWCC system is working to maximum effect and meets national standards and practices.<sup>48</sup>

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The public is more likely to be confident in a system that is subject to regular review and is continually improving as a result.

Some stakeholders suggested a mandatory review of the legislation every five years to ensure it meets current demand. Others suggested an independent stakeholder advisory panel to oversee the system as a whole on an ongoing basis.





## Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission concluded that independent oversight is essential in assuring the public that relevant agencies are ‘doing the right thing’.



### Recommendation 77

It is recommended that the Attorney-General and Minister for Justice and Minister for Training and Skills proposes amendments to the WWC Act to introduce a statutory review process. It should specify that:

- the first review be completed within five years of commencement of the amendments arising from the recommendations in this report
- the review must consider the results of the evaluation in recommendation 81
- the report be released publicly.

In preparation for the statutory review, the Department of Justice and Attorney-General should consider appointing a panel of key external stakeholders to meet regularly and consider:

- how the blue card system is operating (based on analysis of available data, complaints, customer satisfaction measures and other information)
- what improvements are needed, including in relation to legislation, systems, policies and practices, on an ongoing basis.

The panel should include appropriate representation to ensure the interests of Aboriginal and Torres Strait Islander peoples are heard and considered.



# Chapter 7

## Implementation

### Staged approach

#### At a glance

#### Findings



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The recommendations will introduce significant changes to the blue card system

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Implementation requires a staged roll-out

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#### Reforms



- 
- ESTABLISH**  
a working group to oversee the progress of implementation
- 
- DEVELOP**  
an implementation plan
- 
- BUILD**  
capability and functionality in the system
- 
- EVALUATE**  
the success of the reforms
- 

#### Impacts



##### COMMUNITY

Staging change allows recommendations with significant impacts to be actioned early



##### ORGANISATIONS

Staging change helps organisations build capacity gradually

The recommendations in this report are intended to strengthen and streamline the blue card system. They will also build capacity of, and support for, organisations and people involved in it. Ultimately, Queensland's children will be safer doing activities that help them grow, learn and develop.

The recommendations involve, broadly:

- changes to laws
- new systems and processes
- better policies and procedures
- opportunities for ongoing improvement.

The Queensland Family and Child Commission (QFCC) has made 81 recommendations that will introduce significant changes to the blue card system. Appendix L provides a summary of the recommendations and outlines the key areas for action by government. These recommendations should be treated as a whole reform package.

Some recommendations are critical and some are dependent on others. This means they will need a staged roll-out. The QFCC has identified five stages of implementation:

1. Commencing work
2. Critical actions
3. Priority actions
4. Consolidating actions
5. Ongoing improvement actions

## Commencing work

Work should commence on these actions as soon as possible, beginning with the development of a plan identifying implementation priorities and phases. The effective implementation of the recommendations is dependent on the critical decisions and planning that need to occur immediately.

Recommendations relating to streamlining and the development of online systems for the blue card system provide the biggest opportunity for improvements to the efficiency of operations and access to the system by the community. In March 2017, the QFCC made a preliminary recommendation for the Department of Justice and Attorney-General (DJAG) to immediately begin work to establish an online application process. This work should continue as a matter of urgency.

## Critical and priority actions

These two phases involve substantial implementation of the reforms with an initial focus on an online system. The online system must be underway before the commencement of other reforms, such as:

- expanding the scope of the system
- expanding the screening requirements for a working with children check (WWCC)
- removing the agreement to work
- removing the ability for people to commence work while their application is being processed.

## Consolidating actions

The development and establishment of a compliance and enforcement framework is considered a longer-term priority, given the significant amount of work required to implement the other reforms recommended by this report. It will be useful once organisations have had the benefit of those recommendations that are designed to build capacity and provide them with more support to manage their obligations.

## Ongoing improvement actions

The recommendations in this stage support the broader reforms. Work should begin on these recommendations as soon as possible and should continue across the implementation period. In particular, there should be no delay in starting to work to build the capacity of organisations to become child safe.

## Implementation planning

A multi-agency implementation working group, chaired by a senior officer from the DJAG, will be well placed to:

- review all the recommendations that the government accepts
- schedule implementation, taking into account all the interdependencies and resourcing implications
- monitor and report on progress of implementation.

The implementation team would also benefit from the advice of external stakeholders.

Implementation timeframes should consider the need for the reforms to be implemented and embedded to allow the statutory review (see recommendation 77) to consider their operation.

### Recommendation 78

It is recommended that the Department of Justice and Attorney-General establishes an implementation working group made up of government and non-government representatives to develop a detailed implementation plan and reporting framework. The working group should also oversee and report on progress over the implementation period.

The panel should have appropriate representation to ensure the interests of Aboriginal and Torres Strait Islander peoples are heard and considered.

This report recommends that the Queensland Government considers the consolidation of screening functions across government and the administrative arrangements for child safe standards and WWCCs. As the DJAG currently has responsibility for the blue card system, the recommendations in this report in relation to child safe standards and WWCCs have been directed to that agency.

As they are existing functions, work should begin on implementing the relevant recommendations, for example, building the capacity of organisations to become child safe. The implementation plan must allocate responsibility for each recommendation to the agency with administrative responsibility for the relevant function. This should continue to be reviewed through the implementation period if changes in the administrative arrangements occur.



### Recommendation 79

It is recommended that the implementation plan is regularly reviewed to consider any changes in the administrative arrangements for particular functions and to allocate responsibility for each recommendation to the agency with administrative responsibility for the relevant function.

An agile and iterative project approach (one that is flexible and continually improving through feedback) is the best way to implement the recommendations to streamline the blue card system and develop online services. The agencies involved should adopt a staged approach to costing, developing and implementing each initiative. This will allow changes to be made gradually and will deliver results for stakeholders more quickly. This may mean Blue Card Services can deliver some of the smaller functions sooner.



### Recommendation 80

It is recommended that the Department of Justice and Attorney-General works with the Queensland Government Chief Information Officer to use agile and iterative project methodologies to build capability and functionality in the system over time.

## Evaluation and review

While it will take time for the recommendations to take effect and for the benefits to be realised, it is important to plan at the outset for how their success will be measured and when. Accordingly, the QFCC recommends that a detailed evaluation plan be developed as part of the implementation plan.

Evaluation at key stages of the roll-out will inform the next stages and show whether the recommendations are on track to achieve their objectives.



### Recommendation 81

It is recommended that the Department of Justice and Attorney-General engages an independent entity to plan for and evaluate the success of these reforms of the blue card system.





# Appendices and attachments

## Appendix A

### Working with children check jurisdictional comparison

#### Comparison of screening systems

	QLD	NSW	WA	VIC
<b>Table 1—Key elements of a WWCC system</b>				
<b>Check type</b>	Working with Children	Working with Children	Working with Children	Working with Children
<b>Duration of check</b>	Three years	Five years	Three years	Five years
<b>Fees current as at 15 June 2017</b>	Paid and business applicants—\$84.25 Volunteers, students and exemptions—no fee	Paid applicants—\$80 Volunteers—no fee	Paid and self-employed applicants—\$83 Volunteers—\$11	New paid applicants—\$119 Renewal paid applicants—\$88.10 Volunteers—no fee
<b>Online application</b>	✘ <sup>2</sup>	✓	✓ Renewals only	✓
<b>Child safe strategies requirement</b>	✓ Legislative	✓ Not legislative	✓ Not legislative	✓ Legislative <sup>3</sup>
<b>Monitoring</b>	✓ Daily	✓ Daily	✓ <sup>6</sup>	✓ Weekly
<b>Commencement of employment prior to finalisation of application</b>	Paid and exemption applicants—when application is submitted Volunteers, businesses and students—when positive notice is issued	✓ All applicants can commence when application is submitted	Most applicants can commence when application is submitted <sup>7</sup>	Most applicants can commence when application is submitted <sup>8</sup>
<b>Agreement to work required prior to application</b>	✓	✘	✓	✘



	NT	ACT	SA <sup>1</sup>	TAS
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**Table 1—Key elements of a WWCC system**

Check type	Working with Children	Working with Vulnerable People	Working with Children	Working with Vulnerable People
Duration of check	Two years	Three years	Five years	Three years
Fees current as at 15 June 2017	Paid applicants—\$57 Volunteers—\$5	Paid applicants—\$79 Volunteers—no fee	Paid applicants—\$103.40 Volunteers—\$57.20	Paid applicants—\$107.10 Volunteers—\$18.36
Online application	✓	✓	✓	✓
Child safe strategies requirement	✓ Not legislative	✓ Legislative (partially) <sup>4</sup>	✓ Legislative <sup>5</sup>	✓ Not legislative
Monitoring	✓ Daily	✗	✓ Daily	✓ Daily
Commencement of employment prior to finalisation of application	✗ Generally, cannot commence employment without current card <sup>9</sup>	Cannot commence employment without current registration	Cannot commence employment without current clearance	Most applicants can commence when application is submitted <sup>10</sup>
Agreement to work required prior to application	✗	✗	✗	✗

	QLD	NSW	WA	VIC
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**Table 2—Assessment principles**

<b>Principles for assessment</b>	The welfare and best interest of a child are paramount, and every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing	Whether applicant poses a risk to the safety of children	Whether it is in the best interests of children and whether, on all the information and other material properly before the decision maker, there is an 'unacceptable risk' that the applicant might, in the future, cause sexual or physical harm to children, in the course of carrying out child-related work <sup>11</sup>	Whether there is an unjustifiable risk to the safety of children
<b>Legislative test</b>	<p>✓ Whether an exceptional case has been demonstrated in which it would not harm the best interests of children to issue a positive notice</p> <p>OR</p> <p>Whether an exceptional case has been demonstrated in which it would not be in the best interests of children to issue a positive notice</p>	<p>✓ The Children's Guardian must grant a clearance to a person:</p> <p>i) who is subject to a risk assessment under Division 3 unless the Children's Guardian is satisfied that the person poses a risk to the safety of children</p> <p>ii) if it is satisfied that the person is not a disqualified person and the person is not subject to a risk assessment under Division 3</p>	<p>✓ An assessment notice must be issued unless the CEO is satisfied that, because of the particular circumstances of the case, a negative notice should be issued</p> <p>OR</p> <p>A negative notice must be issued unless the CEO is satisfied that, because of the exceptional circumstances of the case, an assessment notice should be issued</p>	<p>✓ The Secretary must refuse to give an assessment notice unless satisfied that doing so would not pose an unjustifiable risk to the safety of children</p> <p>OR</p> <p>The Secretary must give an assessment notice unless:</p> <p>a) the Secretary is satisfied that giving the notice would pose an unjustifiable risk to the safety of children, or</p> <p>b) the Secretary is satisfied that</p> <p>i) a reasonable person would not allow their child to have direct contact with the applicant that is not directly supervised by another person, or</p> <p>ii) the applicant's engagement in any type of child-related work would pose an unjustifiable risk to the safety of children</p>



	NT	ACT	SA <sup>1</sup>	TAS
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**Table 2—Assessment principles**

<b>Principles for assessment</b>	Whether there is an unacceptable risk of harm or exploitation of children	Whether there is an unacceptable risk of harm to a vulnerable person	Whether a person poses an unacceptable risk to children	Whether the person poses an unacceptable risk of harm to vulnerable persons
<b>Legislative test</b>	<p>✘</p> <p>If not disqualified the screening authority must, having regard to administrative guidelines, decide whether the candidate poses an unacceptable risk of harm or exploitation to children</p>	<p>✘</p> <p>The Commissioner must make risk assessment guidelines about how risk assessments are conducted</p>	<p>✘</p> <p>The Minister may, by notice in the Gazette, publish or adopt guidelines in relation to the risk assessment criteria to be used by the central assessment unit in conducting working with children checks</p>	<p>✘</p> <p>The Minister may make orders in relation to the conduct of risk assessments</p>

	QLD	NSW	WA	VIC
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**Table 3—Disqualification framework**

Disqualification framework	✓	✓	✓	✓
Pending charges resulting in an automatic bar	✗ Card will be suspended	✓	✗ An interim negative notice will be issued	✓
Appeal right under the disqualification framework (other than mistake of identity or fact)	✗	✓ <sup>12</sup>	✗	✓ <sup>13</sup>

**Table 4—Information considered in every assessment process**

Convictions, charges and investigative information	✓	✓	✓	✓
Police investigative information	✓	✓ <sup>14</sup>	Where known or advised	✓
Child protection information	✗ Can and will consider on a case by case basis if information is known or suspected to exist	✗ Can and will consider on a case by case basis if information is known or suspected to exist	✗ Can access the Department of Child Protection and Family Information where a discretionary decision requires consideration of all relevant material	✗ Can and will consider on a case by case basis if information is known or suspected to exist
Domestic violence information other than breaches e.g. civil applications and orders	✗ Is not provided	✗ It is not usual to get applications or orders	✗ Can and will consider on a case by case basis if information is known or suspected to exist— information about domestic violence incidents and police callouts, even where no charge	✗ Is not provided
NZ history	✗	✗	✗ Can and will consider on a case by case basis if information is known or suspected to exist	✗



	NT	ACT	SA <sup>1</sup>	TAS
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**Table 3—Disqualification framework**

Disqualification framework	✓	✗ No automatic exclusion based on offence type	✓	✗ No automatic exclusion based on offence type
Pending charges resulting in an automatic bar	✗	N/A	✗	N/A
Appeal right under the disqualification framework (other than mistake of identity or fact)	✓	N/A	✓	N/A

**Table 4—Information considered in every assessment process**

Convictions, charges and investigative information	✓	✓	✓	✓
Police investigative information	✓	✗	✓	✓ <sup>15</sup>
Child protection information	✗ Can and will consider on a case by case basis if information is known or suspected to exist	✗ Can and will consider on a case by case basis if information is known or suspected to exist	✓ Checked in the first instance and monitored	✓ Can and will consider on a case by case basis if information is known or suspected to exist.  Daily reportable behaviour notifications on registered persons and applicants.
Domestic violence information other than breaches e.g. civil applications and orders	✗ Can and will consider on a case by case basis if information is known or suspected to exist—applications and orders	✗ Can and will consider on a case by case basis if information is known or suspected to exist—applications and orders	✗ Can and will consider on a case by case basis if information is known or suspected to exist—applications and orders.	✗ Can and will consider on a case by case basis if information is known or suspected to exist—applications and orders
NZ history	✗	✗	✗	✗

	QLD	NSW	WA	VIC
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Table 4—Information considered in every assessment process (continued)

Other international history	x	x	x Can and will consider on a case by case basis if information is known or suspected to exist	x
Other information	<ul style="list-style-type: none"> <li>Disciplinary information for certain professionals</li> <li>Whether a person is the subject of a child protection prohibition order, a disqualification order, or specified reporting obligations</li> </ul>	<ul style="list-style-type: none"> <li>Findings of misconduct (sexual misconduct or serious physical assault of a child) by a reporting body and notifications made by the NSW Ombudsman</li> </ul>	<ul style="list-style-type: none"> <li>Can and will consider on a case by case basis other information such as disciplinary information from the Australian Health Practitioner Regulation Agency, Teacher Registration Board or employer</li> </ul>	<ul style="list-style-type: none"> <li>Disciplinary information (from Victorian Institute of Teaching and the Suitability Panel)</li> <li>Relevant health practitioner determinations made by the Victorian Civil and Administrative Tribunal (VCAT)</li> </ul>

Table 5—Assessment team structures and other processes

Multi-disciplinary assessment team <sup>16</sup>	x	✓	✓	✓
Decision-making or advisory panel	x	✓ <sup>18</sup> Advisory on general matters only	✓ Advisory only on individual risk assessments and general matters	x
Interim bar	x	✓	✓	✓
Conditional approvals	x	x	x	x
Reasons provided in request for submissions	x	✓	x	x

Table 6—Appeals and compliance powers

Right of internal review	x <sup>21</sup>	x	x	x
Power to issue notices to compel compliance	x	x	x	x
Power to compel information or inspect premises	x	✓ <sup>22</sup>	x	✓ <sup>23</sup>





	NT	ACT	SA <sup>1</sup>	TAS
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Table 4—Information considered in every assessment process (continued)

Other international history	x	x	x	x
Other information	<ul style="list-style-type: none"> <li>Disciplinary information/matters of any nature e.g. teacher registration</li> </ul>	<ul style="list-style-type: none"> <li>Disciplinary information</li> </ul>	<ul style="list-style-type: none"> <li>Publicly available information sourced from professional registration bodies</li> <li>Information held by SA government agencies</li> </ul>	N/A

Table 5—Assessment team structures and other processes

Multi-disciplinary assessment team <sup>16</sup>	✓	✓ <sup>17</sup>	✓	x
Decision-making or advisory panel	✓ Decision-making only	✓ <sup>19</sup> Advisory on individual risk assessments only	✓ Advisory only	✓ Minister can establish an advisory committee to advise the Registrar
Interim bar	x	x	x	✓
Conditional approvals	✓ <sup>20</sup>	✓	x	✓
Reasons provided in request for submissions	✓	✓	x	✓

Table 6—Appeals and compliance powers

Right of internal review	x	✓	✓	✓
Power to issue notices to compel compliance	x	✓	✓	✓
Power to compel information or inspect premises	x	✓	x	✓

	QLD	NSW	WA	VIC
<b>Table 7—Scope of screening<sup>24</sup></b>				
Schools	✓	✓	✓	✓
Education and child care services	✓	✓	✓	✓
Community organisations (e.g. churches, clubs etc.)	✓	✓	✓	✓
Health and counselling services	✓	✓	✓	✓
Private teaching/tutoring	✓	✓	✓	✓
Child accommodation (including home stay)	✓	✓	✓	✓
Religious representatives	✓	✓	✓	✓
School crossing supervisors	✓	✓	✓	✓
Child protection services	✓	✓	✓	✓
Youth justice	✓	✓	✓	✓
Transport services for children	x	✓	✓	✓
Overnight camps	x	x	✓	✓
Commercial entertainment/party services for children	x	✓	✓	✓
Commercial photography services for children	x	x	✓	✓
Gym/play facilities for children	x	x	✓	✓
Talent/beauty competitions for children	x	x	✓	✓



	NT	ACT	SA <sup>1</sup>	TAS
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Table 7—Scope of screening<sup>24</sup>

Schools	✓	✓	✓	✓
Education and child care services	✓	✓	✓	✓
Community organisations (e.g. churches, clubs etc.)	✓	✓	✓	✓
Health and counselling services	✓	✓	✓	✓
Private teaching/ tutoring	✓	✓	✓	✓
Child accommodation (including homestay)	✓	✓	✓	✓
Religious representatives	✓	✓	✓	✓
School crossing supervisors	✓	✓	✓	✓
Child protection services	✓	✓	✓	✓
Youth justice	✓	✓	✓	✓
Transport services for children	✓	✓	✓	✓
Overnight camps	✓	✗	✓	✓
Commercial entertainment/ party services for children	✓	✓	✗	✓
Commercial photography services for children	✓	✓	✗	✗
Gym/play facilities for children	✓	✓	✗	✓
Talent/beauty competitions for children	✓	✓	✗	✓

	QLD	NSW	WA	VIC
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Table 7—Scope of screening<sup>24</sup> (continued)

People with child-related decision-making responsibility (no other contact with children)	✓	✓ <sup>25</sup>	✗	✗
Managing sensitive information (no other contact with children)	✓ <sup>26</sup>	✓ <sup>27</sup>	✗	✗

Table 7A—Additional categories screened in other jurisdictions not covered by the above table

NSW	VIC	TAS
<ul style="list-style-type: none"> <li>Adoption services—only for principal officers of accredited adoption service provider</li> <li>If approved by the Children’s Guardian, an employer may decide that a paid role requires screening where the role involves access to confidential records relating to children</li> </ul>	<ul style="list-style-type: none"> <li>Supervisors of employees under 15 years of age</li> </ul>	<ul style="list-style-type: none"> <li>Adoption and guardianship services</li> <li>Child mentoring services</li> <li>State Library Services</li> <li>Vocational education, training and development services</li> <li>Child-related legal services</li> </ul>

QLD	NSW	WA	VIC
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Table 8—Requirements to be met before screening is required

Contact with a child is required	✗	✓ Face to face required unless in a specified role	✓ Includes electronic and oral (e.g. via telephone) contact	✓ <sup>28</sup> Face to face contact is required
Screening is undertaken even if the person is supervised	✓	✓	✓	✗ <sup>30</sup>

Table 9—Exemptions to screening

People under a certain age	✓ Volunteers under 18 years	✓ People under 18 years	✓ Volunteers under 18 years or students under 18 years on unpaid placements as part of their course of study	✓ People under 18 years or 18–19 and volunteering at their school
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	NT	ACT	SA <sup>1</sup>	TAS
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Table 7—Scope of screening<sup>24</sup> (continued)

People with child-related decision-making responsibility (no other contact with children)	✓	✓	✗	✗
Managing sensitive information (no other contact with children)	✓	✗	✗	✗

	NT	ACT	SA <sup>1</sup>	TAS
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Table 8—Requirements to be met before screening is required

Contact with a child is required	✓	✓ <sup>29</sup> Face to face contact is required	✗	✓ Includes electronic and oral (telephone) contact
Screening is undertaken even if the person is supervised	✓	✓	✓	✓

Table 9—Exemptions to screening

People under a certain age	✓ People under 15 years	✓ People under 16 years	✗	✓ People under 16 years
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	QLD	NSW	WA	VIC
<b>Table 9—Exemptions to screening (continued)</b>				
<b>Police officers</b>	✓ When conducting their professional duties	✓	✓ When conducting their professional duties	✓
<b>Registered health practitioners</b>	✓	✓ <sup>31</sup>	✗	✗
<b>Registered teachers</b>	✓ When conducting their professional duties	✗	✗	✓
<b>Lawyers</b>	✓ When conducting their professional duties	✗	✗	✗
<b>Volunteer parents<sup>32</sup></b>	✓	✓ <sup>33</sup>	✓ This exemption does not apply to overnight camps	✓
<b>Close relatives (not including kinship care)</b>	✓ <sup>34</sup>	✓ <sup>35</sup>	✓ <sup>36</sup>	✓
<b>Co-workers/supervisors of staff under 18 years</b>	✓	✓	✓	✗
<b>University/TAFE staff</b>	✓ Who do not otherwise carry out child-related work	✓ University staff ✗ TAFE staff	✗	✗
<b>Informal domestic/babysitting work</b>	✓	✓	✓	✓
<b>People working under supervision</b>	✗	✗	✗	✓ <sup>37</sup>



	NT	ACT	SA <sup>1</sup>	TAS
<b>Table 9—Exemptions to screening (continued)</b>				
Police officers	x	✓	✓	✓
Registered health practitioners	x	✓	x	x
Registered teachers	x	x	x	x
Lawyers	x	✓	x	x
Volunteer parents <sup>32</sup>	✓	✓	x	x Parents are only exempt if they are related to all participating children
Close relatives (not including kinship care)	x	✓	x	x Only exempt if they are related to all participating children
Co-workers/supervisors of staff under 18 years	x	✓	✓	x
University/TAFE staff	x	x	x	x
Informal domestic/babysitting work	x	x	x	x
People working under supervision	x	x	x	x Supervised by a registered person and activity is for no more than seven days per year

	QLD	NSW	WA	VIC
<b>Table 9—Exemptions to screening (continued)</b>				
<b>Visitors, guests, presenters etc.</b>	<ul style="list-style-type: none"> <li>✓</li> <li>• Volunteer guests at a school or recognised body</li> <li>• Volunteers at a state or national event</li> </ul>	<ul style="list-style-type: none"> <li>✓</li> <li>• Visiting speakers, adjudicators, performers, assessors, or other visitors on a one-off occasion, in the presence of one or more adults</li> </ul>	<ul style="list-style-type: none"> <li>✓</li> <li>• Non-residents of WA at one-off national events or tours for 30 days or less in any 12 month period. Limited to certain categories of employment</li> </ul>	<ul style="list-style-type: none"> <li>✓</li> <li>• Interstate visitors for up to 30 days in one year for: <ul style="list-style-type: none"> <li>– several events if they have a check from their own jurisdiction, or</li> <li>– only one event if they do not have a check from their own jurisdiction</li> </ul> </li> </ul>
<b>Other short-term work</b>	<ul style="list-style-type: none"> <li>✓</li> <li>• Paid employees must work, or are likely to work, for at least: <ul style="list-style-type: none"> <li>– eight consecutive days, or</li> <li>– once a week for each week during a period of four weeks, or</li> <li>– once a fortnight for each fortnight during a period of eight weeks, or</li> <li>– once a month for each month during a period of six months</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>✓</li> <li>• Five days a year if minimal contact with children or supervised</li> </ul>	<ul style="list-style-type: none"> <li>✓</li> <li>• Non-residents of WA in the two-week period after they arrive in WA and for no more than a total of two weeks in any 12 month period</li> </ul>	<ul style="list-style-type: none"> <li>✗</li> </ul>





	NT	ACT	SA <sup>1</sup>	TAS
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Table 9—Exemptions to screening (continued)

Visitors, guests, presenters etc.	x	✓ <ul style="list-style-type: none"> <li>If they have registration similar to working with vulnerable people in another jurisdiction and the work is for no more than 28 days in 12 months, AND Are working or volunteering at an ACT or national event and the Commissioner of Fair Trading declares the person is not required to be registered</li> </ul>	x	✓ <ul style="list-style-type: none"> <li>Registered under another state's law and the activity is of a similar nature to the activity that the person is already registered to engage in under that corresponding law; and they are engaged in the regulated activity for not more than 28 days in any 12-month period</li> </ul>
Other short-term work	x	✓ <ul style="list-style-type: none"> <li>More than three days in four weeks and more than seven days in twelve months</li> </ul>	✓ <ul style="list-style-type: none"> <li>Seven days a year (whether consecutive or not) in a calendar year</li> </ul>	x

QLD	NSW	WA	VIC	
<b>Table 9B—Other exemptions to screening</b>				
	<ul style="list-style-type: none"> <li>Ambulance officers</li> <li>Amusement park employees</li> <li>Relevant people employed under the <i>Corrective Services Act 2006</i></li> </ul>	<ul style="list-style-type: none"> <li>Administrative, clerical, maintenance or ancillary work not ordinarily involving work with children. Home carers with a current police certificate for aged care where the clients are not primarily children</li> </ul>	<ul style="list-style-type: none"> <li>Coaching or private tuition provided to a class of two or more students that is not provided primarily for children.</li> <li>Children’s entertainment or party services that is a performance open to the general public, not involving physical contact with children</li> <li>Children’s entertainment or party service that provides food, equipment or venue but no other contact with children</li> <li>Accommodation or care of children in a residential facility connected to or used predominantly by students of a university or other institution of tertiary education</li> </ul>	N/A



NT	ACT	SA <sup>1</sup>	TAS
<p><b>Table 9B—Other exemptions to screening</b></p>	<ul style="list-style-type: none"> <li>Children’s entertainment or party service that provides food, equipment or venue but no other contact with children</li> </ul>	<ul style="list-style-type: none"> <li>Person participating in the same activity as a child</li> <li>Work experience student</li> <li>Student doing practical training</li> <li>A staff member of, or volunteer for, an approved aged care provider</li> <li>A financial services licensee</li> <li>Working for a Commonwealth or Territory government agency and the only contact is at a public counter or shopfront</li> <li>Person whose only contact is by telephone or if the person is only working with a record of a vulnerable person</li> <li>Engaged in the activity for a declared state of emergency</li> </ul>	<ul style="list-style-type: none"> <li>The Minister may, on application made in a manner and form determined by the Minister, by notice in writing, exempt a specified person, or a specified class of persons, from the operation of a specified provision or provisions of the <i>Child Safety (Prohibited Persons) Act 2016</i>.</li> </ul>
	<ul style="list-style-type: none"> <li>Correctional officer</li> <li>A staff member of, or volunteer for, an approved aged care provider</li> <li>A financial services licensee</li> <li>Working for a Commonwealth or state government agency and the only contact is at a public counter or shopfront or by telephone</li> <li>Person whose only contact is by telephone or if the person is only working with a record of a child</li> <li>Emergency Management worker engaged in the activity for a declared state of emergency</li> <li>Person participating in the activity in the same capacity as vulnerable person</li> <li>School student on work experience placement or doing practical training</li> </ul>		

