

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

## **Explanatory Notes**

### **Short title**

Working with Children Legislation (Indigenous Communities) Amendment Bill 2018.

### **Policy objectives and the reasons for them**

This Bill primarily amends the Working with Children (Risk Management and Screening) Act 2000. A number of other Acts are amended however those amendments are consequential.

The objectives of this Bill are to provide a new Blue Card framework that empowers Indigenous communities to make decisions which best serve their interests in relation to child protection and employment of community members.

The health, safety and wellbeing of all children is paramount and must continue to be the number one priority of the community however the 'one size fits all' approach to the Blue Card system is having a negative impact on Indigenous communities within Queensland.

The current Blue card system contains significant limitations in the way it applies to the unique circumstances of Indigenous communities and this is resulting in missed opportunities for social and economic development.

There have been many instances where individuals have been denied access to work due to the inflexibility of the current system. In a number of cases, the local community, through community leaders, law enforcement and judicial representatives, has determined that the person poses no risk to children and their employment would have broader positive community impacts. It is imperative that the legislative framework in Queensland recognises the different circumstances of remote indigenous communities and supports the process for job seekers in Indigenous communities whilst protecting the interests of children.

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

Specifically, the current Blue card system contains the following limitations:

- There is no mechanism to allow the local community to have input into the issuing of Blue Cards for employment in that community,
- No mechanism exists that recognises behavioural improvements and the positive impact employment of an individual may have on the community,
- The current application process has no set timeframe for the issuing of a Blue Card for individuals in indigenous communities which creates a significant barrier to accessing employment,
- The current application process does not allow an applicant to undertake work during the application process, even if it can be determined that the individual poses no risk to the safety of children. This can often result in the loss of long term employment opportunities.

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

A Community Justice Group typically includes Elders, traditional owners, respected persons and community members of 'good standing'. There are currently close to 50 Community Justice Groups operating across the state.

It is vitally important to note that none of the offences which can be assessed by the Community Justice Group in making a recommendation to issue a *positive notice* are sexually based offences. If an applicant has sexually based offences they are considered through the standard Blue Card process and if these offences are classified as serious offences or disqualifying offences a Blue Card will not be issued.

Additionally, the Bill creates a time limit of three weeks for the chief executive to notify the Community Justice Group of the proposed decision in relation to a *community area application*.

## **Achievement of policy objectives**

The policy objectives are achieved through the development of a new Blue Card assessment framework. This framework enables a Community Justice Group to use its judgement, based on the knowledge of the specific circumstances and individual involved, to issue a binding recommendation to the chief executive to issue a *restricted positive notice* where a *negative notice* would have been issued by the chief executive due to previous *serious offences* being committed by the applicant. The type of *serious offences* that can be considered under the new framework are limited to the following,

- Criminal Code offences
  - o Section 409, 419 and 427 which relate to stealing with violence, burglary and unlawful entry of a vehicle.
- Drugs Misuse Act offences

- Section 5,6,8 and 9D which relate to trafficking dangerous drugs, supplying dangerous drugs, producing dangerous drugs and trafficking in relevant substances or things.

No other offences that are currently classified as *serious offences* or *disqualifying offences* can be considered by the Community Justice Group under the new framework.

A positive notice issued in this way can only be used in the specific community area as defined by the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984.

Under the Bill a new 'class' of Blue Card is created by the issuance of a *restricted positive notice* by the chief executive. This allows the holder to work only in the specific community to which the *restricted positive notice* relates.

### **A new Blue Card framework for Indigenous communities**

The new framework creates the following process to enable the issuance of a *restricted positive notice* to an applicant who would otherwise have been issued a negative notice under the existing framework.

The new regime is outlined in the following points,

- An application (*community area application*) for a blue card is made to the chief executive and the applicant indicates that the application is for a *restricted positive notice* in a *community area*.
- A *restricted positive notice* only allows the person to undertake employment in the community in which the Community Justice Group has jurisdiction (the *community area*) so there is no risk that they will undertake relevant employment in other areas.
- Where a *community area application* is made the treatment of a narrow range of offences that would be classed as *serious offences* under a normal application is augmented to enable the application to be determined by the Community Justice Group. These offences relate to stealing, burglary and unlawful entry of a vehicle and drug related offences.
- Upon receipt of the application the chief executive has 5 business days to notify the Community Justice Group that a *community area application* has been made. The notice must be in writing and include a copy of the application.
- Once the Community Justice Group has been notified of the application they may make a binding recommendation to the chief executive that an *interim restricted positive notice* is issued. This enables the applicant to undertake the regulated employment while the application is being considered. When deciding to issue such a recommendation the Community Justice Group must have regard to the following,
  - any police information, investigative information or disciplinary information about the person that the group is aware of and considers relevant;
  - whether, and in what capacity, the person has previously worked with children;
  - the person's social standing and participation within the community area;
  - whether, in the group's reasonable opinion, withholding the recommendation would have a negative impact on the social or economic wellbeing of the community area's inhabitants;
  - anything else the group reasonably considers to be relevant to the decision.

