Review of the blue card system – Discussion Paper

About Queensland Independent Schools

Queensland independent schools comprise non-government schools that are not part of the Catholic school system. They cater for students from varied socio-economic backgrounds and educate more than 120,000 students at 200 schools, representing 15 per cent of all Queensland school students, and nearly 20 per cent of secondary students in the state. Independent schools are located across the state, with 15% of independent schools classified as rural or remote using the outer regional, remote and very remote classifications of the Australian Bureau of Statistics' Australian Standard Geographic Classification Remoteness Area (ASGC-RA).

Role of the blue card system

1. **How does the blue card system contribute to the creation of safe environments for children?**

    The blue card system provides an external "check" for non-teaching employees in the schooling sector as teaching staff are currently checked through the Queensland College of Teachers (QCT) registration process. Blue cards are required for all governing body members as well as for all other non-teaching staff. It is also required for volunteers where they meet the frequency test, as well as for persons who provide a child accommodation service to overseas (and local students) as part of a homestay or boarding arrangement.

    Additionally, schools are required under the Education (Accreditation of Non-State Schools) Act 2001 and the associated Regulation (s10) to have written processes about: the health and safety of students and staff; response to harm or allegations of harm; appropriate conduct of school's staff and students; reporting by students of inappropriate staff behaviour and dealing with that information; reporting of sexual abuse or suspected sexual abuse; reporting of a reportable suspicion under the Child Protection Act, and a complaints procedure to address allegations of non-compliance with the processes.

    Collectively these processes, the Working with Children Check (WWCC) process and the QCT check assist schools to ensure their environments are child-safe. All of the processes rely on staff, parents and students complying with the legal and policy obligations of the organisation. Together these compliance activities create the scaffold of a child-safe environment.

2. **How can the blue card system better contribute to the creation of safe environments for children?**

    There is a concern that the holding of a blue card is seen as an automatic tick implying that the holder is deemed "safe" with children, and requires no further thought or investigation.

    A wider and more realistic understanding of what the WWCC covers (and doesn't cover) and what it means when a person has a blue card would enhance the use of the blue card as part of the creation of a safe environment for children. The blue card could then be better

promoted as one of the planks in creating a child-safe environment, along with other strategies.

Into the future, some consideration should be given to the advantages of having a system that verifies a person's fitness for working with children and young people and how this information is maintained and made available compared with a system that identifies a person as being inappropriate for a role that involves interaction with children and young people in a workplace or as a volunteer in a community organisation or event.

Strengthening the system: Child Safe Organisations

3. **Are the current requirements for organisations to develop and implement risk management strategies sufficient? Why/why not?**

Non-state schools are required to have a Child Protection policy and an associated risk management strategy. Schools that have full-fee paying international students are also required to have a risk management strategy for regulated activities such as homestay etc.

A risk management strategy should set out how the organisation goes about administering the framework of a child-safe environment and should cover areas including employment practices, reference checks, employees' code of conduct, handling of disclosures and of breaches, communication and support.

The current requirements that include conducting an annual review of the strategy are sufficient. However, 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.

4. **Is the current penalty for not developing and implementing a child and youth risk management strategy sufficient? Why/why not?**

As all schools are not-for-profit charities, they are regulated not only by the State regulator for non-state schools, the Non-State Schools Accreditation Board (NSSAB), but also by the Australian Charities and Not-for-profits Commission (ACNC). Both the ACNC and NSSAB have regulatory powers to enquire and then to require that a school and its governing body comply with Australian and state legislation.

Schools that enrol students on student visas must be separately registered with national and state regulators to ensure they are implementing requirements of the Education Services for Overseas Students (ESOS) framework, which includes requirements to approve the welfare and accommodation arrangements of children under 18 years of age if they are not living with a parent or relative approved by the Department of Immigration.

In this context, as significant penalties could apply to non-state schools across various regimes, the current penalties are sufficient.

5. **Should the blue card system continue to focus on environments where children receive services essential to their development and wellbeing? Why/why not?**

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.

6. **Should the blue card system regulate any additional environments? If so, which ones and why?**

The WWCC is primarily about regulating workplace environments where paid employees interact with and care for children, developing relationships of trust, on a frequent, ongoing basis. It also includes situations where volunteers act in a similar capacity to paid employees, and interact with children (often in a sporting environment) in an often-unsupervised capacity where they can develop a relationship of trust with the children.