QLD	NSW	WA	VIC
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Table 9B—Other exemptions to screening (continued)

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NT	ACT	SA <sup>1</sup>	TAS
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Table 9B—Other exemptions to screening (continued)

			<ul style="list-style-type: none"><li>• Tasmanian, national or international event where activity is exempt by Minister</li><li>– suppliers of food, drink or equipment for a sporting, cultural or other entertainment venue</li><li>– persons providing coaching or tutoring to the general public, but not to children separately from adults</li><li>– persons providing coaching or tutoring as part of an informal arrangement with a neighbour, friend or relative</li><li>– persons as members of a congregation at a religious service</li><li>– lifeguards and lifesavers providing lifesaving services</li><li>– referees, umpires, linespersons or other sporting officials or grounds persons who are not in contact with children at sporting events for extended periods without other adults being present</li></ul>
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## References

- <sup>1</sup> On 1 July 2017, South Australia will enact new legislation. This table reflects the system as it will be after the new legislation is enacted.
- <sup>2</sup> There is an online upload and fee payment system available; however, there is not currently a completely automated online application process.
- <sup>3</sup> On 15 November 2016, new legislation was passed to amend the *Child Wellbeing and Safety Act 2005* (Vic) in Victoria providing the Commission for Children and Young People powers to oversee and enforce compliance with Child Safe Standards by relevant entities.
- <sup>4</sup> *The Working with Vulnerable People (Background Checking) Regulation 2012* (ACT) provides for risk management strategies to be in place by an employer only if a role-based registration is proposed.
- <sup>5</sup> The *Children's Protection Act 1993* requires that organisations providing certain services to children create and maintain a child safe environment, including the lodgement of a Child Safe Environment Compliance Statement with the Department for Families and Communities. All organisations providing health, education, welfare, sporting and recreational, child care, party or residential services wholly or partly for children must ensure that they have a child safe environment policy in place to promote the safety and wellbeing of children.
- <sup>6</sup> Monitoring occurs every day, but only a limited number can be checked though the IMS connection with WA Police so monitoring amounts to every 12 days for each individual.
- <sup>7</sup> People who have a Class 1 offence committed when an adult or have been issued with an Interim Negative Notice or Negative Notice are not permitted to commence employment whilst their application is processing.
- <sup>8</sup> People who have been charged with a certain class of offences; have had a negative notice in the past; intend to supervise a child under the age of 15 in employment; intend to work in a service regulated by the *Children's Services Act 1996* (Vic) or an education and care service or are subject to certain orders or reporting obligations are not permitted to commence employment whilst their application is processing.
- <sup>9</sup> In NT, employers can apply for an exemption for their employees to commence work, but they must have evidence that they have mitigated the risks by providing a copy of their child safe policies.
- <sup>10</sup> Most applicants can commence, provided they have not previously been refused a registration, or had a registration cancelled or suspended, provided the employer agrees, and provided they are supervised by a registered person.
- <sup>11</sup> The WA Court of Appeal has only considered the interpretation of s. 12(5) of the *Working with Children (Criminal Record Checking) Act 2004* (WA). The Supreme Court of WA has not yet had to consider the interpretation of s. 12(6) of the *Working with Children (Criminal Record Checking) Act 2004* (WA).
- <sup>12</sup> Generally, disqualified persons are entitled to a review or enabling order; however, there are some individuals who are not entitled for review e.g. if the person committed a specific offence and then received a sentence of full time custody for the offence (see s. 26, *Child Protection (Working with Children) Act 2012* NSW).
- <sup>13</sup> A person whose application is categorised as a Cat A application under s. 12(1) (a), (b) or (c), *Sex Offenders Registration Act 2004* (Vic), *Serious Sex Offenders Monitoring Act 2004* (Vic) or subject to a supervision or detention order) or in the case of a re-assessment of a cardholder, s. 21 AB, may appeal to VCAT for an assessment notice under s. 26 of the *Working with Children Act 2005* (Vic), noting that the Secretary has no discretion other than to issue a negative notice on a Cat A application.
- <sup>14</sup> NSW gets investigative information through Chapter 16A of the *Child Protection (Working with Children) Act 2012* (NSW) and workplace records and information from NSW Police. The Children's Guardian decides how this information is used.
- <sup>15</sup> Tasmania specifically has access to 'criminal intelligence information'.
- <sup>16</sup> For example, a team which comprises of people with child protection and/or social work backgrounds, people with psychology qualifications etc. Not limited to just one profession e.g. just lawyers.
- <sup>17</sup> There is no requirement for any team members to have any specific qualifications.
- <sup>18</sup> The expert advisory panel established under s. 42A(2) of the *Child Protection (Working with Children) Act 2012* outlines that any expert advice must be on general matters only and cannot relate to individuals.
- <sup>19</sup> A group of independent advisors must be appointed under s. 34 of the *Working with Vulnerable People (Background Checking) Act 2011*.
- <sup>20</sup> NT advised that whilst they have the legislative power to place conditions on a card they have never in practice used this power.
- <sup>21</sup> Can reconsider the application if the decision was based on wrong or incomplete information.
- <sup>22</sup> Power to compel information only.
- <sup>23</sup> Power to compel only. Provisions commence 1 August 2017.
- <sup>24</sup> This is a high level overview of work where a person may require screening. There are specific requirements that must be met before screening is required and these may differ between jurisdictions.
- <sup>25</sup> Limited to specific roles under s. 6(3) and any additional approved roles under s. 7 of the *Child Protection (Working with Children) Act 2012*.
- <sup>26</sup> This is limited to auditors and assessors under the *Education (Accreditation of Non-State Schools Act) 2001*.



- <sup>27</sup>. Employer may, by written notice to an employee, require the employee to have a clearance if their role involves access to confidential records or information about children. The employer may only make this notice, however, with the approval of the Children's Guardian.
- <sup>28</sup>. Currently, contact is defined to be limited to face-to-face contact or the ability to have physical contact. Commencing 1 August 2017, the definition of child-related work will no longer be limited to face-to-face or physical contact and may include written communication, telephone contact, email or other electronic communication.
- <sup>29</sup>. A person is exempt if they will only speak to the child by telephone, or will only work with a record of the child.
- <sup>30</sup>. Commencing 1 August 2017, people engaged in child-related work under supervision will be required to hold a WWC Check.
- <sup>31</sup>. Only applies to practitioners who do not ordinarily treat children without other adults present.
- <sup>32</sup>. In some jurisdictions, this exemption can only be used in very specific circumstances, and there will be some instances where a volunteer parent requires screening.
- <sup>33</sup>. Except where the work is part of a formal mentoring program or involves intimate, personal care of a child with a disability.
- <sup>34</sup>. Only applies to home stay and certain disability services.
- <sup>35</sup>. Except where the work is part of a formal mentoring program or involves intimate, personal care of a child with a disability.
- <sup>36</sup>. This only applies in certain circumstances.
- <sup>37</sup>. Commencing 1 August 2017, people engaged in child-related work under supervision will be required to hold a WWC Check.

## Appendix B

### Table of the recommendations of the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission)

	Royal Commission's recommendation and findings	Recommended Queensland position
<b>General</b>		
1	<p>State and territory governments should:</p> <ol style="list-style-type: none"> <li>within 12 months of the publication of this report, amend their WWCC laws to implement the standards identified in this report</li> <li>once the standards are implemented, obtain agreement from the Council of Australian Governments (COAG), or a relevant ministerial council, before deviating from or altering the standards in this report, adopting changes across all jurisdictions</li> <li>within 18 months from the publication of this report, amend their WWCC laws to enable clearances from other jurisdictions to be recognised and accepted.</li> </ol>	<ul style="list-style-type: none"> <li>Queensland should adopt the standards as minimum standards unless they would decrease safeguards for children in Queensland.</li> <li>Queensland should recognise clearances from other jurisdictions and accept them once all Australian states and territories have implemented the minimum standards outlined by the Royal Commission and there are systems in place to support information sharing.</li> </ul>
2	The South Australian Government should, within 12 months of the publication of this report, replace its criminal history assessments with a WWCC scheme that incorporates the standards set out in this report.	N/A
3	<p>The Commonwealth Government should, within 12 months of the publication of this report:</p> <ol style="list-style-type: none"> <li>facilitate a national model for WWCCs by: <ol style="list-style-type: none"> <li>establishing a centralised database, operated by CrimTrac, that is readily accessible to all jurisdictions to record WWCC decisions</li> <li>together with state and territory governments, identifying consistent terminology to capture key WWCC decisions (for example, refusal, cancellation, suspension and grant) for recording into the centralised database</li> <li>enhancing CrimTrac's capacity to continuously monitor WWCC cardholders' national criminal history records</li> </ol> </li> <li>explore avenues to make international records more accessible for the purposes of WWCCs</li> <li>identify and require all Commonwealth Government personnel, including contractors, undertaking child-related work, as defined by the child-related work standards set out in this report, to obtain WWCCs.</li> </ol>	<ul style="list-style-type: none"> <li>Queensland should support this recommendation. Implementation of a number of the Royal Commission's recommendations in Queensland depends on implementation of this recommendation.</li> </ul>



4	<p>The Commonwealth, state and territory governments should, within 12 months of the publication of this report:</p> <ol style="list-style-type: none"> <li>agree on a set of standards or guidelines to enhance the accurate and timely recording of information by state and territory police into CrimTrac's system</li> <li>review the information they have agreed to exchange under the National Exchange of Criminal History Information for People Working with Children (ECHIPWC), and establish a set of definitions for the key terms used to describe the different types of criminal history records so they are consistent across the jurisdictions (these key terms include pending charges, non-conviction charges and information about the circumstances of an offence)</li> <li>take immediate action to record into CrimTrac's system historical criminal records that are in paper form or on microfilm and which are not currently identified by CrimTrac's initial database search</li> <li>once these historical criminal history records are entered into CrimTrac's system by all jurisdictions, check all WWCC cardholders against them through the expanded continuous monitoring process.</li> </ol>	<ul style="list-style-type: none"> <li>Queensland should support this recommendation and participate in its implementation.</li> </ul>
<b>Standards</b>		
5	<p>State and territory governments should amend their WWCC laws to incorporate a consistent and simplified definition of child-related work, in line with the recommendations below.</p>	<ul style="list-style-type: none"> <li>Queensland should implement the intent of this recommendation by requiring individuals who have contact with children to undergo a WWCC.</li> <li>Queensland should keep current safeguards in the Queensland system by continuing to screen decision-makers and individuals who are engaged in specific child-related environments.</li> </ul>
6	<p>State and territory governments should amend their WWCC laws to provide that work must involve contact between an adult and one or more children to qualify as child-related work.</p> <p><b>Associated findings</b></p> <ul style="list-style-type: none"> <li>The Royal Commission considered whether older children should be subject to WWCC but were not convinced that WWCCs were the most appropriate tool to manage the risk because: <ul style="list-style-type: none"> <li>children make up a small proportion of the workforce</li> <li>children are less likely to have records that would not be picked up through a standard police check</li> <li>only a small number of children have been identified as presenting as risk in other jurisdictions.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Queensland should continue to require individuals under the age of 18 to be subject to a WWCC if they are engaged in paid employment or are a student on placement.</li> </ul>

7	<p>State and territory governments should:</p> <ol style="list-style-type: none"> <li>amend their WWCC laws to provide that the phrase ‘contact with children’ refers to physical contact, face-to-face contact, oral communication, written communication or electronic communication</li> <li>through COAG, or a relevant ministerial council, agree on standard definitions for each kind of contact and amend their WWCC laws to incorporate those definitions.</li> </ol> <p><b>Associated findings</b></p> <ul style="list-style-type: none"> <li>The Royal Commission does not support a requirement for WWCCs where an individual is only dealing with a record relating to a child or making a decision affecting a child.</li> </ul>	<ul style="list-style-type: none"> <li>Queensland should use this definition of ‘contact with children’.</li> <li>Queensland should keep the current safeguards in the Queensland system by continuing to screen decision-makers and individuals who are engaged in specific child-related environments.</li> </ul>
8	<p>State and territory governments should:</p> <ol style="list-style-type: none"> <li>amend their WWCC laws to provide that contact with children must be a usual part of, and more than incidental to, the child-related work</li> <li>through COAG, or a relevant ministerial council, agree on standard definitions for the phrases ‘usual part of work’ and ‘more than incidental to the work’, and amend their WWCC laws to incorporate those definitions.</li> </ol>	<ul style="list-style-type: none"> <li>Queensland should support the recommendation that contact with children must be a usual part of, and more than incidental, to child-related work.</li> <li>Queensland should support and participate in developing standard definitions for ‘usual part of work’ and ‘more than incidental to the work’.</li> </ul>
9	<p>State and territory governments should amend their WWCC laws to specify that it is irrelevant whether the contact with children is supervised or unsupervised.</p>	<ul style="list-style-type: none"> <li>This is already the position in Queensland. Queensland should maintain this current safeguard.</li> </ul>
10	<p>State and territory governments should amend their WWCC laws to provide that a person is engaged in child-related work if they are engaged in the work in any capacity and whether or not for reward.</p>	<ul style="list-style-type: none"> <li>This is already the position in Queensland. Queensland should maintain this current safeguard.</li> </ul>
11	<p>State and territory governments should amend their WWCC laws to provide that work that is undertaken under an arrangement for a personal or domestic purpose is not child-related, even if it would otherwise be so considered.</p> <p><b>Associated findings</b></p> <ul style="list-style-type: none"> <li>The Royal Commission does not support the approach of excluding personal or domestic work in relation to specific categories and believes it should be excluded through a single statutory provision.</li> </ul>	<ul style="list-style-type: none"> <li>Queensland should implement this recommendation.</li> </ul>

<p>12</p>	<p>State and territory governments should amend their WWCC laws to:</p> <ol style="list-style-type: none"> <li>a. define the following as child-related work: <ol style="list-style-type: none"> <li>i. accommodation and residential services for children, including overnight excursions or stays</li> <li>ii. activities or services provided by religious leaders, officers or personnel of religious organisations</li> <li>iii. child care or minding services</li> <li>iv. child protection services, including out-of-home care (OOHC)</li> <li>v. clubs and associations with a significant membership of, or involvement by, children</li> <li>vi. coaching or tuition services for children</li> <li>vii. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions</li> <li>viii. disability services for children</li> <li>ix. education services for children</li> <li>x. health services for children</li> <li>xi. justice and detention services for children, including immigration detention facilities where children are regularly detained</li> <li>xii. transport services for children, including school crossing services</li> <li>xiii. other work or roles that involve contact with children that is a usual part of, and more than incidental to, the work or roles.</li> </ol> </li> <li>b. require WWCCs for adults residing in the homes of authorised carers of children <ul style="list-style-type: none"> <li>• remove all other remaining categories of work or roles.</li> </ul> </li> </ol> <p><b>Associated findings</b></p> <ul style="list-style-type: none"> <li>• The Royal Commission found that rather than limiting WWCCs to people engaged in work or roles that have been designated as child-related, WWCC laws should: <ul style="list-style-type: none"> <li>– clarify that the key factor that determines the need for a WWCC is whether the work or role involves contact with children that is a usual part of, and more than incidental to, the work or role</li> <li>– include a standard and simplified list of the categories of work or roles that are indicative of child-related work</li> <li>– include in the list a general category for other work or roles that traditionally are not considered to be child-related but still involve the required amount of contact with children</li> <li>– include a clear and precise definition of the specific types of work and roles that fall within each of the child-related work categories, to be agreed upon by state and territory governments.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Queensland should implement this recommendation.</li> </ul>
<p>13</p>	<p>State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each category of child-related work and amend their WWCC laws to incorporate those definitions.</p>	<ul style="list-style-type: none"> <li>• Queensland should support and participate in developing standard definitions for the categories of child-related work.</li> </ul>

## Exemptions

- 14 State and territory governments should amend their WWCC laws to:
- a. exempt:
    - i. children under 18 years of age, regardless of their employment status
    - ii. employers and supervisors of children in a workplace, unless the work is child-related

**Associated finding**

    - An employer or supervisor of a child should be exempt from needing a WWCC, provided the work is not child-related. The inherent risks in the employment relationship were acknowledged by the Royal Commission, but it was noted that:
      - industrial relations and anti-discrimination laws help to mitigate these risks
      - supervisors and/or employers in a workplace that is not child-related do not currently require WWCCs in most jurisdictions
  - iii. people who engage in child-related work for seven days or fewer in a calendar year, except in respect of overnight excursions or stays
- Associated finding**
- The Royal Commission noted that the specific period of time may benefit from discussion among the state and territory governments, but it determined that a period of seven days or fewer in a calendar year would strike an appropriate balance between child safety and other concerns.
- iv. people who engage in child-related work in the same capacity as the child
- Associated finding**
- A workplace does not become a child-related service simply because children are engaged in work.
- v. police officers, including members of the Australian Federal Police
- Associated finding**
- Further discussion is needed among the state and territory governments as to whether this exemption should be limited to work in an official capacity as a police officer.

- Queensland should implement the following exemptions:
  - individuals who are subject to a comparable level of screening and monitoring
  - individuals who are under the age of 18 and engaged as a volunteer
  - volunteer parents, except those who are in a position where they are responsible for the care of a child (for example, as part of an overnight camp).
- Queensland should allow people screened in another Australian state or territory to be exempt from screening, once there is national consistency and appropriate information sharing.
- Queensland should not require WWCCs for people employed in workplaces that employ children.
- Queensland should remove the ability for a person issued with a negative notice to be able to rely on an exemption.
- Queensland should implement the simplified frequency test for a WWCC (that is, engaged in child-related activities for more than seven days) as part of the screening requirements—not as an exemption category.

<p>14</p>	<p>vi. parents or guardians who volunteer for services or activities that are usually provided to their children, in respect of that activity, except in respect of:</p> <ul style="list-style-type: none"> <li>a) overnight excursions or stays</li> <li>b) providing services to children with disabilities, where the services involve close, personal contact with those children</li> </ul> <p><b>Associated finding</b></p> <ul style="list-style-type: none"> <li>• While acknowledging that parents can use their own children to access and groom potential victims, the Royal Commission noted that: <ul style="list-style-type: none"> <li>– participating in activities or services for their children is intrinsic to being a parent and should be encouraged</li> <li>– requiring parent volunteers to get WWCCs would intrude unnecessarily on children’s development and family life, and prove overly burdensome</li> <li>– parents already interact with children in a wide variety of settings</li> <li>– there are many other strategies that are critical to making organisations child safe, including family and community involvement, supervision and adequate child protection policies.</li> </ul> </li> <li>• The exemption should not apply to: <ul style="list-style-type: none"> <li>– parents who volunteer on overnight excursions</li> <li>– parents who volunteer in providing services to children with disabilities, where the services involve close, personal contact with those children (for example, bathing)</li> </ul> </li> </ul> <p>b. remove all other exemptions and exclusions</p> <p><b>Associated finding</b></p> <ul style="list-style-type: none"> <li>• The current exemption for interstate volunteers should be removed as it will no longer be needed as WWCCs will be portable across jurisdictions.</li> <li>• Students undertaking practical placements should not be exempt (unless they are under the age of 18)</li> <li>• The current exemption for teachers should not be continued.</li> </ul> <p>c. prohibit people who have been denied a WWCC, and subsequently not granted one, from relying on any exemption.</p>	
<p>15</p>	<p>State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each exemption category and amend their WWCC laws to incorporate those definitions</p>	<ul style="list-style-type: none"> <li>• Queensland should support this recommendation and participate in developing and implementing it as far as possible without reducing existing safeguards.</li> </ul>

## Offences

- 16 State and territory governments should amend their WWCC laws to incorporate a consistent and simplified list of offences, including:
- engaging in child-related work without holding, or having applied for, a WWCC
  - engaging a person in child-related work without them holding, or having applied for, a WWCC
  - providing false or misleading information in connection with a WWCC application
  - applicants and/or WWCC cardholders failing to notify screening agencies of relevant changes in circumstances
  - unauthorised disclosure of information gathered during the course of a WWCC.
- Associated finding**
- The Royal Commission expressed concern that the high number of offences across jurisdictions and their inconsistencies in nature and scope are creating unnecessary complexity and recommended that only offences that fit within the above core categories should continue to be offences.
- Queensland should implement the policy intent of this recommendation by maintaining these offences. However, there will be additional offences under the Queensland framework to maintain existing safeguards.

## Criminal history information

- 17 State and territory governments should amend their WWCC laws to include a standard definition of criminal history, for WWCC purposes, comprised of:
- convictions, whether or not spent
  - findings of guilt that did not result in a conviction being recorded
  - charges, regardless of status or outcome, including:
    - pending charges—that is, charges laid but not finalised
    - charges disposed of by a court, or otherwise, other than by way of conviction (for example, withdrawn, set aside or dismissed)
    - charges that led to acquittals or convictions that were quashed or otherwise over-turned on appeal for all offences, irrespective of whether or not they concern the person’s history as an adult or a child and/or relate to offences outside Australia.
- This is already the position in Queensland. Queensland should maintain this current safeguard.
- 18 State and territory governments should amend their WWCC laws to require police services to provide screening agencies with records that meet the definition of criminal history records for WWCC purposes and any other available information relating to the circumstances of such offences.
- This is already the position in Queensland. Queensland should maintain this current safeguard.

## Disciplinary or misconduct information

- 19 State and territory governments should amend their WWCC laws to:
- require that relevant disciplinary and/or misconduct information is checked for all WWCC applicants
  - include a standard definition of disciplinary and/or misconduct information that encompasses disciplinary action and/or findings of misconduct where the conduct was against, or involved, a child, irrespective of whether this information arises from reportable conduct schemes or other systems or bodies responsible for disciplinary or misconduct proceedings
  - require the bodies responsible for the relevant disciplinary and/or misconduct information to notify their respective screening agencies of relevant disciplinary and/or misconduct information that meets the definition.
- Queensland should implement this recommendation. Queensland should support and participate in the development of a standard definition of disciplinary information.

Responses to records returned		
20	<p>State and territory governments should amend their WWCC laws to respond to records in the same way, specifically that:</p> <ol style="list-style-type: none"> <li>the absence of any relevant criminal history, disciplinary or misconduct information in an applicant's history leads to an automatic grant of a WWCC</li> <li>any conviction and/or pending charge in an applicant's criminal history for the following categories of offence leads to an automatic WWCC refusal, provided the applicant was at least 18 years old at the time of the offence: <ol style="list-style-type: none"> <li>murder of a child</li> <li>manslaughter of a child</li> <li>indecent or sexual assault of a child</li> <li>child pornography-related offences</li> <li>incest where the victim was a child</li> <li>abduction or kidnapping of a child</li> <li>animal-related sexual offences.</li> </ol> </li> <li>all other relevant criminal, disciplinary or misconduct information should trigger an assessment of the person's suitability for a WWCC (consistent with the risk assessment factors set out below).</li> </ol>	<ul style="list-style-type: none"> <li>Queensland should implement the policy intent of this recommendation to remove people with charges and convictions for serious child-related offences.</li> <li>Queensland should maintain the current safeguard about pending charges as it achieves the same policy intent as this recommendation.</li> <li>In Queensland, Blue Card Services's chief executive should retain the discretion to make decisions on exceptional cases.</li> </ul>
21	<p>State and territory governments should amend their WWCC laws to specify that relevant criminal records for the purposes of recommendation 20(c) include but are not limited to the following:</p> <ol style="list-style-type: none"> <li>juvenile records and/or non-conviction charges for the offence categories specified in recommendation 20(b)</li> <li>sexual offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b)</li> <li>violent offences, including assaults, arson and other fire-related offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b)</li> <li>child welfare offences</li> <li>offences involving cruelty to animals</li> <li>drug offences.</li> </ol>	<ul style="list-style-type: none"> <li>This is already the position in Queensland. Queensland should maintain this current safeguard.</li> </ul>
22	<p>The Commonwealth Government, through COAG, or a relevant ministerial council, should take a lead role in identifying the specific criminal offences that fall within the categories specified in recommendations 20(b) and 21.</p>	N/A

## Assessing risk

- 23 State and territory governments should amend their WWCC laws to specify that the criteria for assessing risks to children include:
- the nature, gravity and circumstances of the offence and/or misconduct, and how this is relevant to children or child-related work
  - the length of time that has passed since the offence and/or misconduct occurred
  - the age of the child
  - the age difference between the person and the child
  - the person's criminal and/or disciplinary history, including whether there is a pattern of concerning conduct
  - all other relevant circumstances in respect of their history and the impact on their suitability to be engaged in child-related work.
- Associated finding**
- Risk assessments must be based on evidence about risk to children and applicants should not be precluded from child-related work arbitrarily because of offences that do not indicate such risk.
- Queensland should implement this recommendation.

- 24 State and territory governments should amend their WWCC laws to expressly provide that, in weighing up the risk assessment criteria, the paramount consideration must always be the best interests of children, having regard to their safety and protection.
- Queensland should implement this recommendation.

## Eligibility to work while an application is assessed

- 25 State and territory governments should amend their WWCC laws to permit WWCC applicants to begin child-related work before the outcome of their application is determined, provided the safeguards listed below are introduced.
- Applicants**
- applicants must submit a WWCC application to the appropriate screening agency before beginning child-related work and not withdraw the application while engaging in child-related work
  - applicants must provide a WWCC application receipt to their employers before beginning child-related work
- Other safeguards**
- employers must cite application receipts, record application numbers and verify applications with the relevant screening agency
  - there must be capacity to impose interim bars on applicants where records are identified that may indicate a risk and require further assessment.
- Queensland should not implement this recommendation as to do so would reduce safeguards in Queensland.
- Queensland should implement a no-WWCC/ no-start policy, as this is the best safeguard for children.

- 26 State and territory governments that do not have an online WWCC processing system should establish one.
- Queensland should implement this recommendation.