- Once a community area application is made, the chief executive has 21 days to decide whether to issue a positive or negative notice to the applicant.
- If the chief executive intends to issue a negative notice to the applicant, the chief executive must notify the Community Justice Group prior to issuing the negative notice to the applicant. The notification must include the information considered by the chief executive and the reason for deciding to issue a negative notice.
- Prior to a negative notice being issued to the applicant, the Community Justice Group may recommend to the chief executive that a *restricted positive notice* is issued enabling the person to undertake regulated employment in the community area. The chief executive must issue a *restricted positive notice* if that recommendation is made by the Community Justice Group.
- The Community Justice Group has 8 weeks to make a recommendation to the chief executive and a decision is made when a majority of members agree to a recommendation.
- When deciding to issue such a recommendation the Community Justice Group must have regard to the following,
  - o any police information, investigative information or disciplinary information about the person that the group is aware of and considers relevant;
  - o whether, and in what capacity, the person has previously worked with children;
  - o the person's social standing and participation within the community area;
  - o whether, in the group's reasonable opinion, withholding the recommendation would have a negative impact on the social or economic wellbeing of the community area's inhabitants;
  - o anything else the group reasonably considers to be relevant to the decision.
- If at any time during a period where an *interim restricted positive notice* or a *restricted positive notice* has been issued, the Community Justice Group becomes aware of any change to relevant information, they may revoke the notice.

### Transitional provisions

A number of transitional provisions are incorporated into the Bill to deal with any existing application which could be classified as a *community area application* under the new regime. These transitional provisions allow any existing application that would qualify as a *community area application* to be treated as a *community area application* by notice by the applicant to the chief executive.

### Dictionary changes

A number of key new terms have been added to the dictionary.

- ***community area*** means a community area under the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984.
- ***community area application*** means a prescribed notice application that is for, or includes a prescribed notice application for, a restricted positive notice for a community area.
- ***community justice group***, for a community area, means a community justice group established under the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984, part 4 for the community area.
- ***interim restricted positive notice***, for a community area, means a positive notice issued for the area to a person under section 231C(5).

- **restricted positive notice**, for a community area, means a positive notice issued for the area to a person under section 231E(5).

### **Amendments of other Acts**

Due to interrelationships with other legislation a number of other Acts have been amended. These amendments are consequential and only reflect the policy objectives and changes to the operation of the Blue Card regime in the Working with Children (Risk Management and Screening) Act 2000 as outlined above.

The other acts amended are,

- Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984.
- Child Protection Act 1999.
- Disability Services Act 2006.
- Education (Accreditation of Non-State Schools) Act 2001.
- Education and Care Services Act 2013.
- Education (Queensland College of Teachers) Act 2005.
- Public Service Act 2008.

### **Alternative ways of achieving policy objectives**

There are no practical alternative ways of achieving the policy objectives.

### **Estimated cost for government implementation**

The costs associated with augmenting the current framework to incorporate community area applications are considered minor and can be covered by existing departmental budget allocations.

### **Consistency with fundamental legislative principles**

Under this Bill there are two issues which may be perceived as inconsistent with fundamental legislative principles,

1. It may be perceived that the new blue card framework proposed in this Bill loosens the restrictions on individuals with offences that would otherwise result in the issuing of a negative notice;
2. The framework allows people who have not been issued with a Blue Card to work with children whilst their application is being decided.

These issues may be perceived as not having regard to the rights and liberties of individuals (see the Legislative Standards Act 1992, section 4(2)(a)), in that children in community areas could be exposed to particular convicted persons, while children elsewhere are not. However, the role of the Community Justice Group is to provide the vetting of the individual applicant based on their intimate knowledge of their character and the circumstances of each case. Due to the Community Justice Group's proximity to each case and the individual and community stakeholders involved, they are in a far better position to determine whether an applicant poses a risk to the children they will be working with. Due to the role of the Community Justice Group in the decision making process, the framework ensures that fundamental legislative principles are met.

## **Consultation**

Consultation has been undertaken with key stakeholders most importantly,

- community leaders;
- law enforcement; and
- judicial representatives

## **Consistency with legislation of other jurisdictions**

The changes proposed in this Bill provide a unique assessment regime that relies on the Community Justice Group program operating in the state of Queensland.