27	State and territory governments should process WWCC applications within five working days, and no longer than 21 working days for more complex cases	<ul style="list-style-type: none"> <li>• Queensland should implement this recommendation with acknowledgment that:               <ul style="list-style-type: none"> <li>– less complex assessments must be completed within 21 working days</li> <li>– some complex cases will take longer because of the need to gather additional information.</li> </ul> </li> </ul>
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**Clearance types**

28	<p>All state and territory governments should amend their WWCC laws to specify that:</p> <ol style="list-style-type: none"> <li>a. WWCC decisions are based on the circumstances of the individual and are detached from the employer the person is seeking to work for, or the role or organisation the person is seeking to work in</li> <li>b. the outcome of a WWCC is either that a clearance is issued or it is not; there should be no conditional or different types of clearances</li> <li>c. volunteers and employees are issued with the same type of clearance.</li> </ol>	<ul style="list-style-type: none"> <li>• This is already the position in Queensland. Queensland should maintain this current safeguard.</li> </ul>
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**Appeals**

29	<p>All state and territory governments should ensure that any person the subject of an adverse WWCC decision can appeal to a body independent of the WWCC screening agency, but within the same jurisdiction, for a review of the decision, except persons who have been convicted of one of the following categories of offences:</p> <ul style="list-style-type: none"> <li>• murder of a child</li> <li>• indecent or sexual assault of a child</li> <li>• child pornography-related offences</li> <li>• incest where the victim was a child</li> </ul> <p>and</p> <ol style="list-style-type: none"> <li>a. received a sentence of full time custody for the conviction, such persons being permanently excluded from an appeal</li> </ol> <p>or</p> <ol style="list-style-type: none"> <li>b. by virtue of that conviction, the person is subject to an order that imposes any control on the person’s conduct or movement, or excludes the person from working with children, such persons being excluded from an appeal for the duration of that order.</li> </ol> <p>Notwithstanding the above any person may bring an appeal in which they allege that offences have been mistakenly recorded as applying to that person.</p>	<ul style="list-style-type: none"> <li>• This is already the position in Queensland. Queensland should maintain this current safeguard.</li> </ul>
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Portability		
30	Subject to the implementation of the standards set out in this report, all state and territory governments should amend their WWCC laws to enable WWCCs from other jurisdictions to be recognised and accepted.	<ul style="list-style-type: none"> <li>Queensland should implement this recommendation subject to all states and territories achieving the standards recommended by the Royal Commission and appropriate information-sharing arrangements being in place. Queensland should not reduce current safeguards.</li> </ul>
Duration and continuous monitoring		
31	Subject to the commencement of continuous monitoring of national criminal history records, state and territory governments should amend their WWCC laws to specify that: <ol style="list-style-type: none"> <li>WWCCs are valid for five years</li> <li>employers and WWCC cardholders engaged in child-related work must inform the screening agency when a person commences or ceases being engaged in specific child-related work</li> <li>screening agencies are required to notify a person's employer of any change in the person's WWCC status.</li> </ol>	<ul style="list-style-type: none"> <li>Queensland should implement this recommendation.</li> </ul>
Monitoring and compliance		
32	All state and territory governments should grant screening agencies, or another suitable regulatory body, the statutory power to monitor compliance with WWCC laws.	<ul style="list-style-type: none"> <li>Queensland should implement this recommendation.</li> </ul>
33	All state and territory governments should ensure their WWCC laws include powers to compel the production of relevant information for the purposes of compliance monitoring.	<ul style="list-style-type: none"> <li>Queensland should implement this recommendation and introduce additional compliance powers.</li> </ul>
Governance		
34	The Commonwealth, state and territory governments should: <ol style="list-style-type: none"> <li>through COAG, or a relevant ministerial council, adopt the standards and set a timeframe within which all jurisdictions must report back to COAG, or a relevant ministerial council, on implementation</li> <li>establish a process whereby changes to the standards or to state and territory schemes need to be agreed to by COAG, or a relevant ministerial council, and must be adopted across all jurisdictions.</li> </ol>	<ul style="list-style-type: none"> <li>Queensland should support and participate in the implementation of these recommendations.</li> </ul>
35	The Commonwealth, state and territory governments should provide an annual report to COAG, or a relevant ministerial council, for three years following the publication of this report, to be tabled in the parliaments of all nine jurisdictions, detailing their progress in implementing the recommendations in this report and achieving a nationally consistent approach to WWCCs.	N/A
36	COAG, or a relevant ministerial council, should ensure a review is made after three years of the publication of this report, of the state and territory governments' progress in achieving consistency across the WWCC schemes, with a view to assessing whether they have implemented the Royal Commission's recommendations.	N/A



## Appendix C

### Expert panel

#### Expert panel meeting dates

2016	2017
04 October 2016 (teleconference)	19 January 2017
28 October 2016	14 February 2017
30 November 2016	14 March 2017
13 December 2016	04 April 2017
	26 April 2017
	11 May 2017
	19 May 2017
	09 June 2017
	16 June 2017

#### Panel members

##### Linda Apelt

Linda Apelt has made significant contributions to improving service delivery across the human services sector as a former long-serving director-general with responsibilities spanning Housing and Community Services. Linda is currently CEO of Montrose Therapy and Respite Services, a specialist allied health organisation.

She is an Adjunct Professor with the Institute of Social Science Research at the University of Queensland. Linda has served as a non-Executive Director on a range of boards. She is currently Chair of Screen Queensland and a non-Executive Director on the boards of the Crèche and Kindergarten Association Ltd and Common Ground Queensland Ltd.

##### John Brennan, OAM

John Brennan is the current Chief Executive Officer of Surf Life Saving Queensland (SLSQ). He has been employed with SLSQ professionally for 22 years. John was honoured with the Order of Australia Medal in January 2012 for his services to the surf lifesaving movement. He was awarded the Australian Sports Medal in 2000 for his services to Surf Life Saving and a Citation of Merit in 2003 from International Life Saving.

John is the current Chairman/Director on the Q Sport Board, the SLSQ Representative on the Qld Government State Disaster Management Group, and also sits on a number of other committees for Surf Life Saving Australia. Professionally, John holds membership with: Australian Institute of Management—Fellow (FAIM); Corporate Directors Association; the Australian & New Zealand Sports Law Association, and the Institute of Sports Management.

### **Simon Burgess**

Simon Burgess is a barrister with over 25 years of experience in the justice system and has been the Director of Civil Law at the Aboriginal & Torres Strait Islander Legal Service since 2013. Simon started his legal career in 1991 in the Queensland Government where he worked for 13 years before going to the private bar.

Simon returned to the Queensland Government in 2012 to work as Principal Legal Officer for the newly created Office of Director of Forensic Disability, a role that saw him appearing regularly as Counsel in the Mental Health Court. Simon has also previously served as a legal member on both the Guardianship and Administration Tribunal, Mental Health Review Tribunal and the Queensland Civil and Administrative Tribunal.

### **Paul Doyle, APM**

Paul Doyle was a career police officer, having served for some 37 years with the Queensland Police. At the time of his retirement in 2014, he held the rank of Assistant Commissioner of the Ethical Standards Command. His policing experience mainly centered on being an operational detective, which covered some 26 years of his career. This included a number of significant appointments to major and organised crime units, counter terrorist operations, witness and dignitary protection, the Fitzgerald Commission of Inquiry, Criminal Justice Commission and Crime and Misconduct Commission.

Former Assistant Commissioner Doyle has held positions on a number of boards and committees including the Board of Studies of the Australian Institute of Police Management, the Australian and New Zealand Policing Advisory Agency Integrity Forum and the International Advisory Board and Research Advisory Committee of the Australian Research Council, Centre of Excellence in Policing and Security.

### **Shane Duffy**

Shane is a descendant of the Kalkadoon people from Mount Isa in North West Queensland. He has worked in the human services industry for over 20 years both within the public and not for profit sectors. Key areas of work have been juvenile justice, child protection, business development and human rights with a particular focus on Aboriginal and Torres Strait Islander peoples' access to justice.

Shane has been the Chief Executive Officer of the Aboriginal and Torres Strait Islander Legal Service in Queensland for the last 11 years. He is active on a number of boards and advisory groups. He has represented Aboriginal and Torres Strait Islander people internationally at United Nations forums in New York

### **Hetty Johnston, AM**

Hetty Johnston is founder & chair of Bravehearts Foundation Ltd, Australia's leading child protection advocate. A born lobbyist, Hetty is a woman of passion and determination who has succeeded in highlighting the crime of paedophilia and child sexual assault to media, families, schools and the general community both nationally and internationally.

Hetty works with government and non-government agencies on legislative reform, submissions, lobbying and research to improve child protection and political accountability in Australia.



### **Jacqui Reed**

Jacqui Reed has been Chief Executive Officer of the CREATE Foundation since December 2007. She has over 20 years of experience in child protection, out-of-home care, family services and community work, and has undertaken social research and held several management roles. She has written not only policy, training manuals and research papers, but also a children's book.

Jacqui is an accomplished public speaker presenting at many national and international conferences. Jacqui firmly believes that children and young people, given the right opportunities, have the capacity to transcend their adversity and reach their full potential. She is a member of the Board of Directors and Leadership Committee at CREATE.

### **Bryan Smith**

Following a decision to become a foster carer in 1992, Bryan Smith was encouraged to become more involved in child protection. He has extensive experience having worked with non-government foster and kinship care and residential services since 1995, as well as working for the Department of Families for a short period of time.

Bryan became a committee member of Foster Care Queensland in 1996 and in that time served as both Secretary and President before being appointed to the role of Executive Director in 2004. In 2010, Bryan's family became kinship carers, which has added a richness to Bryan's family as well as living the difference between foster and kinship care. Bryan has been a significant advocate for all foster and kinship carers and the child protection system and continues that role today.

### **Cheryl Vardon**

Cheryl Vardon is the Queensland Family and Child Commission's Chief Executive and Principal Commissioner. She has held the role since October 2015. Cheryl has had a distinguished career as an educator and is recognised for her leadership in the protection of vulnerable children and young people and for Indigenous education. She is an experienced leader of policy implementation and system reform.

As the Principal Commissioner, Cheryl is committed to working with families and children, government agencies and community organisations to make Queensland a safer place to raise a family. As a leader with extensive experience, Cheryl is well positioned to play a key role in the reform of Queensland's child protection and family support system and to champion the needs of all children and families, particularly for Aboriginal and Torres Strait Islander peoples.

Cheryl is a previous Director-General of Education for Western Australia and a former Chief Executive of the Australian Capital Territory Department of Education and Community Services. She was a Vice Principal of the University of Melbourne and an Adjunct Professor at the University of Canberra.

Cheryl has held many board positions and statutory roles on tribunals and commissions.

### **Tammy Williams**

Tammy Williams joined the QFCC as its inaugural Commissioner on 18 April 2016. She is a Murri woman - the Indigenous people of Queensland. She is legally qualified as a barrister and has had an appointment to the Queensland Civil and Administrative Tribunal and other quasi-judicial bodies. Tammy was also a member of the National Human Rights Consultative Committee. She was a member of the expert panel from October 2016 to March 2017.

## Appendix D

### Glossary

<b>Assessable information</b>	This is police information or disciplinary information.
<b>Blue card system</b>	This refers to the requirements for organisations to develop and implement risk management strategies and comply with WWCC requirements.
<b>Child safe organisations</b>	A child safe organisation values children and understands safety does not just happen. Child safe organisations take action to protect children from harm and create safe environments by: <ul style="list-style-type: none"><li>• creating conditions that reduce the likelihood of harm occurring</li><li>• creating an organisational culture that values safe and positive environments for children</li><li>• responding appropriately to disclosures, allegations or suspicions of harm.</li></ul>
<b>Convictions not recorded</b>	This means a person has been convicted of an offence but a court has decided not to record a conviction on the person's criminal history.
<b>Disciplinary information</b>	This is information about a person's conduct that has resulted in disciplinary action from a regulatory body.
<b>Disqualified person</b>	This term refers to a person who: <ul style="list-style-type: none"><li>• has been or is convicted of a disqualifying offence; or</li><li>• is subject to:<ul style="list-style-type: none"><li>– offender reporting obligations; or</li><li>– an offender prohibition order; or</li><li>– a disqualification order; or</li><li>– a sexual offender order.</li></ul></li></ul> See section 169 of the WWC Act.
<b>Disqualifying offence</b>	A disqualifying offence includes: <ul style="list-style-type: none"><li>• a range of offences of a sexual nature</li><li>• child pornography offences</li><li>• murder of a child.</li></ul> See section 168 of the WWC Act.
<b>Disqualification order</b>	This is an order made by the court, which states that a person is prohibited from holding or applying for a WWCC permanently or for a certain period of time.
<b>Eligibility declaration application</b>	This is the process that a disqualified person undertakes to be declared eligible to apply for a WWCC.

<b>Exceptional case for criminal history information</b>	<p>Under the WWC Act, in relation to the commission or alleged commission of an offence by the person, the decision-maker must have regard to:</p> <ul style="list-style-type: none"> <li>(a) in relation to the commission, or alleged commission, of an offence by the person: <ul style="list-style-type: none"> <li>(i) whether it is a conviction or a charge; and</li> <li>(ii) whether the offence is a serious offence and, if it is, whether it is a disqualifying offence; and</li> <li>(iii) when the offence was committed or is alleged to have been committed; and</li> <li>(iv) the nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children; and</li> <li>(v) in the case of a conviction—the penalty imposed by the court and, if the court decided not to impose an imprisonment order for the offence or not to make a disqualification order under section 357, the court’s reasons for its decision;</li> </ul> </li> <li>(b) any information about the person given to the chief executive under section 318 or 319;</li> <li>(c) any report about the person’s mental health given to the chief executive under section 335;</li> <li>(d) any information about the person given to the chief executive under section 337 or 338;</li> <li>(e) anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the person.</li> </ul>
<b>Exemption card</b>	<p>Registered teachers and police officers must apply for an exemption card when providing regulated child-related services that fall outside of their professional duties. They do not need to have a WWCC when providing services as part of their professional duties.</p>
<b>Frequency test</b>	<p>This means:</p> <ul style="list-style-type: none"> <li>• at least eight consecutive days; or</li> <li>• at least once a week for each week during a period of four weeks; or</li> <li>• at least once a fortnight for each fortnight during a period of eight weeks; or</li> <li>• at least once a month for each month during a period of six months.</li> </ul>
<b>Investigative information</b>	<p>This is information that the Police Commissioner may provide in relation to police investigations into allegations of serious child-related sexual offences, even if no charges were laid (see section 305 of the WWC Act).</p>
<b>(ECHIPWC) National Exchange of Criminal History Information for People Working with Children</b>	<p>The intergovernmental agreement for a national exchange of criminal history information for people working with children is an agreement formulated and agreed to by the Council of Australian Governments to establish an inter-jurisdictional exchange of criminal history information for people working with children.</p> <p>States and territories were required to remove legislative and administrative restrictions so that a broader range of information could be shared across states and territories. Agencies must meet strict conditions about use of the information, including only sharing it with other participating agencies.</p>
<b>Negative notice</b>	<p>This is a notice declaring a blue card application has been refused.</p> <p>See section 220(b) of the WWC Act.</p>
<b>Penalty units</b>	<p>A penalty unit is a set amount of money used to work out each fine. The penalty unit value in Queensland is \$121.90 (current from 1 July 2016).</p>

<b>Police information</b>	<p>In the context of a current WWCC assessment, this means any of the following—</p> <ul style="list-style-type: none"> <li>• criminal history</li> <li>• investigative information</li> <li>• whether the person is or has been a relevant disqualified person, the subject of an application for a disqualification order, or named as the respondent to an application for an offender prohibition order.</li> </ul> <p>See schedule 7 of the WWC Act.</p>
<b>Positive notice</b>	<p>This is a notice declaring an application is approved and a blue card can be issued.</p> <p>See section 220 (a) of the WWC Act.</p>
<b>Prohibition order</b>	<p>This is an offender prohibition order under the <i>Child Protection (Offender Prohibition Order) Act 2008</i>, which means an order or a temporary order prohibiting a relevant sexual offender named in the order from engaging in particular conduct.</p>
<b>QP9 (court brief)</b>	<p>This is the document prepared by the Queensland Police Service for the court, including a summary of the offence and the laws under which the person has been charged.</p>
<b>Reportable conduct scheme</b>	<p>Reportable conduct schemes are designed to improve oversight of how organisations prevent and respond to allegations of child abuse.</p> <p>Under a reportable conduct scheme, designated agencies or individuals must report allegations of reportable conduct to a body that oversees the responses to the allegations.</p> <p>Reportable conduct commonly includes any sexual offence or sexual misconduct committed against, with or in the presence of a child—including a child pornography offence, any assault, ill-treatment or neglect of a child, and any behaviour that causes psychological harm to a child.</p>
<b>Reporting obligations</b>	<p>These are reporting obligations under the <i>Child Protection (Offender Reporting) Act 2004</i> and mean the obligations imposed on the offender by part 4 of this Act. This can include, but is not limited to requiring an offender to make a report (the initial report) of the offender’s personal details to the commissioner when the offender receives the notice.</p>
<b>Risk management strategies</b>	<p>These are the strategies, which must cover eight minimum requirements (listed in Chapter 4), which regulated organisations in Queensland must currently develop and implement to mitigate risks of harm to children.</p>
<b>Serious offences</b>	<p>This refers to:</p> <ul style="list-style-type: none"> <li>• any one of a range of offences of a sexual or violent nature, including expired or repealed offences and offences that have been amended, which were committed in Queensland or interstate; and</li> <li>• child pornography offences; and</li> <li>• offences of counselling, procuring the commission of, or attempting or conspiring to commit, one of those offences.</li> </ul> <p>See section 167 of the WWC Act.</p>



<b>Sexual offender order</b>	<p>This means a division 3 order, interim detention order or interim supervision order under the <i>Dangerous Prisoners (Sexual Offenders) Act 2003</i>.</p> <p>A division 3 order is a court order that the prisoner be detained in custody for an indefinite term for control, care or treatment or that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order.</p> <p>An interim detention order means an order detaining a person in custody.</p> <p>An interim supervision order can mean when the court adjourns the hearing of the application and is satisfied the application may not be finally decided until after the prisoner’s release day, the court may make an order that the prisoner’s release from custody be supervised.</p>
<b>Spent convictions</b>	<p>This is a conviction that has lapsed and generally does not appear on a person’s criminal history.</p>
<b>Submission</b>	<p>This is information provided by a person who may be adversely affected by a decision. An applicant is given the opportunity to participate in the decision-making process through the submission process if Blue Card Services is intending to issue a negative notice to them. An applicant should address all the information provided to them by Blue Card Services. Applicants can also include any other information or material relevant to the assessment process.</p>
<b>Substantiated notification</b>	<p>Substantiated notifications means an allegation of harm against a child or young person has been investigated and assessed, and it has been determined that the child or young person has suffered, is suffering, or is at an unacceptable risk of suffering future, significant harm.</p>
<b>Substantiated child harm report</b>	<p>Substantiated child harm report means an allegation of harm against a child or young person in out-of-home care has been investigated and assessed, and it has been determined that the child or young person has suffered, is suffering, or is at an unacceptable risk of suffering future, significant harm.</p>
<b>Unsubstantiated notification</b>	<p>Unsubstantiated notifications means an allegation of harm against a child or young person has been investigated and assessed, and it has been determined that there is no evidence that the child has experienced significant harm and there is no unacceptable risk of significant harm.</p>
<b>Unsubstantiated child harm report</b>	<p>Unsubstantiated child harm report means an allegation of harm against a child or young person in-out-of-home care has been investigated and assessed, and it has been determined that there is no evidence that the child has experienced significant harm and there is no unacceptable risk of significant harm.</p>

## Acronyms

	Acronym
Australian Crime and Intelligence Commission	ACIC
Blue Card Services	BCS
Department of Communities, Child Safety and Disability Services	DCCSDS
Department of Justice and Attorney-General	DJAG
Department of Transport and Main Roads	DTMR
Information and communication technology	ICT
Police Information Centre	PIC
Queensland Civil and Administrative Tribunal	QCAT
Queensland College of Teachers	QCT
Queensland Corrective Services	QCS
Queensland Family and Child Commission	QFCC
Queensland Police Service	QPS
Royal Commission into Institutional Responses to Child Sexual Abuse	Royal Commission
Working with children check	WWCC
<i>Working with Children (Risk Management and Screening) Act 2000</i>	WWC Act



## Appendix E

### Review of the blue card system—Phase 1

**Community and stakeholder consultation summary—Phase 1**

**October 2016–February 2017**

## Introduction

This report is a summary of information provided by stakeholders to the Queensland Family and Child Commission (QFCC) as part of the review of the blue card system.

It includes information from three sources:

- face-to-face community stakeholder forums and targeted engagement sessions
- written submissions
- online surveys of stakeholders of the blue card system.

## Face-to-face forums

Between 30 October 2016 and 23 February 2017, the QFCC completed 2 267 consultation activities. This included 124 forums with 640 participants, of which 181 identified as Aboriginal and/or Torres Strait Islander. The QFCC also held 108 meetings and exchanged 1 389 individual emails/letters and phone calls across the following regions and states:

- Townsville
- Palm Island
- Bundaberg
- Gladstone
- Rockhampton
- Woorabinda
- Mackay
- Torres Strait
- Brisbane South
- Gold Coast
- Sunshine Coast
- Brisbane North
- Northern Area Peninsula (which includes Bamaga, Seisia, Injinoo, New Mapoon and Umagico)
- Brisbane
- Mount Isa
- Doomadgee
- Sydney
- Ipswich
- Kingaroy
- Cherbourg
- Cairns
- Toowoomba
- Victoria
- South Australia
- Northern Territory
- Western Australia
- Australian Capital Territory

## Written submissions

The QFCC received 24 submissions in response to the discussion paper on the review of the blue card system. These were from a wide range of organisations and individual stakeholders

## Online surveys

More than 100 people or organisations responded to an online survey specifically about the discussion paper on the review of the blue card system. The survey asked 24 questions that aligned with the questions in the discussion paper.

## Role of blue card system

There is a widely held view that the blue card system needs an overhaul and that many of its operational aspects are outdated.

Seventy-two per cent of survey respondents agreed that the blue card system helps to keep children safe by identifying individuals charged with offences relating to children and preventing them from working in environments where children could be at risk. It also acts to discourage past offenders from applying for a WWCC (working with children check) and having access to vulnerable children.<sup>1</sup>

WWCCs are part of an overall system. The terms ‘blue card’ and ‘WWCC’ are often used interchangeably. WWCCs are only one tool in the broader system to promote child safe environments. Stakeholders noted that WWCCs do little to protect children from adults who have yet to offend or have not yet been charged with an offence.<sup>2</sup> In its submission to the review, PeakCare advised:

As a number of public inquiries and case reviews continue to reveal, the majority of those perpetrating abuse and not providing children with a quality of care to which they are entitled have not been disciplined or subject to police investigation, charges or convictions.

Overly relying on criminal history checking fosters both complacency and risk aversion, and serves to de-emphasise the criticality of induction and ongoing supervision, support and training and a number of other organisational factors that act together to keep children and young people safe and promote their wellbeing in organisational settings.<sup>3</sup>

Similarly, Bravehearts noted:

The WWCC should not replace an emphasis on organisational policy and responsibility around preventing, identifying or responding to concerns around inappropriate behaviours of staff. WWCCs will only ever tell us about those individuals who are ‘known’ risks to children.<sup>4</sup>

As Independent Schools Queensland submitted, people may see holding a WWCC as an ‘automatic tick’ implying that the holder is safe with children and requires no further thought or investigation.<sup>5</sup>

Many stakeholders confirmed the view that organisations and the community now over-rely on applicants holding a blue card. Stakeholders commented that possession of a blue card could actually cause organisations to be operationally less vigilant. They said there should be greater emphasis on promoting other aspects of creating and maintaining a child safe system, and that government needs to drive this focus.

## Strengthening the system

### Child safe organisations—risk management strategies

The majority of survey respondents agree it is important for organisations providing services to children to identify potential risks and know how to manage them.

Some stakeholders support the idea of requiring organisations to have their risk management strategies in place before they start providing services to children.

yourtown expressed the need for stronger promotion of a child safe organisations framework, arguing that:

A system reliant on the assessment of past behaviours to determine future risk will not be adequate to respond to risks that are driven by opportunistic or situational factors.

Subsequently, organisations need to be both vigilant and to have policies and practices in place that ensure that staff supporting children hold values that are protective of children, engage in training that further develop child safe practices and have their interactions with children supervised.<sup>6</sup>

Similarly, Micah Projects Inc. referenced the Royal Commission and submitted that:

WWCCs will only contribute to keeping children safe if they are used in the context of broader child-safe strategies, such as appropriate leadership, governance and culture; quality recruitment, selection and screening; training; effective child protection policies and procedures; and child-friendly practices.<sup>7</sup>

Further, it recommended that ‘additional specialist support be provided by the QFCC to organisations to promote a culture of safety in all aspects of their work practice, including staff recruitment and monitoring’.<sup>8</sup>

Independent Schools Queensland agreed, stating:

... providing a good suite of resources and an education campaign about the value of developing and implementing appropriate child-safe strategies and policies will raise community awareness and support organisations to achieve good practice in this area.<sup>9</sup>

The Queensland Catholic Education Commission supports the 10 elements of child safe organisations approach outlined by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). It states that the elements ‘clearly articulate a child-focussed approach, including child participation, equity and diversity. Embedding child safety within institutional culture is a critical aspect of creating safe environments for children’.<sup>10</sup>

Organisations broadly agree that strategies for risk management are sufficient, but some advised more support is required for implementation.<sup>11</sup> Such support could include sample strategies and documentation<sup>12</sup> and new processes to encourage compliance. For example, Protect all Children Today Inc. suggested that periodic audits of organisations would ensure there is better compliance and that the necessary risk management strategies are implemented and monitored.<sup>13</sup>

Surf Life Saving Queensland suggested that people need more guidance and support in implementing risk management strategies. Organisations should be educating volunteers and staff about the strategies for child protection, including why they are in place, how to access them when needed and who is responsible for them.<sup>14</sup>

Bravehearts suggests that to avoid duplication, the existing work health and safety regime be extended to include risks to children where organisations engage with or provide services to children.<sup>15</sup>

However, the Queensland Catholic Education Commission warned:

... the requirements to develop and implement a Child and Youth Risk Management Strategy are not well understood at a broader community perspective. Indeed, describing the requirements as a ‘risk management strategy’ tends to shift the conceptual focus to one of workplace health and safety, rather than capturing the intent of the strategy to create safe service environments for children.<sup>16</sup>

## Environments regulated by the blue card system

Approximately half of the survey respondents thought the blue card system should regulate more environments than it currently does. Stakeholders we spoke to were puzzled as to why some environments are within scope and others are not. They queried whether government added environments to the scope of the blue card system when high profile offences occurred within those environments.

Independent Schools Queensland submitted that:

Persons wanting to harm children are drawn to environments where there is easy access to children, and in particular to vulnerable children. It is important that the scope of the WWCC is not reduced as it provides an important deterrent at a point of entry into contact with children. It should apply to the currently defined environments where children spend regular time without a supervising parent.<sup>17</sup>

It also warned that extending the reach of the blue card system well beyond environments that are currently covered could potentially create a false sense of security.<sup>18</sup> However, a number of other submissions suggested including additional environments in the scope of the blue card system. For example, Bravehearts suggested:

The WWCC should be required for anyone undertaking employment or volunteer work within an organisation where the business of the organisation involves regular contact with children aged under 18 years.<sup>19</sup>

Churches of Christ Care suggested extending the blue card system to the following settings:

- commercial entertainment, party, gym and photography targeting children
- overnight camps and excursions
- schools where parents volunteer and have direct contact with children
- workplaces where people under 18 years of age are working or volunteering, and have frequent and consistent contact with children
- workplaces where employers and supervisors have frequent and consistent contact with young people.<sup>20</sup>

Protect all Children Today Inc. also argued for broadening the scope to include any environment where children and young people are involved, not only where they receive services. This includes workplaces such as fast food outlets and chain stores employing young people. These young people may not have the level of maturity to protect themselves or to question the situation they are in, particularly when asked to do the closing shifts late at night.<sup>21</sup>

Protect all Children Today Inc. advised that in the 2015–16 financial year, it supported over 30 children who had been sexually assaulted by a person in a position of authority. This submission emphasised that it was often a supervisor in a fast food outlet, café, or restaurant. For this reason, Protect all Children Today Inc. believes that hospitality needs to be added to the services which are specifically regulated.<sup>22</sup>

## When a working with children check is required

Most survey respondents (89 per cent) agreed a person working in an environment in which services are provided to children should have a WWCC when they have contact with children. Other factors considered relevant to whether a person needs a WWCC were:

- the frequency with which a person provides child-related services (65 per cent agreed)
- whether a person makes decisions that impact on the safety of children (93 per cent agreed)
- whether a person manages sensitive information in relation to children (96 per cent agreed).

yourtown suggested that the level of unsupervised contact is a more accurate determination of risk than the frequency of contact.<sup>23</sup> The Anglican Schools Commission also noted that not all sexual offences occur after a period of ‘grooming’ and that an offence can occur in just 5–15 minutes.<sup>24</sup>

Goodstart Early Learning submitted that:

When children are the target market for an organisation, any person working within that organisation and dealing with children should be required to undergo a WWCC. Specifically, this should include where there is physical or face-to-face contact, or oral, written or electronic communication with children and where contact with children is a usual part of the work.<sup>25</sup>

Protect all Children Today Inc. agreed, stating that ‘anyone working in a child-related position, with direct access to children and young people, regardless of the frequency, should be required to obtain a WWCC’. It disagrees with the Royal Commission in that it believes that all people in positions of management should be required to obtain a WWCC when making decisions affecting a child or managing sensitive personal records.<sup>26</sup>

However, the Australian Bahá'í Community agreed with the Royal Commission that a WWCC should not be required for individuals whose work does not require contact or communication with children (for example, members of management committees).<sup>27</sup>

Bravehearts advised that different environments pose different risks and we should consider a tiered system of suitability checking, depending on the environment.<sup>28</sup>

## When a working with children check is not required—exemptions

### Parent volunteers

Parents who wish to volunteer at their child's school, for example, as a coach or manager of a school sports team, are not required to hold a blue card if their child attends that school. Stakeholders told us that most parents expect that all persons hold a blue card when involved with a sporting team at a school. They would be surprised to find out that some people are exempt just because their child attends the school.

Of the survey respondents, 60 per cent agreed that parent volunteers should require a WWCC before volunteering at their child's school or child care centre.

For most of the stakeholders we spoke to from the education sector, this exemption caused the greatest concern from a risk perspective for extracurricular activities like sport. They believe this exemption would no longer be required if applicants could obtain a WWCC in under seven business days and if the process were simplified.

The Anglican Schools Commission supported a requirement for parent volunteers to hold a blue card, with no frequency exemption, as offences can occur even in situations where contact with children is limited.<sup>29</sup>

Bravehearts' submission noted:

There is nothing in the offending literature to suggest that parents and carers do not offend against their children's peers, in fact the literature suggests quite the contrary. Research into offenders' modus operandi indicates that child sex offenders often use their children and their partner's children to access and groom victims.

The reality is that offenders are often also parents and many offenders do access victims through their own children:


*'By and large, then, extra-familial and mixed-type offenders seek victims close to home—among the children of friends or other children with whom they already have some social relationship' (Smallbone & Wortley, 2000, p.42).<sup>30</sup>*

The Queensland Catholic Education Commission acknowledged that parent volunteers should be subject to WWCCs, but raised the need to manage this carefully due to the large numbers of parent volunteers in catholic schools.<sup>31</sup>

However, the Independent Schools Commission supports retaining exemptions for parents who volunteer in schools, because parent volunteers 'are under the supervision of a school staff member at all times'. That said, it also noted:

Where there are activities that the school deems a parent or other volunteer to be in a largely unsupervised context, we support the school being able to require that person to have a blue card as a risk mitigation strategy for that activity. In independent schools, we support schools having discretion to require blue cards for volunteers based on the school's risk management strategy, but request that the exemption for parents remain.<sup>32</sup>





The situation is less clear in relation to parents volunteering at their child's weekend sporting club not connected to a school. Survey respondents agreed (67 per cent compared to 33 per cent who disagreed) that parent volunteers should no longer be exempt when volunteering at a community organisation (for example, a sporting club) which their child attends or is part of.

For example, the Australian Bahá'í Community said that parents should be required to obtain a blue card, as is the case with any other member of the community, irrespective of whether their own child will be among the recipients of the service they provide. As noted by the Royal Commission, parents can also be offenders.<sup>33</sup>

Stakeholders connected with sporting clubs said that it is difficult to attract volunteers, especially in regional areas. If parent volunteers are not exempt and applicants still have to wait five to six weeks for a WWCC, most sporting seasons would be over before applicants could obtain their blue card. Again, stakeholders made the point that the problem would largely not exist if the process were faster and volunteers could obtain a WWCC within a week in the absence of adverse information.

### **Parent volunteers with a negative notice**

There is a strong view that if a person has been issued with a negative notice, they should not be able to continue to provide child-related services, even if they satisfy the current volunteer parent exemption. Most stakeholders described this as a loophole. They felt that parents would be alarmed if they knew that a parent with a negative notice could access an exemption to provide services to other children at a school or sports club.

Independent Schools Queensland stated:

If a person has a negative notice, they should not be able to work or volunteer in a child-related activity. The strength of the process of issuing a negative notice is in excluding that person from all child related activities.<sup>34</sup>

The Queensland Catholic Education Commission, Goodstart Early Learning and yourtown made similar statements.<sup>35</sup>

However, Surf Life Saving Queensland suggested:

A person issued a negative notice should be allowed to continue services if they are exempt from requiring a WWCC, and are suitably supported by a risk management plan to manage their involvement.<sup>36</sup>

### **Registered teachers and health practitioners**

Survey respondents were divided on whether registered teachers and health practitioners should continue to be exempt from the blue card system—46 per cent said yes and 54 per cent said no.

The Queensland Catholic Education Commission supported retaining the teacher exemption, but recommended that:

... the broader alignment between the Queensland College of Teachers and blue card system processes be explored to determine if there are other aspects, such as information sharing or notification processes that could be enhanced.<sup>37</sup>

Bravehearts supports the removal of the exemption for teachers and police officers.<sup>38</sup>

## Children

Survey responses were evenly split (45 per cent agreed and 55 per cent disagreed) on whether children who are volunteering should continue to be exempt from the blue card system.

The Anglican Schools Commission supported a requirement for WWCCs for all individuals, including those under the age of 18, who will be working or volunteering in child-related activities. It raised the risk of peer-to-peer offending among children and young people. It made the point that under 18-year-olds can and do pose a risk of harm to other children. This has been identified in hearings and research from the Royal Commission.<sup>39</sup>

Protect all Children Today Inc. submitted that:

We also believe that young people over 16 should be eligible to obtain a Blue Card. Sadly, children often commit offences against other children, so exempting someone from obtaining a Working with Children Check until the age of 18, poses unnecessary risks to vulnerable children.<sup>40</sup>

PeakCare advised children under 18 years should be exempt from checks ‘for the simple reason that they are children’.<sup>41</sup>

## Children and young people in out-of-home care

Stakeholders were concerned about the impact of WWCC screening on vulnerable groups in the Queensland community. A significant number of stakeholders involved in foster care and kinship care, including Aboriginal and Torres Strait Islander people, spoke about the difficulties families faced when an adult family member of the household was unable to obtain a blue card. The problem was particularly acute when the adult concerned was a young person under 21, who was a regular member of the household and needed accommodation, financial and emotional support.

Stakeholders said that in some cases, the young person was themselves a carer for an older family member. Many told us about the distressing decision they had to make when faced with either taking a child under a kinship placement or asking an adult member of their household (who could be a young person they had raised, now aged 18 or 19) to leave their home because they could not obtain a blue card. Stakeholders said adverse placement decisions (such as removing children from communities) that ultimately caused harm to children occurred because applicants could not satisfy WWCC requirements.

Many stakeholders spoke of the damage this requirement caused to children and young people because intended placements could not occur, resulting in less satisfactory options being accepted.

The CREATE Foundation also drew attention to the circumstances of young people in foster care (or whose parents are foster carers) who, having turned 18, are required to obtain a WWCC to remain in the home where younger children are being fostered.<sup>42</sup> It advised that people who have lived in out-of-home care are disproportionately likely to have had experience with the criminal justice system. The CREATE Foundation wrote, ‘In some cases, young people in care have been prosecuted due to behaviours that are the result of previous trauma and the application for a Blue Card may then be unsuccessful.’<sup>43</sup> Further to this, they added:

CREATE has also heard that the number of young people unable to secure blue cards, due to a juvenile justice history comprised [of] relatively minor charges has increased markedly ... CREATE believes this is an unintended consequence of the legislation and the purpose of the Act is not to make the lives of young people ... more difficult.<sup>44</sup>



PeakCare also says people living in a care household should not be required to apply for a WWCC as soon as they turn 18 years of age.<sup>45</sup> PeakCare advised that:

... there is also an emerging issue for children and young people in the statutory child protection system, particularly those living in residential care services, as these children are more likely to come in contact with police. Evidence is mounting about the criminalisation of children and young people while in state care. Around 20% of children in care in Queensland are subject to youth justice orders.<sup>46</sup>

The Youth Advocacy Centre agreed and added concerns that many young people may engage in activities, which, if subject to a police charge, will come to the attention of blue card screening. If a child under 16 sends a picture of themselves to another person, police may charge them with creating and distributing child exploitation material. If the recipient does not delete the picture, police may charge them with possession of child exploitation material.

Similarly, young people who engage in sexual activity can be charged with indecent dealing with a minor, or unlawful carnal knowledge. The Youth Advocacy Centre submitted that 'in either situation, these 'offenders' do not pose any risk to children. Their actions are part of normal adolescent development'.<sup>47</sup>

## Employers or supervisors of children

The majority (74 per cent) of survey respondents believed that a person who employs a child or supervises them in a workplace should no longer be exempt from the blue card system.

Protect all Children Today Inc. suggested that workplaces employing young people should require WWCC for supervisors and managers. Protect all Children Today Inc. volunteers are concerned about the increasing number of children and young people they have supported who have been victims of sexual assault perpetrated by an adult supervisor in a work environment. It argues that a professional relationship of this nature poses significant risks to young people, given the position of authority of employers and the vulnerability of young workers. They say it is a risk that requires urgent attention and management.<sup>48</sup>

Goodstart Early Learning suggested that people who engage in child-related work in the same capacity as a child should be exempt.<sup>49</sup>

## People who have been checked in another state or territory

Many survey respondents supported the idea that a person who has undertaken a WWCC in another state or territory should have the outcome recognised in Queensland, with 74 per cent agreeing and 26 per cent disagreeing.

Submissions also supported this concept, for example, Independent Schools Queensland stated:

ISQ supports the development of a national system of checks, including state and national jurisdictions. It is a concern that persons issued with negative notices in another state can operate in child-related activities in Queensland.

It is important to have a system of being able to check relevant information from other states upon employment or upon accepting the person into a volunteer role. We support the development of a national system which records in a central database all persons who are not allowed to work or volunteer in a child related activity. This could be similar to the current ASIC/ACNC excluded directors' database. In this case, it would create less administrative burden for any regulated organisation to check if a person is excluded from child related activities rather than being required to implement an employment policy based on positive notices and maintain a database for everyone who is allowed to undertake child-related activities within an organisation's scope.

However, it would be important for relevant information on exclusions to be continually updated and able to be accessed when needed.<sup>50</sup>

Protect all Children Today Inc. and Goodstart Early Learning also support introducing a national WWCC to accommodate people moving between the states and territories.<sup>51</sup>

The Queensland Catholic Education Commission suggested that Queensland recognise WWCC from other jurisdictions provided that:

- the other jurisdictions adopt a consistent approach to WWCCs
- there is reciprocal, proactive information sharing across jurisdictions
- changes to criminal history are monitored on a national level, not state level.<sup>52</sup>

## When a person can commence work

On the question of whether a person should be able to commence paid employment or volunteering while their WWCC application is processed, respondents replied:

	Yes	No
Start paid employment	36 %	64 %
Start volunteering	21 %	79 %

Stakeholders broadly agreed that long processing times, coupled with the requirement that people only begin work once their WWCC is issued, create problems for organisations. For example, the Australian Bahá'í Community suggested that applicants be able to work with children while waiting for the outcome of their WWCC, provided they are directly supervised at all times by a current WWCC holder.<sup>53</sup>

The World Education Program submitted that:

... all applicants (volunteers and paid workers) should be able to begin working once their application is lodged if the organisation requesting the WWCC has done its own checking and deemed the [applicant] to be suitable ... The Queensland system needs to get the applications into the screening system faster to allow this to happen.<sup>54</sup>

As Surf Life Saving Queensland pointed out:

It can be very problematic for an organization when the volunteer can't begin volunteering while their card is being processed, particularly in regional areas with lower population numbers.

As an emergency service organization that relies on volunteers to deliver services to keep the public safe while swimming at patrolled locations, and to deliver iconic junior development programs (nippers), any delays to engaging people in frontline roles may cause issues in locations where there are low volunteer numbers. Once an application has been submitted a person should be able to start volunteering/working this includes undertaking the necessary educational training to obtain the appropriate rescue skills needed). Organisations must then be able to place an interim bar on a person if they are deemed to pose a risk to children while their application is being assessed.<sup>55</sup>

Bravehearts advised:

... as long as an application for a WWCC has been made accompanied by the legislative requirement for serious penalties for non-disclosure and the organisation to have in place a child protection policy, a person should be able to commence work within the organisation prior to the completion of the screening process.<sup>56</sup>

The Queensland Catholic Education Commission agreed, submitting that:

QCEC supports that paid employees be allowed to start working whilst their Working With Children Check is being processed, subject to more strict application processing timeframes (i.e. five day processing) and the implementation of thorough risk management approaches. Volunteers should continue to be subject to the requirement that they apply for, and receive, their positive notice prior to commencing volunteer duties.<sup>57</sup>

In contrast, Goodstart Early Learning, Protect all Children Today Inc. and Girl Guides Queensland advised the opposite. They do not believe a person should be able to work or volunteer until a WWCC is issued. In its submission, Protect all Children Today Inc. advised that since processing times are currently so long:

Should a negative notice be issued after the WWCC has been undertaken, the worker or volunteer will have already had access to vulnerable children and young people for an unreasonable period of time.<sup>58</sup>

Most stakeholders told us they would prefer that persons do not start work or volunteering until they have a WWCC but said they understood the reason for this approach, given the delays in processing. Most stakeholders feel this issue would largely disappear if BCS processed applications within a shorter timeframe.

Stakeholders generally support a continuing prohibition against certain people applying for a WWCC.

## The information considered as part of a working with children check

Results of the survey indicated strong support for considering each of the following types of information as part of the WWCC process:

- charges (currently considered)
- convictions, including spent convictions and where a conviction was not recorded (currently considered)
- information about a police investigation (currently considered in certain circumstances)
- juvenile criminal history information (currently considered)
- breaches of a domestic violence order (currently considered)
- child protection information (currently considered in some cases)
- international criminal history (where known, currently considered in some cases)
- information about whether a person is, or has been, subject to a domestic violence order (not currently considered)
- information about WWCCs in other states and territories (currently considered where this is disclosed).

However, stakeholders were concerned that BCS does not currently consider domestic violence orders/history and only considers child protection information in limited circumstances. They provided several examples of individuals who had their own children removed from their care but who were still able to obtain a blue card. Those applicants had no police record, but BCS did not consider their child protection history as part of the WWCC process.

A number of stakeholders have reservations about the age and relevance of adverse criminal history information that BCS considers in supporting a negative notice. Most stakeholders expressed the view that offences need to be relevant to working with children.

However, some submissions suggested that WWCC screening should include offences other than child-related offences. Girl Guides Queensland stated that there is ‘no positive influence for children if the applicant has other recent and recurring offences’.<sup>59</sup>

Churches of Christ Care Queensland also stated:

... the blue card system [should] check an applicant’s broader criminal history, including international, child protection and domestic violence histories. This could be further linked to other discoverable evidence of misconduct, within reason.<sup>60</sup>

Bravehearts suggested that employment history checks (including disciplinary hearings and diversionary programs) be included and that employer organisations be required to notify any work-related disciplinary matters to BCS.<sup>61</sup>

yourtown submitted that:

The following information should be included in addition to the current set of police and disciplinary information:

- Any disciplinary information regardless of vocation related to child related employment
- All information about client complaints or employer investigations, regardless of outcome
- Family court and child protection information
- International and interstate criminal history.<sup>62</sup>

Goodstart Early Learning made a similar submission, suggesting that the applicant’s entire criminal history be considered. This includes:

- juvenile and international criminal history
- all charges and convictions
- relevant disciplinary and misconduct information
- child protection and domestic violence history.<sup>63</sup>

Stakeholders were also concerned that BCS does not monitor changes in national police information on a daily basis and does not routinely consider international criminal history. They did note, however, that international history checks might delay an application for months and that such checks might be of little value from countries that do not have similar legal systems or that are politically and socially unstable.

Mercy Community Services suggested considering international criminal history where a person has lived overseas for more than six months in countries from which information is available.<sup>64</sup>

Stakeholders support the idea of BCS accessing further sources of information as long as it does not delay the outcome.

Independent Schools Queensland submitted that:

A blanket requirement for an overseas criminal history check could be problematic in some cases. Depending on a person’s country of origin and reason for leaving the country, processes for obtaining his or her criminal history from overseas could be time-consuming and may not be reliable.

Authorities should be able to make use of information from overseas jurisdictions if it is provided, and regulated organisations should be able to request this information as part of their own risk management strategies if they deem it important in creating a child-safe environment.<sup>65</sup>

## How a working with children check decision is made—presumptions for and against approval

The survey indicated strongly (93 per cent agreed) that in certain defined circumstances, a person should not be issued a blue card, for example, if police have charged, or a court has convicted a person of certain offences. This supports the continuation of the legislative test that directs decision-making against granting a blue card to certain applicants.

There is some support for a conditional blue card to allow applicants who might otherwise receive a negative notice an opportunity to work with children—to demonstrate they are not a risk. Stakeholders suggest that the system could operate like a provisional licence system for drivers. Stakeholders who suggested this feel it offers hope to applicants that they can demonstrate they have changed their behaviour.

Bravehearts suggested that in cases where an applicant has a criminal matter pending, BCS could issue a temporary card that might allow supervised contact with children until the matter is finalised.<sup>67</sup>

The obvious danger would be the loss of public support if a person with a conditional blue card offended against a child. The Royal Commission has reported that conditional WWCCs should not be available.

## How negative notices can be reviewed

Ninety per cent of survey respondents support the idea that a person should be able to have an adverse WWCC decision reviewed. The majority also agree that the Queensland Civil and Administrative Tribunal (QCAT) should continue to review these decisions. However, stakeholders told us that for Aboriginal and Torres Strait Islander applicants, this avenue of review is not one they can access because of the time, complexity and cost involved.

BCS does not currently offer applicants a right of internal review. Stakeholders support a fair, quick and free right of internal review that is both visible and promoted in decision letters and on BCS's website.

For example, Goodstart Early Learning submitted that:

The current review process would be improved if applicants had a right to apply for an internal review of a decision, prior to applying to the Queensland Civil and Administrative Tribunal (QCAT) for review. This would be particularly beneficial given that both parties are able to provide additional evidence when the matter is being considered by QCAT which could have been considered through an internal review process.

An internal review step would enable any other relevant information to be considered by the Blue Card decision maker, potentially reducing the need for external review.

An internal review step would also relieve pressure on QCAT, provide for a more collaborative and informed approach to decision making and assist in reducing the number of external appeals.<sup>69</sup>

Bravehearts' submission advised that '... a clear and transparent process for assessing WWCC applications, along with an appeals process and annual reporting, would ensure the integrity of the scheme'.<sup>70</sup>

## How compliance with the blue card system is monitored

There was strong agreement (98 per cent of survey respondents), that a government agency should have statutory powers to monitor compliance with the blue card system.<sup>71</sup>

Some submissions suggested there should be an accreditation system for child safe organisations. For example, yourtown told us:

... organisations would place greater importance on the implementation of child safe practices if an accreditation system involving the external monitoring of an organisation's enactment of child safe policies, procedures and practices was introduced. Research indicates that this would encourage the proper development and application of these policies ... This would require the regulator to have legislative powers to enforce requests for information from organisations involved in child related services. Even if this reform is not supported the regulator needs these powers to facilitate compliance with the current system.<sup>72</sup>

However, there is concern that some organisations are already subject to compliance and monitoring under other legislative regimes, creating some duplication. For example, Independent Schools Queensland advised:

As schools are recognised as charities, they are subject to regulation by the [Australian Charities and Not-for-profits Commission] ACNC. The ACNC has extensive powers — including removal of directors and loss of charity status for organisations that do not comply with the governance standards, one of which is compliance with all Australian laws. There is already significant statutory power to act — there needs to be a determination about which statutory body has the best power to act.<sup>73</sup>

Similarly, the Queensland Catholic Education Commission submitted that:

... the crossover of activity for organisations, particularly non-state schools, with other legislative requirements, increases complexity. For example,

- Non-state schools are required to have a Code of Conduct in order to meet accreditation requirements under the Education (Accreditation of Non-State Schools) Regulation 2001. This same requirement exists under the Child and Youth Risk Management Strategy.
- Non-state schools are also required to have written processes that meet mandatory reporting requirements of child abuse and harm under both the *Child Protection Act 1999* and *Education (General Provisions) Act 2006*. The Child and Youth Risk Management Strategy must include policies and procedures for handling disclosures or suspicions of harm, including reporting guidelines.

... QCEC submits that alignment between legislative requirements and other government requirements is essential.<sup>74</sup>

Protect all Children Today Inc. suggested periodic audits of organisations would promote better compliance with risk management strategies.<sup>75</sup> Surf Life Saving Queensland suggested either higher penalties for organisations failing to implement risk management strategies, or 'a positive reinforcement philosophy', which could come in the form of a certification or accreditation program.<sup>76</sup>

PeakCare said that 'the penalty does not function as a motivator for compliance', and a focus should be 'more appropriately placed on multi-pronged strategies that support child safe, child friendly organisations'.<sup>77</sup>



## What information is shared

Almost all survey respondents agreed that government agencies should be able to share information about a person's WWCC to manage risks.<sup>78</sup> This included sharing information with other states and territories as well as with Queensland government and non-government agencies. For example, Churches of Christ Care recommended more detailed information sharing with foster agencies, which could be integrated into foster carer assessment processes.<sup>79</sup>

The Anglican Schools Commission submitted that:

... as the lead agency for child protection, information held by the DCCSDS is critical in allowing BCS to undertake a thorough and complete assessment of eligibility for an individual to work with children.<sup>80</sup>

Bravehearts suggested that information sharing should include the Registrar of Births, Deaths and Marriages as well as the Commonwealth Department of Immigration.<sup>81</sup>

Broader information sharing is widely supported by other stakeholders, as long as doing so would better protect children. Most stakeholders conceded that it is easier to take the default position of not sharing information so they do not breach their privacy obligations. Information sharing for child protection is an issue that requires considerable work.

Bravehearts supported sharing all relevant information with other states and territories and stated:

In an ideal world they would have access to a ... portal to search themselves and even better if it was ultimately just one national portal — at least for criminal history and intelligence.<sup>82</sup>

Goodstart Early Learning agreed, submitting that:

At the very least, there should be a centralised national database to facilitate easy access to relevant information by screening agencies. This could be established with appropriate safeguards to protect people's privacy however the overriding concern must always be what is in the best interests of children.<sup>83</sup>

There was an overwhelming preference among stakeholders for the development of a national system of WWCCs.<sup>84</sup>

Goodstart Early Learning advised that:

Australia should adopt a national Working with Children Check and as an interim step Queensland should adopt the national standards identified by the Royal Commission Working with Children Check Report, except for allowing an individual to work before they have a WWCC.<sup>85</sup>

## Streamlining the system

### How organisations are helped to create safe service environments

Ninety-five per cent of survey respondents believed that organisations need better support in order to be child safe. A similar number thought that parents and communities need better support in choosing child safe organisations for their children.

Submissions confirmed this view. For example, Independent Schools Queensland advised that:

The WWCC can only ever be one strategy in creating a child-safe organisation. It cannot solely be relied on to protect children. Schools and other organisations would benefit from greater assistance and an educative approach from the Department of Justice to embed a child-safe organisational culture. A heavy

reliance on compliance and an onerous administrative workload detracts from the time and capacity of schools to develop a child-safe school culture. Any assistance to make the process easier will help schools and other organisations to create safer child-safe organisations.<sup>86</sup>

There was broad agreement that government needs to play a stronger role in supporting organisations in developing child safe practices, and in informing parents about how to look for child safe environments.

Goodstart Early Learning submitted that:

A strong communications campaign would help to equip parents and the community to better understand what ‘child-safe’ entails and that the blue card is only one but an important tool in keeping children safe. A greater understanding about the importance of the overall risk management strategy and the need to maintain its currency should also be highlighted. Consideration could be given to requiring organisations to publish their risk management strategy and display it in a prominent place for families.<sup>87</sup>

Bravehearts suggested that government provide templates for policies and procedures that need little change, and/or grants to assist organisations to develop their policies and procedures. It also proposed online training as an economical solution.<sup>88</sup>

The Anglican Schools Commission submitted that:

The current BCS website is not considered as being ‘user’ friendly with many of our school staff struggling to find relevant information to assist with determining if the criteria has been met for ‘regulated employment’ depending on the relevant category within the WWC Act. The Victorian Working with Children Check webpage seems to be very ‘user friendly’, comprehensive and very easy to find relevant information.

Education and training for users of all components of the legislation is critical to support stakeholders who are required to work within, and are desirous of working within the system to ensure full compliance.<sup>89</sup>

The Queensland Catholic Education Commission stated:

Increased community and organisational awareness around what makes organisations child safe is essential ... public focus in Queensland has been around the ‘blue card’, not the ‘blue card system’ and the important elements of the Child and Youth Risk Management Strategy. Where parents and communities are more aware, then they are able to better determine how an organisation is creating a safe environment for their child.

Provision of training and practical support for regulated organisations would be of significant assistance. It is acknowledged that this approach would be multi-modal to capture the broad range of service environments, however could be achieved through coordinated regional training.<sup>90</sup>

Protect all Children Today Inc.’s submission advised:

PACT on several occasions has requested a list of the Blue Card holders associated with our organisation, but have been told that BCS are unable to provide this Report. Reports of this nature would assist organisations to ensure that the necessary paperwork is submitted for people who have resigned or ceased their association.

Further, we express concern over smaller organisations, such as sole traders, having the necessary experience, knowledge, resources or capacity to implement risk management plans, disclosure policies and procedures etc. These agencies need to be better supported to ensure they comply with the requirements.

In relation to support for parents and the community more generally, Protect all Children Today Inc. suggested creating a register of compliant child safe organisations that carers and parents could access.<sup>91</sup>

In the same vein, the Anglican Schools Commission suggested:

... an accreditation process for ‘child-safe’ organisations be available for businesses such as schools and [education and care services] to work towards and apply. Such accreditation could be listed for public information to assist in assuring parents and communities that an organisation is doing all that is required to be considered as a ‘child-safe’ organisation.<sup>92</sup>

Surf Life Saving Queensland submitted that:

... parents should be educated about what to look for when selecting a child safe organisation ... Online videos and checklists would be a basic starting point ... Organisations can then benchmark themselves against these and the legislative requirements and promote accordingly to potential and existing members.<sup>93</sup>

## Blue card process

The most common concern stakeholders raised with us about the WWCC process was delay. They told us that it takes about five to six weeks to obtain a blue card in the absence of any adverse history. Stakeholders think this processing time is too long, particularly in light of the timeframes other jurisdictions achieve for similar straightforward applications. In New South Wales, for example, the published processing time is three to five business days.

Stakeholders reported that applications requiring assessment of adverse information commonly take several months to determine. They generally regard current processing timeframes as unacceptable, especially for renewals when there has been no change to an applicant’s criminal history since the original approval.

Stakeholders also said that if it were possible to obtain a WWCC within a more reasonable time, a number of the exemptions would not be necessary.

## Online process

Stakeholders, including 73 per cent of survey respondents, generally supported the move to an online application process. Many stakeholders mentioned the need to retain some paper-based applications for people with limited access to or ability with technology.<sup>94</sup>

BCS has recently implemented the ability to pay the application fee online. However, the entire process needs automating, including the ability to go online and to check on the progress of an application. This would save applicants calling BCS to ask about progress.

For example, the Anglican Schools Commission suggested that a complete online application process with a much shorter (3–5 day) turnaround time would assist employers and organisations in managing the recruitment of both paid and unpaid individuals.<sup>95</sup>

Many stakeholders said the current form is difficult to follow and complete correctly and BCS returns the forms for any perceived error, no matter how simple. These returns only contribute to the delays and are very frustrating.

Stakeholders generally commented that BCS’s website is outdated and largely unhelpful, particularly when trying to determine the key question of whether an applicant needs a WWCC. Most feel that the website does not assist them or answer their questions. They said they had to abandon their efforts and make a telephone call or several calls. The view was that BCS should upgrade the website in tandem with implementing an online application form. The website needs to include advice that is more direct and helpful.

Employer stakeholders strongly stressed the need for a portal they can easily access to assist with compliance with their WWCC and risk management obligations. It was not widely known what support is currently available for organisations. This large group of stakeholders also indicated that such a portal would significantly decrease the administrative burden associated with the WWCC process.

Development of a robust online system could help support a system where individuals apply for a WWCC, with a link to the one or more organisations for which they work or volunteer. The Queensland Catholic Education Commission suggested that:

Regulated organisations should have an interface with this system through secure access. This approach would potentially remove the administrative demand of maintaining complex blue card ‘registers’, and organisations could link/unlink blue card holders in a more streamlined manner.<sup>96</sup>

## Need for a link with an organisation

The majority (75 per cent) of survey respondents believed that an applicant should be able to apply for a WWCC without first being linked with (or employed by) an organisation. This could speed up the process for hiring staff and volunteers.

Many of the stakeholders we spoke to considered the requirement to have an agreement to work with an organisation prior to applying for a WWCC to be an unnecessary barrier. Most would prefer to apply for a WWCC without the need to have an agreement to work in place. Many stakeholders advised that young family members thought it odd they could not simply apply for a WWCC when they turned 18 before seeking employment, given many positions specify that a WWCC is required.

Submissions generally supported this position.<sup>97</sup> For example, Mercy Community Services highlighted that this could ‘expedite on-boarding [enabling new recruits to begin work] through the linking of the WWCC to the organisation rather than a full application process’.<sup>98</sup>

However, Protect all Children Today Inc. questioned:

... why an individual would wish to apply for a Blue Card without being associated with an organisation. This could pose potential risks as an individual would not have the compliance requirements of an organisation and could then expose children to unnecessary risk.<sup>99</sup>


While it might have been necessary to set the system up this way when it began, in order to reduce demand for WWCCs, it is time to consider if it is still necessary. There is no obvious child protection benefit from having an agreement to work with an organisation before BCS grants an applicant a blue card. The benefit comes after BCS issues the blue card. If a cardholder’s criminal history changes, BCS is able to notify the employer.

As the Queensland Catholic Education Commission identified:

A key benefit of linking individuals with an organisation is the proactive notification to the organisation if the individual’s blue card status changes. Without this link, the onus shifts to the organisation to somehow continually monitor the individual’s card status. Noting the current blue card renewal period of three years, this would present a significant organisational risk ... at a minimum, blue card holders who work with community organisations must be required to link their cards to those organisations during the period of engagement.<sup>100</sup>

## Physical card with photograph

Eighty-eight per cent of survey respondents supported retaining a physical card, and a similar number supported including a photograph. The stakeholders we spoke to largely supported having a photo on the card. They believe it is best practice and more important than a signature. However, submissions differed as to whether a physical card, with a photograph, would help support child safety.



Churches of Christ Care Queensland, the Anglican Schools Commission, Protect all Children Today Inc. and Surf Life Saving Queensland supported maintaining a physical card, including a photograph, to provide a form of identification.<sup>101</sup> Independent Schools Queensland agreed a photograph would be useful for volunteers.<sup>102</sup>

In contrast, PeakCare stated:

PeakCare is of the view that the card does not and should not constitute an identity document nor further encourage complacency that holding a card, with or without the holder's photo, equates to the person being 'safe'. Inadvertently, it appears that a widespread public perception has been formed that equates a 'blue card' with an 'iron-clad certificate' of the holder's suitability to work with or care for children.<sup>103</sup>

Both the Queensland Catholic Education Commission and Mercy Community Services stated that the need for a photograph would add an administrative burden to the process. They said this could cause greater delays with limited benefit.<sup>104</sup>

Goodstart Early Learning suggested:

In an online environment, a physical card may be redundant as individuals and their photo could be viewed online. However given the significant number of Queenslanders who currently hold a blue card, consideration should be given to incorporating it into other existing forms of identification such as a driver's license.

## How long a working with children check is valid

Only 25 per cent of survey respondents supported extending the current three-year renewal period. In contrast, most written submissions broadly supported the Royal Commission's finding that a WWCC should be valid for five years.<sup>105</sup> A number of stakeholders told us they think it unnecessary to have to make a fresh application every three years and to provide proof of identity again, given that BCS checked it with the original application.

However, support for extending the renewal period was dependent on the establishment of continuous interstate monitoring of changes in criminal history. For example, the Anglican Schools Commission supports retaining the current three-year renewal period unless national criminal history is monitored on a daily basis like Queensland criminal history. It said that to extend the renewal period without daily monitoring of national history poses risks to the safety of children.<sup>106</sup>

Bravehearts also supports leaving the renewal period at three years. It submitted that:

Ensuring that there are regular re-application processes that do not over-burden the system but that still provide regular check is a vital component of any WWCC.<sup>107</sup>

yourtown told us:

The only advantage of the current three year term for Blue Cards is that at the time of renewal interstate criminal history is reviewed. yourtown believes that if a system was introduced to continually review interstate criminal history then Blue Cards could be open ended. In the absence of this system, the current three-year period for Blue Cards is an adequate time.<sup>108</sup>

Similarly, the Queensland Catholic Education Commission advised:

There is an administrative benefit for regulated organisations by extending the renewal period, by virtue of decreased renewal application. The clear risk is the monitoring of a blue card holder over a greater period if this continues to be limited to changes to Queensland criminal history only. For the renewal period to be extended, more comprehensive monitoring of changes in criminal history would be required, including monitoring at a national level.<sup>109</sup>

## Community participation and support

### Supporting Aboriginal and Torres Strait Islander communities

More than 90 per cent of survey respondents agreed that Aboriginal and Torres Strait Islander peoples need more support to participate in the blue card system.

Mercy Community Services advised:

Aboriginal and Torres Strait Islander people are overrepresented in the criminal justice, domestic violence, and child protection systems therefore increasing the chances that Aboriginal and Torres Strait Islander applicants will have history that requires consideration. Having to then respond to issues that occurred due to disadvantage only amplifies the impact of that disadvantage. This dynamic must be an aspect of deliberation in the decision making framework.<sup>110</sup>

### Perceptions about working with children checks

Aboriginal and Torres Strait Islander communities consistently told us that they are not seeking lower child protection standards to apply to their communities. Stakeholders agree that the safety and wellbeing of children is paramount. However, communities dispute that negative notices keep children safe. They claim negative notices are more likely to cause families to unravel and make it impossible to place children in preferred kinship arrangements. This is especially so when not all adult members of a household can obtain a blue card.

Overall, the blue card system is not viewed positively. It is also apparent that there are significant levels of misunderstanding about the system. This is largely because of the experiences of others within the community who were not able to obtain a blue card and who have shared their stories. Essentially, stakeholders feel the blue card system is unfair, not culturally appropriate and a significant impediment to employment and kinship care arrangements. There are a number of specific issues that they describe as barriers to participation.

Churches of Christ Care told us that:


The blue card and criminal history check process can be a particular barrier when identifying Aboriginal and Torres Strait Islander carers. This is partly due to limited community knowledge of the blue card system and the nature of offences that disqualify someone. So when a family member is needed to look after children, they might not volunteer because they will be unsuccessful in obtaining a blue card due to a past offence.<sup>111</sup>

Micah Projects Inc. expressed similar sentiments:

Without compromising safety, it will be important to increase the available pool of kinship carers through careful consideration of the nature of past crimes, fulfilment of rehabilitation periods and current suitability of the applicant to be a kinship carer.

Stakeholders pointed out that there are limited employment opportunities within communities. Inability to obtain a blue card has significant ramifications and contributes to a feeling of hopelessness. The fact that BCS considers historic offences causes applicants to think that any criminal history precludes a successful application.

Given the amount of misinformation in communities about the likelihood of successfully obtaining a blue card, applicants are reluctant to approach an organisation in any capacity if the outcome is likely to be a negative notice.



PeakCare advised that the WWCC process might discourage certain individuals from applying for work where a blue card would be required:

... costs associated with the blue card system include the unintended consequence of prospective foster or kinship carers (particularly Aboriginal and Torres Strait Islander peoples), human services and social work students, and prospective employees being dissuaded from entering child-related employment ... anecdotally it seems that prospective foster and kinship carers are still fearful and put off by the process.<sup>112</sup>

## Working with children check process

Stakeholders describe the application form as complex and not easy to complete. It is five pages, contains detailed, small text, and seven parts, which applicants need to complete with precision.

If BCS proposes to issue a negative notice, it invites applicants to make a written submission to respond to adverse information before it makes a final decision. This is how it provides procedural fairness to applicants. Overwhelmingly, stakeholders see the submission process as unfair.

Documents provided by stakeholders indicate that BCS asks applicants to:

- address all the concerns outlined in the letter, including in the attachments
- discuss steps taken to address their offending behaviour and how they will safely interact with children
- supply detailed written references.

Stakeholders told the review team that a significant number of applicants within communities do not respond within the time period stated and disengage from the process.

Goodstart Early Learning submitted that:

Lack of internet reliability and poor literacy skills are issues which affect a number of remote Queensland communities. To enable all Queenslanders to participate in the blue card system, consideration should be given to providing additional support, such as out-reach workers or partnering with another government agency (e.g. post offices) located in remote communities to provide individuals with face to face support in completing their application.

Whilst there is a need to accommodate issues such as the difficulty in some instances of providing documentation to verify identity, it is important that the integrity of the blue card system (even with its current shortcomings) not be further compromised by a watering down of requirements.<sup>113</sup>

## Working with children check decisions

A major issue raised by Aboriginal and Torres Strait Islander stakeholders concerns the relevance and age of offences that BCS considers when issuing a negative notice. They believe that to be relevant, an offence needs to relate to a child or involve a child in a clear way that reasonably suggests a child will not be safe with that applicant.

Stakeholders mentioned that BCS considers very old offences relevant, and that people have no opportunity for rehabilitation. Essentially, there is no incentive to make positive life changes if BCS takes past offences into account to such a degree that it issues a negative notice.

Stakeholders believe that decision-makers in Brisbane do not understand the realities of life in a community. Some Elders attending forums said that statistically, communities were over-policed, over-charged, over-convicted and over-represented in the criminal justice system. This means that a negative notice issued by BCS is in effect a secondary penalty for life.

Communities suggested that they would like to have some input into WWCC decisions. A panel could facilitate this and recommend to BCS when it should issue negative notices.

## Review of working with children check decisions

Stakeholders do not view the QCAT review process as a realistic option without long-term legal assistance. They said the majority of applicants would simply not attempt it. Elders described it as ‘illusory’ or a ‘mirage’. It is a further area where public education appears necessary.

Stakeholders complained that the process did not appear to consider any cultural considerations during the decision-making process. They said they were unaware of any Aboriginal and Torres Strait Islander person within BCS who could assist them.

Robbie Katter MP, Member for Mount Isa, also voiced concern about the impact of WWCC screening on Aboriginal and Torres Strait Islander communities. He wrote:

... one of the biggest hurdles I hear from the constituency is that the application and subsequent appeals process is laborious, and doesn't adequately take into account the challenges faced by Indigenous community members. There must be a holistic approach to effective engagement, and a genuine desire to enhance the job prospects in these communities.<sup>114</sup>

## Building public confidence

Stakeholders pointed out that BCS only checks past known adverse information and there is still a significant level of misunderstanding within the community about what information is checked when an application is made and what the role of a WWCC is.

When persons with WWCCs are charged with high profile offences, the media often asks how it was possible for such a person to hold a blue card. This suggests that a government decision-maker must have erred by providing a blue card to that offender. Stakeholders stated frequently that such suggestions unnecessarily erode public confidence in the blue card system.

## Mechanisms for oversight and review of the blue card system

Almost all survey respondents agreed that it is important for the blue card system to be reviewed regularly to identify opportunities for improvement.

Submissions also supported regular review of the legislation. For example, Bravehearts told us that:

Regular reporting on the effectiveness of the WWCC system and Act will ensure accountability, transparency, and that contemporary best practice is maintained ensuring the WWCC system is working to maximum effect and meets national standards and practices.<sup>115</sup>


The Anglican Schools Commission made a number of suggestions:

The WWCC legislation has not been reviewed since its conception in 2001. The ASC is unaware if BCS have ever reviewed their practices and processes particularly from a ‘user’ perspective.

The process has become so manual and cumbersome, the intent of the BC system is at risk of being lost.

The ASC would welcome an opportunity to provide ongoing feedback to BCS. It is our submission that individuals applying for a WWCC should automatically be given an opportunity to provide real-time feedback on the application process to BCS.





It is our submission that BCS be required to be externally audited on a 3–5 year basis with the results of such audit made readily available to the public. A process of this nature would assist with continuous improvement to not only strengthen the system but ensure that the process remains current within a changing environment. An audit process would provide stakeholders with a better understanding of the effectiveness of the Blue Card System.

yourtown submitted that:

This is an important area of social policy directly impacting on the safety of children and young people. Given the high systemic risks within organisations in relation to child abuse, the lack of research in regard to the effectiveness of child safe strategies, emerging risks and the ever changing technological context within which contemporary organisations operate there is a need for a regular review of the WWC Act. The legislative review should be set at five year intervals to provide time to adequately assess ongoing changes to the system.<sup>116</sup>

Protect all Children Today Inc. also suggested a mandatory review of the legislation every five years to ensure it meets current demand, especially in relation to reporting.<sup>117</sup>

Similarly, Goodstart Early Learning submitted that:

The WWC Act should be amended to include a mandatory review of the legislation and the operation of the blue card system. Furthermore, the Chief Executive of Blue Card Services should be required to report annually on the effectiveness or otherwise of the blue card system. This report should be made publicly available. This would assist in developing the public's understanding of the blue card system and how it contributes to a broader child protection framework.<sup>118</sup>

In terms of oversight of the system, Bravehearts suggested having an independent stakeholder advisory panel to oversee the system. The panel could oversee and respond to complaints, practice, outcomes, governance and reporting.<sup>119</sup>

## Data and information about the blue card system

There was general agreement that releasing more information about the system, including statistics and other content, would improve community trust. Mercy Community Services stated:

... it could be valuable to provide regular statistics on the number of WWCC applications, outcomes of those applications; appeals made and outcomes of those appeals. Readily available information on how to best respond to request for further information and appeal processes would also be helpful.<sup>120</sup>

Many stakeholders suggested BCS use the data it collects to provide stronger screening of individuals who may pose a risk to children.

Goodstart Early Learning suggested, 'the blue card system should be upgraded to enable research functionalities and the ability to identify trends such as high risk areas of employment.' It also said:

... the data collected and held by BCS is information rich and would provide valuable insights to inform future policy development at a national, state and organisational level. It would be beneficial for the wider community if the Chief Executive of BCS provided an annual public report on the effectiveness of blue card operations as well as an approved set of data to enable organisations to better understand developments within their own sector.<sup>121</sup>

Churches of Christ Care submitted a similar proposal, stating that 'the scope of criminal activity should also be reviewed to examine patterns, length of history, convictions and the range of charges for an individual'.<sup>122</sup>

Micah Projects Inc. said, 'we are concerned that BCS does not currently have a research function to support any analysis of data to identify trends or potential risks in particular environments'.<sup>123</sup>

These submissions indicate a desire to use data from the blue card system to develop targeted ways to screen for risks to children.

As the Youth Advocacy Centre noted, there is no large-scale research to assist in understanding the effectiveness of WWCCs that we know in reducing risks of harm to children. It is important that the limitations of the system are well understood and that we know whether there are additional or better ways to ensure children's safety.<sup>124</sup>

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5. Independent Schools Queensland, Submission.
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- <sup>94</sup>. Goodstart Early Learning, Submission; Mercy Community Services, Submission; Queensland Catholic Education Commission, Submission; Independent Schools Queensland, Submission; Churches of Christ Care, Submission; Australian Bahá'í Community, Submission.
- <sup>95</sup>. Anglican Schools Commission, Submission.
- <sup>96</sup>. Queensland Catholic Education Commission, Submission.
- <sup>97</sup>. Mercy Community Services, Submission; Goodstart Early Learning, Submission; Bravehearts, Submission; Anglican Schools Commission, Submission; Surf Life Saving Queensland, Submission.
- <sup>98</sup>. Mercy Community Services, Submission.
- <sup>99</sup>. Protect all Children Today Inc., Submission.
- <sup>100</sup>. Queensland Catholic Education Commission, Submission.
- <sup>101</sup>. Churches of Christ Care Queensland, Submission; Protect all Children Today Inc., Submission; Anglican Schools Commission, Submission; Surf Life Saving Queensland, Submission.
- <sup>102</sup>. Independent Schools Queensland, Submission.
- <sup>103</sup>. PeakCare, Submission.
- <sup>104</sup>. Queensland Catholic Education Commission, Submission; Mercy Community Services, Submission.
- <sup>105</sup>. Australian Baha'i Community, Submission; World Education Program, Submission; Surf Life Saving Queensland, Submission; Independent Schools Queensland, Submission.
- <sup>106</sup>. Anglican Schools Commission, Submission.
- <sup>107</sup>. Bravehearts, Submission.
- <sup>108</sup>. yourtown, Submission.
- <sup>109</sup>. Queensland Catholic Education Commission, Submission.
- <sup>110</sup>. Mercy Community Services, Submission.
- <sup>111</sup>. Churches of Christ Care, Submission.
- <sup>112</sup>. PeakCare, Submission.
- <sup>113</sup>. Goodstart Early Learning, Submission.
- <sup>114</sup>. Robbie Katter MP, Submission.
- <sup>115</sup>. Bravehearts, Submission.
- <sup>116</sup>. yourtown, Submission.
- <sup>117</sup>. Protect all Children Today Inc., Submission.
- <sup>118</sup>. Goodstart Early Learning, Submission.
- <sup>119</sup>. Bravehearts, Submission.
- <sup>120</sup>. Mercy Community Services, Submission.
- <sup>121</sup>. Goodstart Early Learning, Submission.
- <sup>122</sup>. Churches of Christ Care, Submission.
- <sup>123</sup>. Micah Projects Inc., Submission.
- <sup>124</sup>. Youth Advocacy Centre, Submission.



## Appendix E

### Review of the blue card system—Phase 2

**Community and stakeholder consultation summary— Phase 2**

**10–31 March 2017**

## Introduction

On 10 March 2017, the Queensland Family and Child Commission (the QFCC) released an options paper seeking responses to a range of potential options for reform of the blue card system. Submissions closed on 31 March 2017. The options paper is available on the QFCC's website (<https://www.qfcc.qld.gov.au/sites/default/files/Review-of-the-blue-card-system-Options-Paper.pdf>).

This report summarises the information provided by community members and stakeholders to the QFCC in response to the options paper.

The QFCC used this information to develop the final recommendations for strengthening and streamlining the blue card system.

## Stakeholder forum

The QFCC held a stakeholder forum in Brisbane on 20 March 2017. The forum explored the options for reform identified in the options paper. This included giving attendees the opportunity to vote for their preferred options and provide feedback on the options.

43 participants attended the forum and provided feedback on the options.

## Written submissions

A range of organisations and individual stakeholders made a total of 28 submissions responding to the options paper.

Not all stakeholders responded to all options contained in the options paper. Some chose to respond only to options directly related to their field of work. Others chose to either support, or not support, every option.

## The scope of regulation

The options paper presented four options for stakeholders to consider:

### Options—Scope of regulation

- 1.1 Maintain current scope and simplify categories
- 1.2 Adopt the Royal Commission's recommendations in relation to child-related work
- 1.3 Maintain mandatory regulated environments, with the ability for organisations to opt in to regulation
- 1.4 Allow a statutory instrument to be issued to clarify the scope of regulation

Stakeholders reported experiencing uncertainty about whether an organisation or activity is a regulated service. However, they noted that the current requirements are already complex and that any reforms should not make the system more complicated.

In line with these comments, the majority of stakeholders preferred option 1.2, which proposed adopting the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). The Royal Commission recommended having a consolidated list of child-related work or roles that require a working with children check (WWCC).

Stakeholders preferred this option because it would mean there would be one simple definition of regulated services, including some new environments that Queensland does not currently regulate.

Stakeholders also strongly supported option 1.4, which proposed allowing the Minister or Chief Executive to make legally binding rulings (through a statutory instrument) to clarify the scope of regulation. A number of stakeholders considered that options 1.2 and 1.4 together would support a nationally consistent approach, while reducing uncertainty about regulated activities and services.

Some stakeholders raised concerns that the current blue card system does not regulate environments where children may be present, but the organisation is not providing child-related services or activities, for example, people in workplaces supervising or employing children.

One stakeholder, Protect all Children Today Inc. submitted that:

PACT strongly advocates for the need for Employers and Supervisors of children engaging in a workplace that is not child-related be required to obtain a Blue Card.

... PACT volunteers expressed concerns about the increasing number of children and young people they have supported who have been victims of sexual assault perpetrated by an adult supervisor in a work environment.<sup>1</sup>

Similarly, St Vincent de Paul Society recommended broadening the scope to include other child-related services where contact with children is more than incidental to work or position.<sup>2</sup>

Some stakeholders also supported option 1.3.<sup>3</sup>

## Child safe organisations

The options paper presented four options for stakeholders to consider:

### Options—Child safe organisations

- |     |   |
|-----|---|
| 2.1 | Adopt the recommendations of the Royal Commission and expand the elements of a child safe organisation strategy |
| 2.2 | Separate requirements for child safe organisations and WWCCs  |
| 2.3 | Develop a publicly available register of child safe organisations   |
| 2.4 | Introduce an accreditation process to complement existing regulatory frameworks                                 |

Stakeholders believe that there is not enough focus on child safety and organisations need to do more to be child safe. Stakeholders commented that this is, in part, due to confusion about current risk management and blue card requirements.

Accordingly, the majority of stakeholders preferred option 2.1, which proposed adopting the Royal Commission's recommendations to expand the elements of a child safe organisation strategy. This is because it supports a nationally consistent approach to child safe organisations, which would assist to reduce confusion among national organisations about what is required of them.

Stakeholders also raised concerns that there was an over-reliance on blue cards as the main tool for keeping children safe.

St Vincent de Paul Society agreed, stating that:

Whilst supportive that the blue card system positively contributes to creation of safe environments for children ... there is a risk of organisational over reliance and complacency with the WWCC ...<sup>4</sup>

Similarly, Micah Projects Inc. submitted that:

... WWCC laws and checks cannot prevent predatory and harmful behaviour from occurring and ... reform must ensure that all relevant organisations comply with a child-safe regime ...<sup>5</sup>

Stakeholders also supported the option to separate child safe organisation requirements from the requirements for blue cards. They noted that separating these requirements would help to address the issue of over-reliance on blue cards by highlighting the importance of child safe organisations—blue cards are only one of many strategies to keep children safe.

Stakeholders expressed different views about option 2.3, which proposed developing a publicly available register of child safe organisations.

Mercy Community Services submitted that:

... there is some benefit in this option as it would assist families in choosing services and being confident in their children's safety being promoted. As many families using tertiary and secondary child protection services have limited range of choice, it would provide reassurance that organisations supporting children are child safe.<sup>6</sup>

However, Independent Schools Queensland submitted that a public register may have the opposite effect, because it could give a false sense of security to those accessing the services.<sup>7</sup>

Further, PeakCare warned that a publicly available register has unintended consequences of suggesting that organisations not on the register are not safe, when an organisation's absence from the register could range from being an administrative error, a misunderstanding of requirements or a breach of obligations.<sup>8</sup>

Some stakeholders did not support an accreditation process to complement existing regulatory frameworks as set out in option 2.4. They largely raised the financial and administrative burden associated with this option as the reason for this.

Protect all Children Today Inc. considered that 'many smaller agencies would not have the need, expertise, financial or staffing resources to obtain accreditation, which could lead to inequity'.<sup>9</sup>

The World Education Program Australia proposed that an accreditation process be optional rather than mandatory and should recognise organisations that already comply with child safety regulations at state and national levels.<sup>10</sup>



## Working with children checks

### Who needs a working with children check?

The options paper presented three options for stakeholders to consider:

#### Options—Who needs a working with children check?

- 3.1.1 Maintain the status quo and simplify screening requirements
- 3.1.2 Adopt the Royal Commission's recommendations in relation to when a WWCC is required
- 3.1.3 Maintain mandatory screening requirements with an option for discretionary screening

The Royal Commission recommends that a person should have a WWCC when they have contact with children involving:

- physical contact
- face-to-face contact
- oral communication
- written communication
- electronic communication.

The contact must be part of the child-related work (more than incidental) regardless of whether it is supervised or unsupervised. Contact does not include dealing only with records about or making decisions affecting a child.

More stakeholders preferred option 3.1.2 over option 3.1.1. Option 3.1.2 proposed adopting the Royal Commission's recommendations in relation to when a WWCC is required. However, they raised concerns that currently Queensland has stronger safeguards that are not consistent with the recommendations.

Stakeholders generally only supported adopting the Royal Commission's recommendations to the extent that they do not reduce the existing safeguards in Queensland.

The Independent Education Union agreed in principle with the Royal Commission's recommendation for a simplified frequency test. However, it noted that this would remove screening requirements for some people who currently require a blue card because they work in child-related service environments, but do not have regular contact with children.<sup>11</sup>

Protect all Children Today Inc. did not support option 3.1.2, noting that:

... people in a position of management should be required to obtain a Blue Card when making decisions affecting a child or managing sensitive personal records. Organisations have a responsibility to ensure the safety of their client base and it is important that the people engaged in those agencies have the necessary screening. Otherwise, it provides an access point for people seeking to exploit children, young people, or their personal information.<sup>12</sup>

P&C Qld disagreed. It said:

... the nature and amount of contact should be key factors in determining if a WWCC is required for a person engaged in child related work ... adopting this option, will remove screening requirements for our executive members of P&C Associations who are responsible for Outside School Hours Care Program and who are currently required to have a business blue card despite not regularly attending the premises or having contact with the students attending the Program.<sup>13</sup>

## Who does not need a working with children check?

The options paper presented four options for stakeholders to consider:

### Options—Who does not need a working with children check?

- |       |  |
|-------|--|
| 3.2.1 | Adopt the Royal Commission’s recommendations in relation to exemptions   |
| 3.2.2 | Remove all categories of exemptions for people providing services to children, except those with comparable screening and monitoring |
| 3.2.3 | Maintain exemptions for individuals who are subject to registration or screening and engaged in professional duties                  |
| 3.2.4 | Introduce an exemption for individuals who have been screened in another jurisdiction  |

The Royal Commission recommends only having the following exemptions:

- all children under 18 years of age
- employers and supervisors of children in a workplace, unless the work is child-related
- people who engage in child-related work for seven days or less in a calendar year – except overnight excursions
- people who engage in child-related work in the same capacity as the child
- police officers
- parents or guardians who volunteer for services or activities usually provided to their children—except overnight excursions and providing services to children with disabilities.

While most stakeholders strongly support moving towards national consistency, there were concerns that adopting the Royal Commission’s recommendations about exemptions may reduce existing safeguards. They also raised that adopting these recommendations would duplicate screening undertaken by other government agencies.

Most stakeholders supported option 3.2.2, which proposed removing all categories of exemptions for people providing services to children except those with comparable screening and monitoring, for example, teachers and police officers.

For example, the Queensland Catholic Education Commission does not support removing the teacher exemption as the Queensland College of Teachers’ screening process is comparable to the WWCC process.<sup>14</sup>

P&C Qld said it would:

- ... not support the removal of parent exemptions due to the regulatory burden it would place on P&Cs
- ... Rather the Royal Commission’s recommendation of maintaining exemptions of parents except for overnight excursions and providing services to children with disabilities would be the preferred option.<sup>15</sup>

The Federation of Parents and Friends Associations in Catholic Schools in Queensland suggested amending the legislation so that people who have been subject to registration or screening that is at least equivalent to a blue card be deemed eligible for a blue card. These people should get a blue card rather than an exemption card.<sup>16</sup>

Most stakeholders support option 3.2.4, which proposed introducing an exemption for individuals who have been screened in another state or territory.

Goodstart Early Learning and Protect all Children Today Inc. both support recognising WWCCs undertaken by other states and territories provided WWCC holders register their WWCC in Queensland within a specified time.<sup>17</sup> Goodstart Early Learning also proposed that Blue Card Services (BCS) in the Department of Justice and Attorney-General Queensland check disciplinary and misconduct records for those WWCC holders who were screened initially in another state or territory.<sup>18</sup>

There were divided views on whether volunteer parents should remain exempt from needing a blue card. Some stakeholders supported removing the exemption as a way of strengthening current safeguards. Others were of the view that removing the exemption may reduce parental engagement in their children’s activities.

The Australian Bahá’í Community believes that all parents should be required to obtain a blue card, except when:

- they are present with their child without playing any role on the organisation and running of a program or activity
- they are present with their child, and are directly supervised by someone with a current WWCC.<sup>19</sup>

However, the Federation of Parents and Friends Associations in Catholic Schools in Queensland submitted that it:

... wants maximum safety for children (this would imply removing the exemption) and at the same time we want to increase the level of engagement and involvement by parents with their children’s education. However, the current process of applying for and obtaining a WWCC would be a barrier to our objective of increasing engagement. If the process was simplified including by allowing individuals to apply on line and receive a reasonably quick result this may increase the acceptance of changes to this exemption.<sup>20</sup>

## Information considered as part of a working with children check

The options paper presented 10 options for stakeholders to consider:

### Options—Information considered as part of a working with children check

3.3.1	Introduce a tiered screening process
3.3.2	Increase the sharing of information to improve consistency of decision-making
3.3.3	Introduce a requirement for an applicant to supply international criminal history
3.3.4	Enable information sharing to complement existing border protection regulations
3.3.5	Introduce a requirement to consider New Zealand criminal history
3.3.6	Adopt the Royal Commission’s recommendations to consider disciplinary action or findings of misconduct
3.3.7	Consider disciplinary information under the Public Service Act 2008 and other regulatory frameworks
3.3.8	Consider child protection history
3.3.9	Consider civil domestic violence history in particular circumstances
3.3.10	Enable consideration of outcomes from other employment screening systems

There was limited support for option 3.3.1. The CREATE Foundation supports a tiered screening process for young people in care about to turn 18, who currently need to apply for a blue card to continue living in their carer’s home.<sup>21</sup>

However, other stakeholders did not support it. For example:

... as this could be onerous for employers and employees when employees move between positions, especially for a short period, within an organisation; a person works or volunteers in more than one organisation and these are on different tiers; or a person moves employer and there is a time delay for a higher tier check.<sup>22</sup>

Mercy Community Services advised:

MCS agrees that rigours of the checks completed should be proportionate to the risk present, but our experience suggests that this is managed in the intersection of monitoring systems. Making WWCC a tiered system has benefits, if viewed in isolation; but MCS suggest that many higher risk environments already have increased measures of protection for activities where children may be considered more vulnerable. The complexity of overlapping the tiered WWCC approach within these other systems will result in confusion and increased red tape.<sup>23</sup>

Stakeholders largely supported sharing a greater variety of information as part of the WWCC process. All stakeholders agreed with option 3.3.2. This option proposed increasing information sharing between regulatory agencies to improve consistency of decisions.

Churches of Christ Care supported options that enable broader screening of an applicant's history. However, it noted that this screening must occur alongside improved internal systems and efficiencies that reduce time for assessment.<sup>24</sup>

Although stakeholders recognise the value of sharing a greater variety of information, there are divided views on the type of information that should be shared and considered as part of a WWCC.

Stakeholders considered that obtaining an applicant's international criminal history would be beneficial. However, they noted that considering this information for every application may increase processing times and application costs.

Australian Bahá'í Community also identified practical limitations on obtaining international criminal history, specifically noting that obtaining such information may cause problems for the Bahá'í community where some members are refugees. It is possible that they would be unable to obtain the required international criminal history checks proposed.<sup>25</sup>

Similarly, PeakCare Queensland Inc. noted that:

Obtaining and assessing international criminal history is problematic not only because of the resource and time implications but because options rely on applicants making disclosures, the difficulties with personal identification for groups such as immigrants and refugees, and because of differences across jurisdictions in understandings, reflected in legislation, about what actions (or inactions) constitute a 'crime', particularly crimes that are considered relevant to working with children or the conceptualisation of domestic and family violence as a crime.<sup>26</sup>

Multiple stakeholders identified concerns about using child protection information and domestic violence information for WWCCs.

PeakCare Queensland Inc. raised that child protection and domestic violence history is disproportionate for Aboriginal and Torres Strait Islander peoples, and specialist knowledge would be required to interpret this information.<sup>27</sup>

Similarly, Sisters Inside Inc. noted that many women in prison have child protection histories and are survivors of domestic violence. Mothers in prison may also be subject to intervention by child protection authorities because of their imprisonment. It is concerned that options 3.3.8 and 3.3.9 would have unintended

consequences for criminalised women who may not have literacy skills or confidence to respond to requests for information as part of the WWCC process. Sisters Inside Inc. does not support the use of child protection information without appropriate safeguards, such as dedicated funding for legal assistance or advocacy support.<sup>28</sup>

Micah Projects Inc. made a similar submission. It advised that it is concerned about unintended consequences—particularly as it could unfairly impact on women who have a domestic violence order/cross-application resulting from their vulnerability to coercion or self-defence.<sup>29</sup>

Youth Advocacy Centre Inc. noted that the threshold for child protection information is very low and would require someone to review the material to test its relevance and appropriateness.<sup>30</sup>

## Decision-making

The options paper presented eight options for stakeholders to consider:

Options—Decision-making	
3.4.1	Amend the disqualification framework to adopt the Royal Commission’s recommendations
3.4.2	Introduce an amended disqualification framework
3.4.3	Adopt the Royal Commission’s recommendations regarding risk assessment
3.4.4	Review the processes underpinning risk assessment
3.4.5	Establish a mechanism for regular review of the decision-making guidelines to ensure a contemporary evidence based approach to assessing risk
3.4.6	Explore quality assurance strategies to ensure consistency of decision-making
3.4.7	Offer an internal review
3.4.8	Examine current review rights and processes

Stakeholders largely supported all of these options.

The Royal Commission’s recommendations includes automatic exclusion (disqualification) for certain convictions or pending charges:

- |   |   |
|---|---|
| i. Murder or manslaughter of a child      | iv. Incest where the victim was a child |
| ii. Indecent or sexual assault of a child | v. Abduction or kidnapping of a child   |
| iii. Child pornography-related offences   | vi. Animal-related sexual offences      |

The Royal Commission:

- does not support screening agencies having the ability to exercise discretion in relation to automatic exclusions
- supports an appeal right for people convicted of offences that would automatically exclude them except where they have been sentenced to a custodial period or are subject to an order controlling their movement or employment
- recommends all other relevant criminal, disciplinary or misconduct information should trigger an assessment of a person’s eligibility to obtain a WWCC

- has indicated that risk assessment should be based on evidence about risks to children and applicants should not be precluded from child-related work arbitrarily because of offences that do not indicate such risks
- has endorsed the development of a common risk assessment guide to bring consistency and rigour to risk assessment across jurisdictions.

The Royal Commission has also specified that WWCC assessments should be based on:

- the nature, gravity and circumstances of the offence and its relevance to children or child-related work
- the length of time since the offence
- the age of the child and of the person at the time of the offence
- whether there is a pattern of concerning conduct
- all other relevant circumstances in respect of their assessable history and the impact on their suitability to be engaged in child-related work.

The CREATE Foundation supports option 3.4.4. It said:

CREATE has found that young people after transitioning [from care] are distinctly disadvantaged by the decision-making framework and process for blue cards, which:

- appear inconsistent and not commensurate with the seriousness of offending
- do not always consider offences which are relevant to working with children.<sup>31</sup>

## Information sharing

The options paper presented two options for stakeholders to consider:

### Options—Information sharing

- |     |  |
|-----|--|
| 4.1 | Have stand-alone information-sharing regime to enable all agencies to share information about the safety and wellbeing of children |
| 4.2 | Review existing information-sharing provisions to assess whether broader enabling information-sharing provisions are necessary     |

Almost all stakeholders agree that government agencies should be able to share information to assess and manage risks of harm to children. This includes sharing information with other states and territories as well as within the Queensland government.

The majority of stakeholders preferred option 4.1. This option proposed a stand-alone information-sharing regime to allow all agencies to share information about the safety and wellbeing of children.

The Federation of Parents and Friends Associations in Catholic Schools Queensland submitted:

An essential principle is that decision-makers must have access to as much relevant information as possible to undertake fully informed risk assessments. People expect that particularly within its own jurisdiction the Queensland Government must be able to ensure full sharing of information across its agencies.<sup>32</sup>

Churches of Christ in Queensland recommends including non-government organisations licensed under the *Child Protection Act 1999 Act* within specific information-sharing provisions.<sup>33</sup>

## Ensuring compliance

### Capacity building and education

The options paper presented four options for stakeholders to consider:

#### Options—Capacity building and education

- |       |  |
|-------|--|
| 5.1.1 | Development of a sector strategy to build capacity   |
| 5.1.2 | Review of existing resources and the development of an online education and training package |
| 5.1.3 | Accreditation of training organisations  |
| 5.1.4 | Have legislated training requirements  |

Most stakeholders supported option 5.1.1, which proposed the development of a sector strategy to build organisational capacity.

Stakeholders agreed that BCS should have statutory powers to monitor compliance. However, most also noted the critical importance of education and training in building organisational capacity to comply with the system.

For example, the Early Childhood Teachers' Association Inc. advised that:

... organisations need more support to understand how to embed child safe practices in their organisations; that more focus is required on the importance of child safe policies and practices and there needs to be more user-friendly information available for organisations.<sup>34</sup>

In relation to option 5.1.3, St Vincent de Paul Society recommends that the financial cost, resources and regulatory burden accreditation steps might have on businesses need to be strongly considered.<sup>35</sup>

The Queensland Catholic Education Commission suggests online education and training should be customised to service environments and acknowledge the different operating contexts, for example, the management of a school environment as compared to a community sporting club.<sup>36</sup>

### Compliance framework for screening and risk management obligations

The options paper presented five options for stakeholders to consider:

#### Options—Compliance framework and risk management obligations

- |       |   |
|-------|---|
| 5.2.1 | Establish a new stand-alone compliance framework  |
| 5.2.2 | Introduce a compliance framework to complement existing compliance and enforcement models |
| 5.2.3 | Introduce tiered compliance requirements based on risk assessment                         |
| 5.2.4 | Review penalties and offences   |
| 5.2.5 | Adopt the Royal Commission's recommendation to simplify the list of offences              |

Stakeholders support establishing a clear compliance framework. However, some noted potential overlap with existing compliance regimes. For example, the Queensland Catholic Education Commission advised:

... from an education perspective, nonstate schools currently face challenges in navigating the requirements of the *Education (Accreditation of Non-State Schools) Act 2001* and Regulation, the *Education (General Provisions) Act 2006* and the *Child Protection Act 1999* in terms of ensuring that student protection processes align with these specific legislative requirements.<sup>37</sup>

Some stakeholders said that at the very least, BCS should be able to obtain information from an organisation for compliance purposes.

The majority of stakeholders, including 98 per cent of survey respondents, preferred option 5.2.4, which proposed a review of penalties and offences.

## Application process and outcomes for working with children checks

The options paper presented nine options for stakeholders to consider:

### Options—Application process and outcomes for working with children checks

- |     |   |
|-----|---|
| 6.1 | Allow individuals to apply for a WWCC (without an agreement to work in an organisation)                         |
| 6.2 | Adopt the Royal Commission recommendation and allowing individuals to commence work during processing of a WWCC |
| 6.3 | Require a WWCC before an individual can commence work   |
| 6.4 | Have online identification verification   |
| 6.5 | Have over the counter identification verification   |
| 6.6 | Extend the renewal period from three years to five years  |
| 6.7 | Introduce a digital card  |
| 6.8 | Issue a registration number rather than a digital or physical card  |
| 6.9 | Maintain a physical card and introduce a photograph   |

Stakeholders consistently raised their concerns about the time it currently takes to get a blue card. They support any measures to speed up the process.

For example, the Isolated Children's Parents Association Qld Inc. said:

ICPA Qld has received a report that recently a qualified school teacher from Victoria with a current WWCC Victorian card waited a total of 10 weeks before her Queensland WWCC blue card application was approved. Another report involved an employer being unable to employ a prospective applicant as the applicant's approval for a blue card went over 9 weeks.<sup>38</sup>

Stakeholders preferred option 6.1, which proposed to remove the requirement for applicants to have an agreement to work with an organisation before applying for a blue card.

St Vincent de Paul Society Queensland recommends implementing options 6.1 and 6.4 together. It said allowing individuals to apply for a blue card prior to engagement will provide volunteers have greater flexibility.<sup>39</sup>



Protect all Children Today Inc. disagreed with the Royal Commission's recommendation that a person be allowed to start working/volunteering while their WWCC is being processed:

We believe the current delays (approximately 8 weeks) to obtain a Blue Card need to be addressed as a matter of priority, as this could result in children being exposed to unnecessary risk. Further, should a negative notice be issued after the WWCC has been undertaken, the worker or volunteer will have already had access to vulnerable children and young people for an unreasonable period of time.<sup>40</sup>

P&C Qld advised it does not support making all employees and volunteers having a blue card before starting work unless the timeframes for processing WWCCs are greatly reduced.<sup>41</sup>

Stakeholders' views were divided on extending the renewal period. A number of stakeholders raised the administrative burden associated with having to make a fresh application every three years. This is because it requires proof of identity documents to be rechecked, even though they were originally checked with the applicant's initial application.

Stakeholders who do not support the recommendation are concerned that currently BCS can only monitor changes in Queensland criminal history on a daily basis. This means changes in interstate history are only identified at the time of renewal.

## Supporting organisations

The options paper presented two options for stakeholders to consider:

### Options—Supporting organisations

- |     |  |
|-----|--|
| 7.1 | Develop an organisation portal to support organisations to manage their obligations  |
| 7.2 | Update and enhance the Blue Card Services website to improve access to information about the blue card system for the community, parents and organisations |

Stakeholders overwhelmingly supported BCS developing an organisation portal and enhancing its website. Most agreed that an automated system in the form of an online organisation portal would assist them in managing their obligations. It would also simplify the regulatory burden on organisations and strengthen safeguards for children by providing organisations with up-to-date information.

## Supporting the community

The options paper presented three options for stakeholders to consider:

### Options—Supporting the community

- |     |  |
|-----|--|
| 8.1 | Provide targeted education and communication about the role of the blue card system                        |
| 8.2 | Ensure interpreting services are easily accessible   |
| 8.3 | Provide targeted education about the blue card system in culturally and linguistically diverse communities |

There was total stakeholder support for each of these options.

For example, PeakCare Queensland Inc. advised it is:

... supportive of making resources accessible in languages other than English as well as promoting access to language interpreter services for prospective applicants, where needed. Successful multicultural inclusion is imperative in Queensland given the percentage of residents born overseas, whose first language is not English and/or who do not speak English at home.<sup>42</sup>

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd. (QATSICPP) supports having options 8.1 and 8.3 but identified the need to consider alternatives to the options proposed. It supports funded positions in Aboriginal and Torres Strait Islander community controlled child and family wellbeing services to assist with community applications and support organisational compliance with advice and technical support.<sup>43</sup>

## Supporting Aboriginal and Torres Strait Islander applicants and communities

The options paper presented three options for stakeholders to consider:

### Options—Supporting Aboriginal and Torres Strait Islander applicants and communities

9.1	Development of a strategy to increase and support participation of Aboriginal and Torres Strait Islander peoples
9.2	Embedding community based support
9.3	Embedding consideration of culture as part of the application and assessment process

There was also total stakeholder support for each of these options.

Stakeholders acknowledged that the current operation of the blue card system has an adverse impact on Aboriginal and Torres Strait Islander peoples. They consistently identified the following concerns:

- the current system is seen as a barrier to employment and kinship care arrangements for Aboriginal and Torres Strait Islander peoples
- there is a lack of community education and culturally appropriate information and resources available for Aboriginal and Torres Strait Islander peoples
- there is limited support and engagement with communities during the WWCC process
- current processes and systems are not culturally appropriate and do not consider culture in the decision-making process.

QATSICPP expressed in principle support for reform options that:

- create safer environments for children
- reduce red tape and the administrative burden on individuals, organisations and government
- promote fair and consistent decision-making
- support Aboriginal and Torres Strait Islander applicants and communities
- support culturally and linguistically diverse groups
- support national consistency in line with the Royal Commission.<sup>44</sup>

It also advised:

QATSICPP sees that there is a legitimate role in supporting access to natural justice for individuals whom receive negative notices, based on the existence of the criminal history outside of the exclusionary offences. It is important that people understand their rights of appeal and are supported to present a response that enables decision-makers to understand that context of historical offending behaviours as it relates to their capacity to fulfil requirements of their employment or provide kinship care.<sup>45</sup>

Sisters Inside Inc. agreed with the QATSICPP, stating:

It is important that support is independent, free and provided by Aboriginal and Torres Strait Islander-controlled organisations and adequately funded to allow for assistance with drafting submissions as well as advocacy in QCAT.

In our view, independent support for Aboriginal and Torres Strait Islander people applying for a blue card is more important than embedding culture in the application and assessment process.<sup>46</sup>

## Public confidence

The options paper presented three options for stakeholders to consider:

### Options—Public confidence

- |      |   |
|------|---|
| 10.1 | Undertake regular statutory review of the WWC Act                   |
| 10.2 | Establish an advisory council for the blue card system              |
| 10.3 | Expand legislative functions to improve reporting on blue card data |

Stakeholders supported the option to require a regular statutory review of the *Working with Children (Risk Management and Screening) Act 2000*.

The Queensland Catholic Education Commission notes that the three options proposed to build public confidence are not mutually exclusive. There is merit in each approach in terms of increasing accountability and transparency.<sup>47</sup>

Mercy Community Services identified the potential benefits of an advisory council in providing rigour and oversight to the blue card system. However, it also stated:

... it is not clear that this investment would be proportionate to the resultant improvement in child safety, especially as other options presented are likely to demonstrate greater benefit for resources used.<sup>48</sup>

The Youth Advocacy Centre cautioned against establishing an advisory council:

We would suggest that significant thought be given to setting up another advisory body. This is a favoured government response but such bodies do not, of themselves, instil public confidence. In some instances it simply provides an illusion because the reality does not live up to the expectation for those put on to the group ... However, if there was such a group, the number of Aboriginal and Torres Strait Islander people should reflect the impact of the blue card system on these communities and individuals: the requirement that there should be 'at least one' appears tokenistic.<sup>49</sup>

## References

1. Protect all Children Today Inc., Submission.
2. St Vincent de Paul Society Queensland, Submission.
3. For example, the Independent Education Union, Submission.
4. St Vincent de Paul Society Queensland, Submission.
5. Micah Projects Inc., Submission.
6. Mercy Community Services, Submission.
7. Independent Schools Queensland, Submission.
8. PeakCare, Submission.
9. Protect all Children Today Inc., Submission.
10. World Education Program Australia, Submission.
11. Independent Education Union, Submission.
12. Protect all Children Today Inc., Submission.
13. P&C Qld, Submission.
14. Queensland Catholic Education Commission, Submission.
15. P&C Qld, Submission.
16. Federation of Parents & Friends in Catholic Schools in Queensland, Submission.
17. Goodstart Early Learning, Submission; Protect all Children Today Inc., Submission.
18. Goodstart Early Learning, Submission.
19. Australian Bahá'í Community, Submission.
20. Federation of Parents & Friends in Catholic Schools in Queensland, Submission.
21. CREATE Foundation, Submission.
22. PeakCare, Submission.
23. Mercy Community Services, Submission.
24. Churches of Christ Care, Submission.
25. Australian Bahá'í Community, Submission.
26. PeakCare Queensland Inc., Submission.
27. PeakCare Queensland Inc., Submission.
28. Sisters Inside Inc, Submission.
29. Micah Projects Inc., Submission.
30. Youth Advocacy Centre Inc., Submission.
31. CREATE Foundation, Submission.
32. Federation of Parent & Friends Association in Catholic Schools Queensland, Submission.
33. Churches of Christ in Queensland, Submission.
34. Early Childhood Teachers' Association Inc., Submission.
35. St Vincent de Paul Society Queensland, Submission.
36. Queensland Catholic Education Commission, Submission.
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38. Isolated Children's Parents Association Qld Inc., Submission.
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40. Protect all Children Today Inc., Submission.
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43. Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd, Submission.
44. Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd, Submission.
45. Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd, Submission.
46. Sisters Inside Inc, Submission.
47. Queensland Catholic Education Commission, Submission.
48. Mercy Community Services, Submission.
49. Youth Advocacy Centre, Submission.



## Appendix F

### History of the blue card system

History of the blue card system
<b>2001</b>
<p>In February 2001, the <i>Commission for Children and Young People Act 2000</i> established the Commission for Children and Young People with enhanced scope, functions and powers, reflecting the Queensland Government's implementation of recommendations of the Forde Inquiry.</p> <p>In May 2001, working with children checks (WWCCs) were introduced.</p> <p>The scope of screening was limited to residential facilities, schools (including boarding schools), churches, clubs and associations, counselling and support services and private teaching, coaching or tutoring.</p>
<b>2003</b>
<p>WWCC requirements were expanded to include child care.</p>
<b>2005</b>
<p>A scheduled review of the WWCC requirements resulted in an expansion of screening to include child accommodation services (including home stay), religious representatives, the emergency services cadet program, school crossing supervisors, sport and active recreation, hostels for children and education programs conducted outside school.</p> <p>New provisions established risk management obligations for regulated service providers.</p>
<b>2006</b>
<p>WWCC requirements were expanded to include foster and kinship carers and adult occupants, as well as relevant people associated with licensed care services.</p>
<b>2007</b>
<p>The health, counselling and support services category of work was expanded to include massage services.</p>
<b>2008</b>
<p>A new framework was established that prevented certain people with serious child-related criminal history from applying for a WWCC up-front.</p>
<b>2009</b>
<p>The National Exchange of Criminal History Information for People Working with Children commenced. This allowed the Commission access to expanded criminal history information (including spent convictions).</p>
<b>2010</b>
<p>Duplication of screening for people working with children in Queensland was reduced by creating blue card exemptions for people who had undertaken a comparable level of screening.</p>
<b>2013</b>
<p>The Queensland Child Protection Commission of Inquiry found that the blue card system needed streamlining and automating and recommended that the administration of the blue card system be transferred to the Queensland Police Service.</p>

## 2014

Responsibility for the administration of the blue card system was moved to the Public Safety Business Agency. The *Commission for Children and Young People Act 2000* was renamed the *Working with Children (Risk Management and Screening) Act 2000*.

## 2016

In September 2016, the Director-General of the Department of the Premier and Cabinet requested, on behalf of the Premier, that the Principal Commissioner, Queensland Family and Child Commission ‘undertake a whole of system review of the *Working with Children (Risk Management and Screening) Act 2000* and its operation’.

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In October 2016, responsibility for the administration of the blue card system was moved to the Department of Justice and Attorney-General.

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## Appendix G

### Scope of regulation—child safe standards

Child safe standards	
Any organisation providing services to children must, before providing these services, be able to meet child safe standards.	
Any organisation providing regulated child-related services is required, before providing these services, to meet child safe standards.	
Regulated child-related services: Specified categories of services provided by organisations that are targeted at children	
Includes	
<ul style="list-style-type: none"> <li>• Accommodation and residential services, including overnight stays               <ul style="list-style-type: none"> <li>– home stay providers</li> <li>– camp operators</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Activities or services provided by religious organisations or individuals               <ul style="list-style-type: none"> <li>– religious entities operating activities or services such as children’s choirs, youth groups, Sunday schools and children’s religious studies</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Child care or minding services               <ul style="list-style-type: none"> <li>– nanny, au pair, babysitting service providers</li> <li>– stand-alone care providers</li> <li>– adjunct care providers</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Sport, clubs, associations and other community activities               <ul style="list-style-type: none"> <li>– clubs specifically for children</li> <li>– clubs with junior divisions</li> <li>– cadet program operators</li> <li>– playgroup service providers</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Child protection services               <ul style="list-style-type: none"> <li>– providers of foster and kinship care</li> <li>– licensed care services</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Coaching or tuition services               <ul style="list-style-type: none"> <li>– academic tutoring</li> <li>– sport or recreation coaching</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Commercial photography entertainment or party services               <ul style="list-style-type: none"> <li>– gym or play facilities</li> <li>– children’s photographers</li> <li>– talent or beauty competitions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Disability services               <ul style="list-style-type: none"> <li>– disability service providers</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Education and care services               <ul style="list-style-type: none"> <li>– schools and boarding schools</li> <li>– long day care</li> <li>– kindergarten and pre-prep service providers</li> <li>– family day care</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Health services               <ul style="list-style-type: none"> <li>– children’s hospitals</li> <li>– pediatricians or other child specialists</li> <li>– children’s counselling services</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Justice and detention               <ul style="list-style-type: none"> <li>– youth justice</li> <li>– residential care service providers</li> <li>– immigration detention facilities where children are regularly detained</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Transport services               <ul style="list-style-type: none"> <li>– school crossing services</li> <li>– school bus services</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Other services prescribed by regulation</li> </ul>	
Does not include	
<ul style="list-style-type: none"> <li>• Workplaces for children</li> </ul>	<ul style="list-style-type: none"> <li>• Friend/relative child minding arrangements</li> </ul>
<ul style="list-style-type: none"> <li>• Services provided to the general public including children               <ul style="list-style-type: none"> <li>– SES volunteers</li> <li>– general health practitioners</li> </ul> </li> </ul>	

## Appendix H

### Comparison of screening systems that currently interact in Queensland

	WWCC	Registered teachers	Police	Registered health practitioners	Legal practitioners
<b>Test</b>					
	Whether it is in the best interests of children for the applicant to be issued with a WWCC <sup>1</sup>	Suitability to teach <sup>2</sup>	Suitability to be engaged by the service <sup>3</sup>	Eligible for registration if <ul style="list-style-type: none"> <li>• qualified</li> <li>• not disqualified</li> <li>• suitable person to hold general registration in the health profession</li> <li>• meets requirements in registration standards<sup>4</sup></li> </ul>	A fit and proper person to hold a local practising certificate <sup>5</sup>
<b>Police information</b>					
Charges	✓	✓	✓	✓	✓
Convictions	✓	✓	✓	✓	✓
Spent convictions	✓	✓	✓	✓	
Convictions not recorded	✓	✓	✓	✓	
Police investigative information	✓	✓	✓		
International criminal history <sup>6</sup>		✓	✓	✓	✓ convictions only
<b>Other information</b>					
Disciplinary information	✓	✓	✓	✓	✓
Court/prosecution information (Director of Public Prosecutions)	✓	✓	✓		
Corrective Services information	✓	✓	✓		





	WWCC	Registered teachers	Police	Registered health practitioners	Legal practitioners
Child protection information	✓ <sup>7</sup>				
Domestic violence information (other than criminal breaches)			✓		
Suitability assessment for specific role (can include but is not limited to interviews, checks of qualifications, or recency of practice)		✓	✓	✓	✓
<b>Disqualification framework</b>					
Disqualifying offences	✓	✓	✓		
<b>Monitoring of information</b>					
Daily monitoring of police information	✓	✓	✓		
Monitoring through self-disclosure	✓	✓	✓	✓	✓
Complete check upon renewal	✓	✓			

<sup>1</sup> *Working with Children (Risk Management and Screening) Act 2001*, ss. 5 and 6.

<sup>2</sup> *Education (Queensland College of Teachers) Act 2005*, ss. 11, 12, and 12A.

<sup>3</sup> *Police Service Administration Act 1990*, s. 5AA.1.

<sup>4</sup> *Health Practitioner Regulation National Law (Queensland)*, s. 52.

<sup>5</sup> *Legal Profession Act 2007*, s. 46.

<sup>6</sup> International criminal history is usually obtained on a self-disclosure basis, where it is the responsibility of the applicant to obtain police records from countries they have lived in previously.

<sup>7</sup> Not routinely considered.

# Appendix I

## Outline of WWCC requirements

### Working with children check requirements

- An individual must apply for a WWCC if they intend to engage in regulated activities.
  - Blue Card Services must be able to issue a compliance notice to an organisation that seeks to undertake WWCCs despite its employees/volunteers not being engaged in regulated activities.
- 
- Regulated organisations must ensure that no employee/volunteer undertakes regulated activities without a WWCC clearance.
  - Regulated individuals must not engage in regulated activities without a WWCC clearance.
  - Volunteers must have a unique code issued by a regulated organisation in order to have their application for a WWCC processed free of charge.

### Regulated activities:

**An individual (who is not exempt) is engaged by a regulated service to work or volunteer for more than seven days and meets the screening requirements**

### Screening requirements

#### Contact

- The individual will have more than incidental contact with children as part of their usual functions

#### Decision-making

- the individual is responsible for making decisions about the operation of a regulated organisation

#### Specified environments

- the individual is working or volunteering in a school, boarding school, long day care service or kindergarten service, licensed care service, residential facility or a youth detention facility where there is opportunity for regular contact with children.

#### Specified roles

- the individual is working or volunteering in the following specified roles:
  - adult member of a foster or kinship care household
  - adult member of a family day care home
  - adult member of a home stay household

## Appendix J

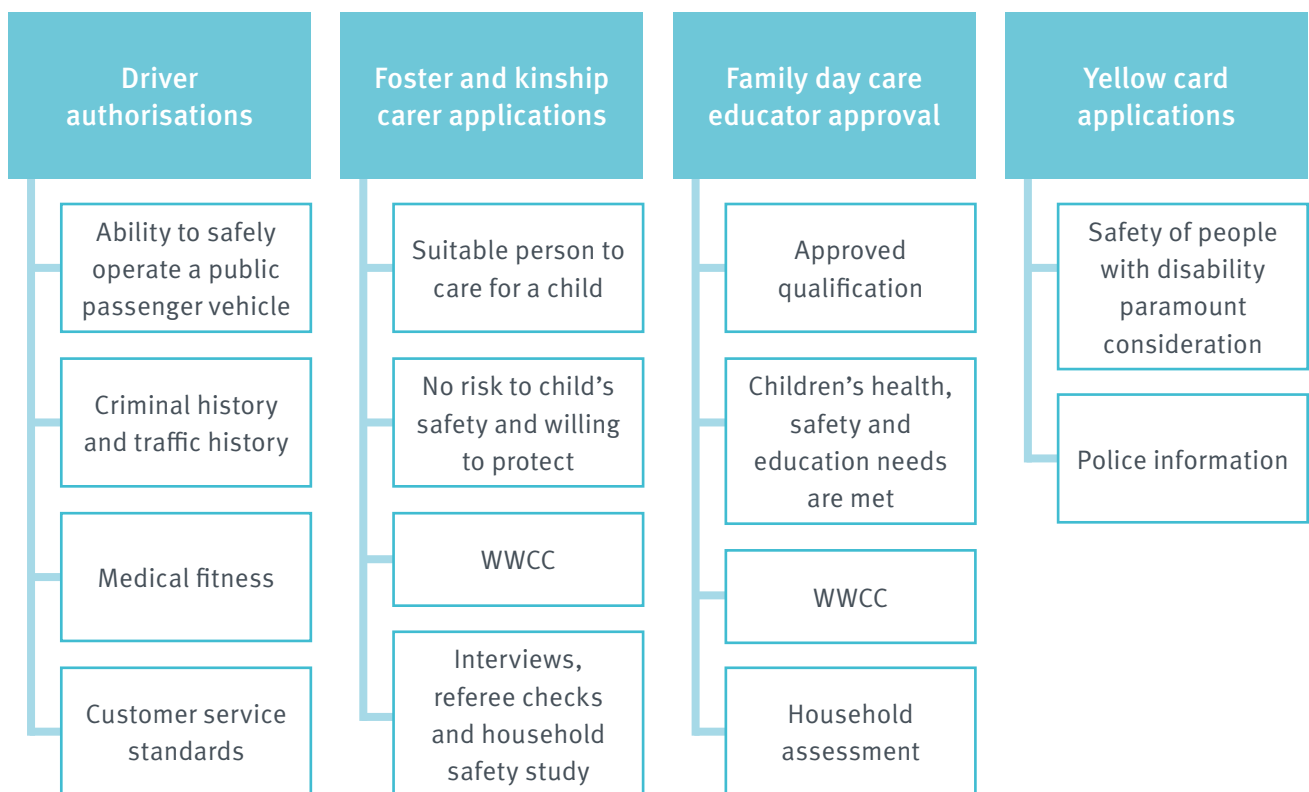
### Intersection with other screening systems

The purpose of the working with children check (WWCC) is to assess a person’s eligibility to engage in child-related services. It is not to assess a person’s suitability to engage in a specific child-related role, such as a foster carer or family day care educator.

Queensland’s blue card system is one of many systems that gather information to assess a person’s eligibility or suitability for certain activities. These are in addition to the systems that currently interact with the blue card system in relation to exemptions (for example, those related to teachers and registered health practitioners). Other systems that assess employees and volunteers include:

- foster and kinship carer approvals
- the yellow card system for people working with adults with a disability
- driver authorisations for people operating public passenger services
- family day care educator approvals.

Each of these systems gathers information to assess the suitability of people who may also require a WWCC. The deciding factors for each system are shown below.



To make the right decision about a person’s suitability for a specific role, these agencies and assessors must have access to all relevant information to make the best decisions in the interests of children. They also have information that may be relevant to a WWCC.

Barriers to sharing information between these systems can lead to duplication of screening and create inconsistent and fragmented decision-making.

Blue Card Services (BCS) can currently access a broader range of information than other agencies. This is because it is a party to the *Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working with Children* (ECHIPWC). Under this agreement, BCS must meet strict conditions about use of the information, including only sharing it with other participating agencies. None of the other agencies listed is party to the agreement, so BCS cannot share information received under the agreement with them.

## Foster and kinship carer approvals

A WWCC is part of a broad suitability assessment for foster and kinship carers. The assessment includes household safety, health and wellbeing, referee checks, interviews and training. Child Safety Services (CSS) in the Department of Communities, Child Safety and Disability Services (DCCSDS) and carer assessors decide on suitability to care for children in the child protection system. However, BCS must first assess eligibility for child-related work through a WWCC.

Information sharing between BCS and CSS about foster and kinship carers is complex. The *Child Protection Act 1999* allows CSS to share information about disciplinary action involving foster and kinship carers, including the reasons for decisions. BCS has to ask for this information, which it uses to assess WWCC applications. However, CSS cannot share information with BCS about a foster or kinship carer's application.

Decisions made by BCS are critical for all foster and kinship carer applicants. Without a blue card, they cannot care for children. Sometimes WWCC decisions are positive, despite an applicant's criminal history. BCS cannot give CSS any details about how it reached its WWCC decision. This means assessors do not have all relevant information about foster and kinship carers to assess their suitability.

## Yellow card system

The DCCSDS also decides whether people are suitable to work with adults with a disability (through the yellow card system). The blue card system interacts with the yellow card system through an exemption card process. People with a current blue card who want to work with adults with a disability can apply for a yellow card exemption. The yellow card exemption process does not operate in reverse. People with a current yellow card are not exempt from having a WWCC to work in child-related activities. The yellow card system also does not apply to people providing disability services to children.


The same issues arise as with foster and kinship carers—BCS only advises the DCCSDS whether a person has a current blue card. It cannot provide details of the information it used in deciding on the WWCC. This means that assessors do not have all relevant information about a person's criminal and other history when assessing their suitability to work with people with a disability, who—like children—are vulnerable.

Any changes in relation to the yellow card system will need to be considered in the context of the implementation of the National Disability Insurance Scheme.

## Driver authorisations

In Queensland, people operating public passenger services need a driver authorisation from the Department of Transport and Main Roads (DTMR). This assesses the suitability of people to drive public passenger vehicles such as public transport bus and charter bus services.

Some people with driver authorisations also need to have a WWCC, depending on which organisation employs them. For example, bus drivers employed by a commercial company do not need to have a WWCC; however, people employed by a school or a child care centre to drive a bus do. The DTMR decides whether a person is suitable to drive public passenger vehicles. BCS decides whether they are eligible to work with children.



While the WWCC does not form part of the driver authorisation process, the *Transport Operations (Passenger Transport) Act 1994* permits information sharing in certain cases. The DTMR has to seek advice from BCS when a person with, or applying for, a driver authorisation is convicted of certain child-related offences. It does not matter whether the person has a blue card.

The policy rationale is to allow the DTMR to draw on BCS for expertise and knowledge of disqualifying offences under the *Working with Children (Risk Management and Screening) Act 2000* (the WWC Act).

The DTMR can share information with BCS that is reasonably necessary for BCS to provide advice. BCS must then advise whether there is an ‘exceptional case’ so that approving the driver authorisation would not harm the best interests of children. In these cases, the DTMR must consider the advice of BCS and cannot give a driver authorisation if BCS says that there is no exceptional case. This means that BCS can affect the decision whether or not the person is involved in child-related transport services.

Recommendations in this report will bring transport services for children in scope of regulation under the WWC Act. This means that all transport services for children will need to comply with the WWC Act, including child safe standards and WWCCs.

As with foster and kinship carers and the yellow card system, there may be an opportunity for BCS to share relevant information, not just the outcome of the WWCC, with the DTMR. This information may be relevant to the broader assessment of the person’s driver authorisation.

## Family day care approved providers

The Department of Education and Training (DET) is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law* and regulations. It decides who can be an ‘approved provider’. Approved providers assess, approve and monitor family day care educators. Approved providers are non-government people or entities operating one or more family day care service.

Approved providers must apply to have a WWCC before starting a family day care service. Family day care educators must also apply to have a WWCC, be working towards or have an approved qualification, and meet several regulations about the safety, wellbeing and education needs of children attending the service. Family day care educators must register with an ‘approved service’, operated by an approved provider. The approved provider then decides on a family day care educator’s suitability.

BCS shares with the DET the outcomes of a WWCC in relation to an approved provider. BCS notifies the approved provider of:

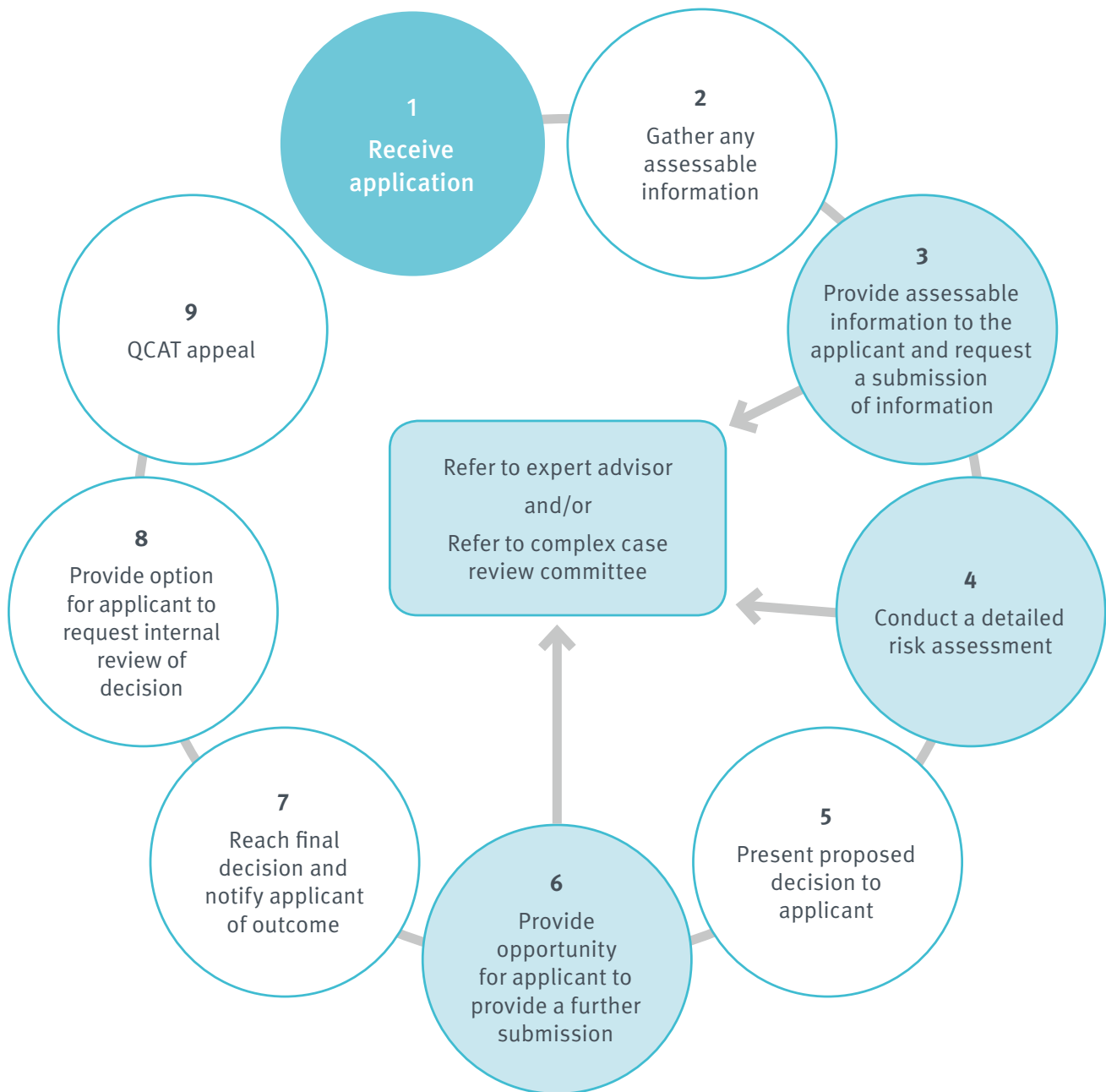
- the outcomes of an educator’s WWCC
- any changes to the status of an educator’s blue card.

However, again, BCS does not share the information it used to make its decision.

Approved providers are non-government people or entities. This adds complexity, given the confidential nature of people’s criminal and other history that BCS considers as part of a WWCC. However, there are opportunities to share more information with the DET about the risk assessment undertaken in relation to an approved provider. The DET and the Department of Justice and Attorney-General can explore opportunities to share more information in relation to family day care educators.

## Appendix K

### New risk assessment decision-making process





## Appendix L

### A summary of the key recommendations

<b>Recommendation summary</b> <b>The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following</b>	<b>Recommendation number</b>
<b>Administrative and funding arrangements</b>	
The Queensland Government considers the administration arrangements for child safe organisations and WWCCs.	Recommendation 5
The Queensland Government reviews the funding arrangements that support the blue card system.	Recommendation 3
The Queensland Government undertakes a review of the resourcing requirements necessary to support organisations in building capacity to be child safe.	Recommendation 6
The Queensland Government undertakes a review of the resourcing requirements necessary to support an enhanced compliance and enforcement function.	Recommendation 51
The Queensland Government considers whether there are benefits from: <ul style="list-style-type: none"> <li>• consolidating screening functions across government where possible</li> <li>• streamlining processes and implementing a revised funding structure to reduce invoicing across government departments.</li> </ul>	Recommendation 1
The Queensland Government consider whether removing the exemption for registered teachers is the most effective way to achieve a comparable level of screening.	Recommendation 21
The Queensland Government considers whether removing the exemption for registered health practitioners and lawyers is the most effective way to achieve comparable screening for individuals providing child-related services.	Recommendation 24
<b>Legislative change</b>	
The Queensland Government undertakes an overarching review of the WWC Act.	Recommendation 2
<b>Child safe standards</b>	
Amend the WWC Act to: <ul style="list-style-type: none"> <li>• remove references to child and youth risk management strategies and instead introduce a requirement for organisations to meet child safe standards</li> <li>• remove the link between WWCC requirements and risk management strategy requirements so that child safe standards are the priority and the overarching mechanism for achieving safe service environments</li> <li>• reframe the current risk management strategy requirements to reflect the Royal Commission's 10 elements of child safe environments as simple standards</li> <li>• increase penalties for offences about child safe standards, to reflect each organisation's responsibility to keep children safe in service environments</li> <li>• require organisations to address all the elements of the child safe standards in policies, procedures and practices before starting operation.</li> </ul>	Recommendation 4
Amend the WWC Act to: <ul style="list-style-type: none"> <li>• include a specific function for the agency responsible for regulating child safe standards to develop the capacity of people and organisations to create child safe environments.</li> </ul>	Recommendation 7

Recommendation summary The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following	Recommendation number
Amend the WWC Act to: <ul style="list-style-type: none"> <li>require organisations to publish or display information about how they are meeting their child safe standards obligations.</li> </ul>	Recommendation 10
Amend the WWC Act to expand the scope of the blue card system in line with the recommendation of the Royal Commission to:	
<ul style="list-style-type: none"> <li>have one consolidated list of regulated child-related services</li> </ul>	Recommendation 15
<ul style="list-style-type: none"> <li>include additional categories of child-related work</li> </ul>	Recommendation 12
<ul style="list-style-type: none"> <li>allow regulation to prescribe other activities that involve providing services primarily to children and that require contact with children.</li> </ul>	
The Department of Justice and Attorney-General work with the Department of Transport and Main Roads to:	Recommendation 13
<ul style="list-style-type: none"> <li>define the types of child-related transport services which will be within scope of the system to ensure they are only those targeted at children</li> <li>consider ways to reduce duplicate of effort, processes and costs for those people affected.</li> </ul>	
Amend the WWC Act to:	Recommendation 16
<ul style="list-style-type: none"> <li>to allow its chief executive to issue legally binding advice declaring whether a service is regulated (for example, through a statutory instrument).</li> </ul>	
<b>Working with children checks</b>	
Amend the WWC Act to require WWCCs for people who:	Recommendation 17
<ul style="list-style-type: none"> <li>operate a regulated service and make decisions that could impact on the implementation of child safe standards in the organisation</li> <li>provide regulated activities i.e.:               <ul style="list-style-type: none"> <li>engaged by a regulated service for an overnight camp where they will have contact with children, and/or</li> <li>engaged by a regulated service to work or volunteer for more than seven days in a calendar year and are:                   <ul style="list-style-type: none"> <li>in a position where they will have contact with children</li> <li>in a specified child-related service while children are ordinarily present—this includes schools, boarding schools, long day care services or kindergarten services, residential facilities, child-related health services, child-related disability services and youth detention facilities</li> <li>are in a specified role—an adult member of a household where foster or kinship care, family day care or homestay are provided.</li> </ul> </li> </ul> </li> </ul>	
Amend the WWC Act to:	Recommendation 18
<ul style="list-style-type: none"> <li>allow the chief executive of BCS to issue legally binding advice declaring whether a WWCC is required (for example, through a statutory instrument).</li> </ul>	
Amend the WWC Act to:	Recommendation 19
<ul style="list-style-type: none"> <li>remove the requirement for a person to have an agreement to work with an organisation before applying for a WWCC and consider how to make sure the system is sustainable and remains focused on child-related activities.</li> </ul>	



<b>Recommendation summary</b> <b>The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following</b>	<b>Recommendation number</b>
Amend the WWC Act to: <ul style="list-style-type: none"> <li>• require organisations to make sure their employees and volunteers do not start regulated activities without a WWCC</li> <li>• prevent people who are independent from an organisation and who need a WWCC from starting regulated activities without one.</li> </ul>	Recommendation 20
Amend the WWC Act to introduce a new exemption framework: <ul style="list-style-type: none"> <li>• keep the exemption for police officers in the WWC Act</li> <li>• remove the exemption card process for police officers and teachers (if the exemption remains)</li> <li>• keep the exemption for volunteer children (children in paid employment or undertaking student placements will require a WWCC)</li> <li>• introduce a new consistent exemption for volunteer parents, not including volunteer parents who are in a position where they are responsible for the care of a child or children (for example, on an overnight camp).</li> </ul>	Recommendation 22 Recommendation 23 Recommendation 26 Recommendation 25
Amend the WWC Act to: <ul style="list-style-type: none"> <li>• remove the ability for people to rely on an exemption if they:               <ul style="list-style-type: none"> <li>– are subject to reporting obligations or a prohibition order under the <i>Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004</i></li> <li>– have a suspended WWCC</li> <li>– have a current negative notice.</li> </ul> </li> </ul>	Recommendation 28
Amend the WWC Act to: <ul style="list-style-type: none"> <li>• introduce a new disqualification framework.</li> </ul>	Recommendation 29
Amend the WWC Act to: <ul style="list-style-type: none"> <li>• require applicants to disclose if they have been convicted of a crime or any other offence, or charged with any offence in a country other than Australia</li> <li>• require applicants to disclose if they have lived or worked in New Zealand for six months or more</li> <li>• require BCS to obtain a New Zealand criminal history for applicants who disclose they have lived or worked in New Zealand for six months or more</li> <li>• enable BCS to require applicants to provide criminal history records from the relevant country and/or further information in relation to the criminal history</li> <li>• enable BCS to seek further information from applicants (including statutory declarations) where they have disclosed international criminal history or cannot provide information.</li> </ul>	Recommendation 31
Amend the WWC Act to: <ul style="list-style-type: none"> <li>• allow the QPS to share information about a suspect with BCS</li> <li>• develop criteria for giving information about suspects, including when the QPS has told a person that they are a suspect in a disqualifying offence</li> <li>• enable BCS to suspend a blue card to manage risks of harm to children while an investigation is finalised.</li> </ul>	Recommendation 33

**Recommendation summary**

The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following

**Recommendation number**

Amend the WWC Act to:

Recommendation 34

- enable BCS to use information from a reportable conduct scheme, if introduced in Queensland, for WWCCs
- in the absence of a reportable conduct scheme, enable BCS to consider disciplinary information under the *Public Service Act 2008* and other regulatory frameworks as part of the risk assessment process.

Amend the WWC Act to:

Recommendation 35

- enable BCS to assess relevant child protection information as part of a WWCC. Relevant child protection information is:
  - information about a substantiated allegation of harm
  - information about unsubstantiated allegations of harm showing a pattern of concerning behaviour.

Amend the WWC Act to:

Recommendation 39

- allow BCS to obtain applications for domestic violence orders and all documents related to orders made where:
  - the applicant for a blue card is named as a respondent, and
  - the applicant has a charge or conviction related to a breach of a domestic violence order or another domestic violence offence as defined under the Criminal Code.

Amend the WWC Act to:

Recommendation 41

- introduce a new decision-making framework.

Amend the WWC Act to:

Recommendation 45

- make the risk assessment guidelines a statutory instrument and subject to annual review

Amend the WWC Act to:

Recommendation 69

- remove the positive notice letter as an outcome of a WWCC application
- include a photograph on the WWCC product.

Amend the WWC Act to:

Recommendation 70

- extend the WWCC renewal period to five years, once interstate daily monitoring of criminal history information is in place.

### Compliance

Amend the WWC Act to:

Recommendation 49

- introduce an escalating compliance and enforcement model including capacity building, education and training.

### Information-sharing

Amend the WWC to:

- introduce new information sharing provisions to allow BCS and other relevant agencies to exchange information for the purposes of:

Recommendation 58

- completing a WWCC assessment or other screening process
- monitoring and enforcing compliance with child safe standards.

- require BCS to develop information-sharing guidelines.

Recommendation 59



<b>Recommendation summary</b> The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following	<b>Recommendation number</b>
Amend the WWC Act to: <ul style="list-style-type: none"><li>allow BCS to share risk assessment information with screening agencies in other states and territories and work with other state and territory screening agencies to identify ways to automate data matching and information exchange.</li></ul>	Recommendation 62
<b>Reporting and data</b>	
Amend the WWC Act to: <ul style="list-style-type: none"><li>allow genuine researchers to access non identifying data about the blue card system.</li></ul>	Recommendation 75
Amend the WWC Act to: <ul style="list-style-type: none"><li>introduce a statutory review process within five years of commencement of the amendments arising from the recommendations in this report.</li></ul>	Recommendation 77
<b>Support, education and capacity building</b>	
The Department of Justice and Attorney-General develops: <ul style="list-style-type: none"><li>an annual sector-wide education and training strategy to build the capacity of organisations to become child safe. In doing so, it should consider whether BCS should provide the training or if government will fund non-government organisations to provide it</li><li>an accreditation process for training providers, including a training program and resource materials, to ensure fee-for-service training organisations have knowledge and understanding of Queensland law and the requirements of child safe standards and WWCCs</li><li>a new suite of materials to support organisations in developing and implementing child safe standards. These should include sector-specific best practice guidelines on creating child safe standards—to build greater understanding in organisations and the broader community.</li></ul>	Recommendation 8
The Department of Justice and Attorney-General: <ul style="list-style-type: none"><li>develops an education and community awareness strategy for parents, carers and the community to:<ul style="list-style-type: none"><li>raise awareness about the role of the blue card system in keeping children safe</li><li>help parents and carers to choose child safe organisations for their children</li><li>increase understanding about child safe standards and about the fact that the WWCC is only one component of a much broader strategy</li></ul></li><li>improves access to information about the blue card system that highlights the roles of parents, carers and the community in keeping children safe, including WWCC requirements.</li></ul>	Recommendation 9
The Department of Justice and Attorney-General provides more support for culturally and linguistically diverse communities.	Recommendation 72
The Department of Justice and Attorney-General develops and implements a specific strategy and action plan to address issues for Aboriginal and Torres Strait Islander peoples and to build cultural capability in the blue card system.	Recommendation 73

Recommendation summary The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following	Recommendation number
<b>Develop new processes and policies</b>	
<b>Decision-making processes for WWCCs</b>	
<p>The Department of Justice and Attorney-General develops relevant policies to make sure that BCS:</p> <ul style="list-style-type: none"> <li>• checks for child protection information wherever there is something to suggest there may be a risk of harm to children</li> <li>• has staff with expertise in assessing child protection history as part of a multi-disciplinary approach to risk assessments.</li> </ul>	Recommendation 36
<p>The Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services identify the most efficient way to exchange child protection information so as not to adversely affect processing timeframes.</p>	Recommendation 37
<p>The Department of Justice and Attorney-General puts in place relevant policies to make sure that:</p> <ul style="list-style-type: none"> <li>• BCS has staff with sufficient expertise in assessing information about domestic violence as part of a multi-disciplinary approach to risk assessments</li> <li>• the most efficient way to exchange information about domestic violence orders is identified so that it does not adversely affect processing timeframes.</li> </ul>	Recommendation 40
<p>The Department of Justice and Attorney-General implements a multi-disciplinary structure within the risk assessment unit in BCS.</p>	Recommendation 42
<p>The Department of Justice and Attorney-General:</p> <ul style="list-style-type: none"> <li>• appoints a multi-disciplinary panel of advisors</li> <li>• establishes a complex case review committee to review proposed decisions and make recommendations.</li> </ul>	Recommendation 43
<p>The Department of Justice and Attorney-General takes steps to improve quality and consistency of decision-making.</p>	Recommendation 44
<p>The Department of Justice and Attorney-General takes steps to provide more support for applicants through the risk assessment process.</p>	Recommendation 46
<p>The Department of Justice and Attorney-General implements an internal review process and generally requires applicants to use it before applying to the Queensland Civil and Administrative Tribunal (QCAT).</p>	Recommendation 47
<b>Compliance processes</b>	
<p>The Department of Justice and Attorney-General develops, publishes and implements an annual compliance and enforcement strategy and evaluates the strategy each year</p>	Recommendation 48
<p>The Department of Justice and Attorney-General develops an annual compliance strategy for government regulatory bodies operating in child safe regulated environments. This should include processes for sharing information about compliance breaches and actions.</p>	Recommendation 55
<b>Information sharing</b>	
<p>The Department of Justice and Attorney-General works with other relevant agencies to develop guidelines to provide practical guidance about the new information-sharing provisions, and a change management strategy to achieve the necessary cultural change.</p>	Recommendation 60

Recommendation summary The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following	Recommendation number
<b>Information and communication technology</b>	
The Department of Justice and Attorney-General works with relevant agencies to develop an information and communication technology (ICT) strategy to identify the technical solutions needed to automate information sharing. This is to maximise efficiencies and minimise the risk that agencies cannot share information quickly and easily.	Recommendation 61
The Department of Justice and Attorney-General urgently develops and implements an efficient online application process and online service for WWCC applicants.	Recommendation 63 and 64
The Department of Justice and Attorney-General undertakes a full risk assessment against the Queensland Government Authentication Framework to determine the best way to check identities. This must strengthen the identity check process and, as far as possible, support a fully online application process.	Recommendation 65
The Department of Justice and Attorney-General develops an organisational portal with at least the minimum functionality specified.	Recommendation 71
<b>Reporting and data</b>	
The Department of Justice and Attorney-General establishes a comprehensive reporting framework and commences regular public reporting.	Recommendation 74
The Department of Justice and Attorney-General promotes the benefits of analysing the data, and reports on research partnerships.	Recommendation 76
<b>Review/further consider</b>	
<b>Child safe standards</b>	
Queensland Government reviews the <i>Child Employment Act 2006</i> to ensure that organisations employing children and young people are required to meet child safe standards.	Recommendation 14
The Queensland Government considers further reforms to include any recommendations of the Royal Commission to strengthen child safe standards.	Recommendation 11
<b>Working with children checks</b>	
<p>The Department of Justice and Attorney-General works with other states and territories to consider whether issues relating to mutual recognition of WWCCs can be resolved to allow an exemption if a person has been screened in another state or territory, namely:</p> <ul style="list-style-type: none"> <li>• the comparability of screening processes</li> <li>• the establishment of a centralised database</li> <li>• barriers to information sharing about WWCC decisions.</li> </ul>	Recommendation 27
The Department of Justice and Attorney-General consults with the Australian Department of Immigration and Border Protection on opportunities to share the information about international criminal histories.	Recommendation 30
The Queensland Government reviews the criteria for giving investigative information to BCS to see whether they are sufficient to allow the QPS to share the information BCS needs to assess risks of harm to children.	Recommendation 32
The Department of Justice and Attorney-General reviews the current QCAT process to identify opportunities to provide more support for applicants.	Recommendation 48

Recommendation summary The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following	Recommendation number
<b>Compliance processes</b>	
The Department of Justice and Attorney-General explores options to implement an electronic case management system for compliance activities.	Recommendation 53
The Department of Justice and Attorney-General consults with relevant regulatory bodies to assess whether authorised officers under compatible regulatory models could become authorised officers under the WWC Act for the exercise of all or some of the WWC Act enforcement powers.	Recommendation 54
The Department of Justice and Attorney-General reviews offences and penalties in the WWC Act.	Recommendation 56
<b>Information sharing</b>	
Once the Royal Commission releases its final recommendations, the Queensland Government considers developing separate legislation to allow information sharing for the purpose of assessing and managing risks of harm to the safety, welfare or wellbeing of children.	Recommendation 57
<b>Streamlining risk assessment</b>	
The Department of Justice and Attorney-General works with the QPS to provide advice to the Queensland Government about the most efficient way to achieve electronic returns of police information that can be integrated into the BCS database and establish the automated exchange of other police information, including QP9s (court briefs).	Recommendation 66
The Department of Justice and Attorney-General works with all relevant agencies to automate and streamline information sharing to support the WWCC process.	Recommendation 67
<p>The Department of Justice and Attorney-General reviews the risk assessment process to identify and implement ways to:</p> <ul style="list-style-type: none"> <li>• automate the process for less complex risk assessments</li> <li>• manage all risk assessment files electronically.</li> </ul>	Recommendation 68
<b>Statutory review</b>	
In preparation for the statutory review, the Department of Justice and Attorney-General considers appointing a panel of key external stakeholders.	Recommendation 77
<p>The statutory review includes consideration of:</p> <ul style="list-style-type: none"> <li>• whether child protection information should be assessed for all WWCC applications</li> <li>• introducing accreditation frameworks as potential ways to improve the levels of compliance across organisations</li> <li>• introducing a public register of non-compliant organisations.</li> </ul>	Recommendation 38
	Recommendation 52
<b>Implementation</b>	
The Department of Justice and Attorney-General establishes an implementation working group to develop a detailed implementation plan and reporting framework and report on progress over the implementation period.	Recommendation 78



Recommendation summary The Queensland Family and Child Commission's Principal Commissioner, advised by an expert panel, recommend the following	Recommendation number
The implementation plan is regularly reviewed to consider any changes in the administrative arrangements for particular functions and allocate responsibility for each recommendation to the agency with administrative responsibility for the relevant function.	Recommendation 79
The Department of Justice and Attorney-General works with the Queensland Government Chief Information Officer to use agile and iterative project methodologies to build capability and functionality in the system over time.	Recommendation 80
The Department of Justice and Attorney-General engages an independent entity to plan for and evaluate the success of these reforms of the blue card system.	Recommendation 81

## Attachment 1

### Authorising documents for the review

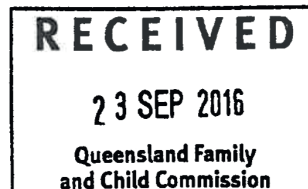


Department of the  
**Premier and Cabinet**

For reply please quote: SocPol/RM – TF/16/12499 – DOC/16/135826  
Your reference: D16/135826

21 SEP 2016

Ms Cheryl Vardon  
Principal Commissioner  
Queensland Family and Child Commission  
PO Box 15217  
BRISBANE CITY EAST QLD 4002



Dear Ms Vardon

I write regarding concerns raised about the ability of current Blue Card and related information sharing regimes to protect our children.

These concerns, including those relating to exemptions available in the current regimes and the nature of the checks undertaken, have the potential to undermine both the rigour of the regimes and the public confidence in how we protect children in our community. The direct result is that our children may be at risk.

I therefore request that you undertake a whole of system review of the *Working with Children (Risk Management and Screening) Act 2000* and its operation.

In undertaking the review, I would also ask that you give consideration to:

- the work you are undertaking in regards to Recommendation 28 of the *When a Child is Missing* report relating to the review of legislation, policies and practices relating to information sharing between government agencies responsible for undertaking decision making about child safety
- recommendations of the August 2015 report, *Working with Children Checks (WWCC)*, by the Royal Commission into Institutional Responses to Child Sexual Abuse, including those recommendations relating to a nationally consistent approach
- the July 2016 paper from the Royal Commission, *Creating Child Safe Institutions*, and any further relevant reports to be released by the Commission in coming months, related to the quality and safeguards for children in out of home care



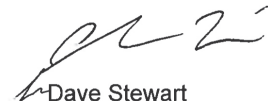
- any comments contained in the Queensland Child Protection Commission of Inquiry report (*Taking Responsibility: A Roadmap for Queensland Child Protection*) published in June 2013
- any specific issues experienced by Aboriginal and Torres Strait Islander families and children
- relevant developments in other jurisdictions.

Furthermore, I ask that you pay particular attention to the use and reliance on working with children checks and other information in the assessment and approval process for foster carers in Queensland.

Finally, I ask that the review identify and address issues raised by other stakeholders, including whether the regime should apply to adults working in areas such as the fast food and retail industries.

I ask that you deliver your review within six months of receipt of this letter.

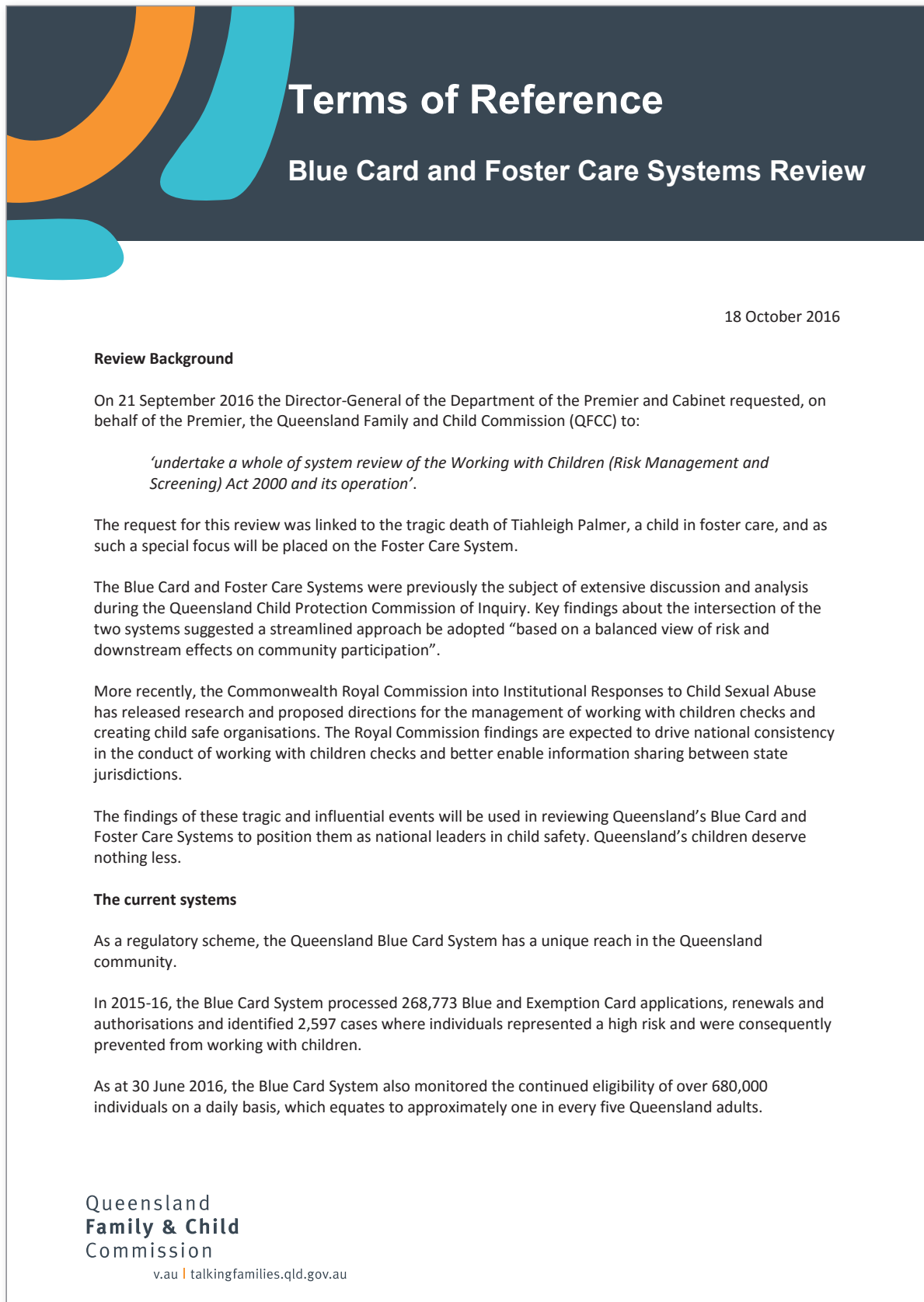
Yours sincerely



Dave Stewart  
Director-General

## Attachment 2

### Terms of reference



# Terms of Reference

## Blue Card and Foster Care Systems Review

18 October 2016

### Review Background

On 21 September 2016 the Director-General of the Department of the Premier and Cabinet requested, on behalf of the Premier, the Queensland Family and Child Commission (QFCC) to:

*‘undertake a whole of system review of the Working with Children (Risk Management and Screening) Act 2000 and its operation’.*

The request for this review was linked to the tragic death of Tiahleigh Palmer, a child in foster care, and as such a special focus will be placed on the Foster Care System.

The Blue Card and Foster Care Systems were previously the subject of extensive discussion and analysis during the Queensland Child Protection Commission of Inquiry. Key findings about the intersection of the two systems suggested a streamlined approach be adopted “based on a balanced view of risk and downstream effects on community participation”.

More recently, the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse has released research and proposed directions for the management of working with children checks and creating child safe organisations. The Royal Commission findings are expected to drive national consistency in the conduct of working with children checks and better enable information sharing between state jurisdictions.

The findings of these tragic and influential events will be used in reviewing Queensland’s Blue Card and Foster Care Systems to position them as national leaders in child safety. Queensland’s children deserve nothing less.


### The current systems

As a regulatory scheme, the Queensland Blue Card System has a unique reach in the Queensland community.

In 2015-16, the Blue Card System processed 268,773 Blue and Exemption Card applications, renewals and authorisations and identified 2,597 cases where individuals represented a high risk and were consequently prevented from working with children.

As at 30 June 2016, the Blue Card System also monitored the continued eligibility of over 680,000 individuals on a daily basis, which equates to approximately one in every five Queensland adults.

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In 2015-16, the Blue Card System engaged with over 2,400 regulated businesses and organisations to provide information to help increase compliance with system requirements. It also conducted 386 compliance checks of organisations and 48,512 checks of individuals.

Foster carer approvals comprise slightly under 1% of all current Blue Card holders. Foster carers make a special contribution to the lives of Queensland children; they take on both the joys and burdens of caring for children in circumstances where their biological parents are not willing or able to do so, and through their tireless efforts they help restore safety, wellbeing and dignity to the lives of our most vulnerable children.

For these reasons, it is critical that the safeguards for children in foster care are of the highest quality.

Through assessing and monitoring changes in criminal history information and undertaking proactive educative and compliance activities, the Blue Card System makes a significant contribution to the safety of Queensland children. However, the Blue Card System's contribution to the safety of Queensland children generally, and children in foster care in particular, has to be considered in the context of broader strategies and decision making in relation to the protection of children in our community.

Reviewing Queensland's Blue Card System will require revisiting key policy settings, exploring opportunities to innovate and the inclusion of broader stakeholder perspectives in the way the system operates.

Reviewing the Foster Care System will require a complementary examination of the additional safeguards required for our most vulnerable children.

#### **Terms of reference**

The review is to be conducted under Part 3 of the *Family and Child Commission Act 2014*.

The QFCC will work with all stakeholders to explore the Blue Card and Foster Care Systems' strengths and weaknesses, identify opportunities for improvement and provide robust advice and recommendations back to government, by 31 March 2017.

The terms of reference under which the QFCC will conduct the review are as follows.

1. Explore ways to build and sustain public confidence in the Blue Card and Foster Care Systems.
2. Review the Blue Card System legislation, including its scope, to identify any gaps, barriers, inconsistencies or inefficiencies in meeting the safety needs of children in Queensland.
3. Review key Blue Card System operations to identify opportunities to streamline, innovate and enhance access for members of the community, including Aboriginal people and Torres Strait Islanders.
4. Audit and review foster carer approval and monitoring processes, to assess their effectiveness as safeguards for vulnerable children and to identify any gaps or inconsistencies in meeting the safety needs of children in Queensland.
5. Review Child Safety Services within the Department of Communities, Child Safety and Disability Services to determine whether it is operating effectively, including engaging with frontline staff through targeted consultation to determine any capacity issues or pressure points in meeting the safety needs of children in the Child Protection System.



### Review process

In undertaking the review, the QFCC will:

1. Establish steering and advisory mechanisms representative of the scope of the Blue Card and Foster Care Systems
2. Work collaboratively with stakeholders, including through conducting state-wide and targeted consultation and providing an open opportunity for written submissions
3. Consider the QFCC's own prior reviews, relevant publications and evidence of the Royal Commission into Institutional Responses to Child Sexual Abuse, the Queensland Child Protection Commission of Inquiry and the Queensland Ombudsman
4. Explore any specific issues with the Blue Card System experienced by Aboriginal and Torres Strait Islander families and children
5. Assess and consider relevant developments in other jurisdictions, including the impact on the Queensland Blue Card system of a nationally consistent approach or model
6. Provide an estimate of any costs, savings, efficiencies or impacts to government or stakeholders expected to result from any proposed recommendations, and
7. Deliver findings and recommendations to the Premier by 31 March 2017.

Although the QFCC may consider a series of individual circumstances to form a view on systemic issues related to the Blue Card and Foster Care Systems, it is not a function of the review to investigate the circumstances of a particular child, family, Blue Card applicant or foster carer, or to advocate on their behalf.



Cheryl Vardon  
**Principal Commissioner**  
Queensland **Family and Child** Commission

### Attachment 1 - Proposed approach to the terms of reference.

1. Explore ways to build and sustain public confidence in the Blue Card and Foster Care Systems.

QFCC proposes to approach TOR 1 by considering:

- a. the extent and regularity of public reporting about the outcomes the systems deliver for children and the community and its achievements against benchmarks
- b. how stakeholders can be more involved in oversight of the systems and provide ongoing input about its functioning
- c. the education and support needs of those members of the community who interact with the systems, including individuals who may be disadvantaged due to remoteness, disability, cultural or other considerations
- d. the benefits of promoting, in respect of the Blue Card system, a system which emphasises employment (and volunteer) screening which is tailored for industry suitability, rather than relying on Blue Cards as a 'one size fits all'.
- e. the benefits of systems data holdings across government for researchers, policy makers and stakeholders, particularly in building the understanding of child safe service organisations

2. Review the Blue Card System legislation, including its scope, to identify any gaps, barriers, inconsistencies or inefficiencies in meeting the safety needs of children in Queensland.


QFCC proposes to approach TOR 2 by considering:

- a. whether screening should be extended to adults working in areas such as the fast food and retail industries
- b. whether the system should differentiate between the relative risks of service environments
- c. the availability of criminal history information from other jurisdictions, including international
- d. the availability and use of other information, including criminal intelligence and child protection and domestic and family violence histories
- e. the alignment of the system with developments in other jurisdictions, including findings of the Royal Commission into Institutional Responses to Child Sexual Abuse and linkages with 'reportable conduct' schemes
- f. the appropriateness of current system exemptions
- g. the impact of any proposed changes on the system and its workability and effectiveness, including impact on all future Blue Card holders.

3. Review key Blue Card System operations to identify opportunities to streamline, innovate and enhance access for members of the community, including Aboriginal people and Torres Strait Islanders.

QFCC proposes to approach TOR 3 by considering:

- a. ways to streamline and automate processes
- b. the current validity period and fee structure
- c. the accessibility and utility of the application, renewal and appeal processes, with a focus on the experiences of members of the community who interact with the system, including those who may be disadvantaged due to remoteness, disability, cultural or other considerations
- d. whether an appropriate balance exists in screening activities as compared with broader child safe organisation and educative approaches
- e. the impact of any proposed changes on the workability of the system and on future Blue Card holders.

- 
4. Audit and review foster carer approval and monitoring processes, including links with the Blue Card System and Community Visitors, to assess their effectiveness as safeguards for vulnerable children.

QFCC proposes to approach TOR 4 by considering:

- a. the views of children in care
  - b. available data about the safety of children in foster care to identify trends over time and comparisons to other jurisdictions
  - c. assessment, approval and monitoring requirements and processes for foster and kinship carers, including links to the Blue Card System
  - d. the need for tailored assessments of carers based on the risk assessments
  - e. a representative audit sample of foster carer approvals
  - f. practice approaches to visiting and engagement with children in out-of-home care by caseworkers
  - g. practice approaches to visiting and engagement with children in out-of-home care by the Office of Public Guardian
  - h. approaches to safeguards in other jurisdictions and linkages to the findings of the Queensland Ombudsman's report on the *Management of child safety complaints*
5. Engage with frontline staff through targeted consultation to determine any capacity issues or pressure points in meeting the safety needs of children in the Child Protection System.

QFCC proposes to approach TOR 5 by considering:

- a. available data, analytics and modelling about the Child Protection System workforce, including changes over time and any region specific issues
- b. available evidence about the impacts of the child protection reforms, including whether workforce related assumptions and findings of the Queensland Child Protection Commission of Inquiry remain relevant
- c. case studies that help highlight capacity issues or pressure points
- d. the views of frontline staff and their representative bodies
- e. the experiences of other jurisdictions

## References

- <sup>1</sup> Higgins, D J, Kaufman K, and Erooga, M 2016, 'How can child welfare and youth-service organisations keep children safe?', *Developing Practice: The Child, Youth and Family Work Journal*, 44, pp. 48–64; South, S, Shlonsky, A, and Mildon, R 2014, *Scoping Review: Evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, accessed 2 December 2016, <http://www.childabuseroyalcommission.gov.au/getattachment/3828bdcb-3689-4011-98a3-d2ebbf277718/Evaluations-of-pre-employment-screening-practices>; Irenyi, M, Bromfield, L, Beyer, L, and Higgins, D 2006, 'Child maltreatment in organisations: Risk factors and strategies for prevention', *Child Abuse Prevention Issues*, no. 25, p.1, accessed 1 December 2016, <https://aifs.gov.au/cfca/sites/default/files/publication-documents/issues25.pdf>; Kaufman, K. and Erooga, M 2016, Risk profiles for institutional child sexual abuse: A literature review, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, accessed 1 December 2016, <http://www.childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/risk-profiles-for-institutional-child-sexual-abuse>.
- <sup>2</sup> South, S, Shlonsky, A, and Mildon, R 2014, *Scoping Review: Evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, accessed 2 December 2016, <http://www.childabuseroyalcommission.gov.au/getattachment/3828bdcb-3689-4011-98a3-d2ebbf277718/Evaluations-of-pre-employment-screening-practices>.
- <sup>3</sup> PeakCare, Submission.
- <sup>4</sup> Higgins, DJ, Kaufman, K, and Erooga, M 2016, 'How can child welfare and youth-service organisations keep children safe?', *Developing Practice: The Child, Youth and Family Work Journal*, 44, pp. 48–64.
- <sup>5</sup> Higgins, D J, Kaufman K, and Erooga, M 2016, 'How can child welfare and youth-service organisations keep children safe?', *Developing Practice: The Child, Youth and Family Work Journal*, 44, pp. 48–64.
- <sup>6</sup> Independent Schools Queensland, Submission.
- <sup>7</sup> Smallbone, S, and McKillop, N (in press), Child sexual abuse: A place-based approach, in Y Smaal and M Finnane (Eds.), *The sexual abuse of children: Recognition and redress*. Melbourne: Monash University Press.
- <sup>8</sup> Queensland Catholic Education Commission, Submission.
- <sup>9</sup> Surf Life Saving Queensland, Submission.
- <sup>10</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, 2016, Creating child safe institutions, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, accessed 1 December 2016, <http://www.childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/key-elements-of-child-safe-organisations>.
- <sup>11</sup> Protect all Children Today Inc., Submission.
- <sup>12</sup> Queensland Catholic Education Commission, Submission.
- <sup>13</sup> Australian Institute of Criminology, *Indigenous Justice in Focus*, accessed 23 June 2017, [http://www.aic.gov.au/crime\\_types/in\\_focus/indigenousjustice.html](http://www.aic.gov.au/crime_types/in_focus/indigenousjustice.html).
- <sup>14</sup> Queensland College of Teachers 2016, *2015 Annual Report*, Queensland College of Teachers, p. 19, accessed 7 March 2017, [http://qct.edu.au/pdf/QCT\\_Annual\\_Report\\_2015.pdf](http://qct.edu.au/pdf/QCT_Annual_Report_2015.pdf).
- <sup>15</sup> Information received from Queensland College of Teachers, 24 January 2017.
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27. *Working with Vulnerable People (Background Checking) Act 2011* (ACT), s. 23.
28. *Child Protection (Working with Children) Act 2012* (NSW), s. 4.
29. *Care and Protection of Children Act 2007* (NT), s. 184.
30. Children's Protection Regulations 2010 (SA), r. 6.
31. *Registration to Work with Vulnerable People Act 2013* (Tas), s. 25.
32. *Working with Children Act 2005* (Vic), ss. 13–14.
33. *Working with Children (Criminal Records Checking) Act 2004* (WA), s. 3; *Chief Executive Officer, Department for Child Protection v Grindrod* [No 2] [2008] WASCA 28.
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42. This includes an ability to submit a *Request to consider alternative identity* for all applicants and a *Declaration of Identity* document for Aboriginal and Torres Strait Islander applicants.
43. Queensland Catholic Education Commission, Submission.
44. Protect all Children Today, Submission.
45. Queensland Catholic Education Commission, Submission.
46. Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Submission.
47. Churches of Christ Care, Submission.
48. Bravehearts, Submission.





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