It is important that children are safe, but extending the reach of the blue card system well beyond environments that are currently covered could potentially create a false sense of security.

This is perhaps an area where a monitoring function of the system could identify potential environments that currently sit outside the area of regulated employment where there is evidence that children and young people can be placed at risk – for example, in situations where young people are supervised by adults in a voluntary capacity or in paid employment in a workplace.

In a situation like this, parents would assume there are workplace policies about sexual or other harassment that would protect a young person, but in reality, a young person may choose not report improper behaviour by a supervisor or work colleague for fear of losing his or her job. This differs from a situation where a parent who engages and pays for a commercial service for children, for example, for a child's birthday party, remains the person responsible for the wellbeing of the children involved.

Strengthening the system: Working with Children Checks

7. **In what circumstances, should a person be required to undergo a WWCC? Does this differ depending on the service environment?**

A WWCC should be required for persons in employment where the role is to interact with and care for children, developing a relationship of trust on a frequent ongoing basis. It

should also be required for volunteer positions where the volunteer is operating in a similar circumstance or environment – i.e., where they are interacting and caring for children, developing a relationship of trust - often in a largely unsupervised capacity.

8. **Is the current frequency test suitable for use in determining whether a WWCC is required? Why/why not?**

In the independent schooling context, the current volunteer frequency test is useful as it recognises and allows schools to continue to undertake normal and planned activities where there is infrequent or one-off contact with children without needing to obtain blue cards for everybody. A good example of this is where, under current provisions, schools or clubs can recruit families to host visiting overseas groups or teams for one-off sporting events or short cultural exchanges. It is also useful to have an exemption of this kind for overseas teachers or other adults accompanying such groups for these short-term visits.

Volunteers in schools, irrespective of the frequency of contact, are under the supervision at all times of a school staff member.

There is inconsistency with the frequency aspect when looking at the physical number of days of contact for "paid" employment (8 days at a time; 4 times per month; once every month for 6 months). If the intention is to determine frequency of contact that allows for developing a relationship with the child, then there should be consideration given to a consistent number of days of contact.

9. **When should a person not have to undergo a WWCC?**

In an independent school, parents of a currently enrolled student do not need to obtain a blue card to be able to volunteer at their child's school. We support the continuation of this exemption as parent volunteers are under the supervision of a school staff member at all times.

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.

We also support exemptions that currently exist for relatives of international students. International students on student visas under the age of 18 years can live with a parent, custodian or relative approved by the Department of Immigration to provide welfare and accommodation arrangements. Blue cards are not required in these situations. Nor are they required if a school undertakes the responsibility of approving welfare and accommodation arrangements for an overseas student under the age of 18 years, and the parent gives

permission for the child to visit or to spend time in Australia with a relative – for example, during a school vacation period.

10. **If a person has been issued with a negative notice, should they be able to continue to provide services if they are exempt from requiring a WWCC? Why/why not?**

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.

11. **Should WWCC's from other jurisdictions be recognised in Queensland?**

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.

12. **Should a person be allowed to start working/volunteering while their WWCC is being processed? Why/why not?**

The current paper based approach to applying for a blue card is cumbersome and it can take many weeks to complete in some situations. Employers have been known to wait up to 2 months to get clearance for a new "paid" employee in a management position and this is clearly not commercially acceptable.

On the other hand, schools or other organisations that arrange homestay accommodation for international students or visiting groups often use the "volunteer" application process. There are times when additional homestays need to be arranged quickly because of last minute changes to arrangements, and the current system does not have the capacity to respond quickly.

If there were an online process that allowed the appropriate checks and a blue card approval to take only three to four days, that would assist greatly the ability of entities to check on people before they commence in a child related activity. Similarly, a system that could facilitate a check for a negative notice rather than a positive notice would be more agile.

13. **Should some individuals be prohibited from applying for a WWCC? If so, why and in what circumstances?**

Persons on the Offenders Register should be prohibited from applying for a WWCC check. There would need to be clear guidelines and a range of factors assessed for any exemptions, such as the age of an offender at time of offence and subsequent in role in an organisation.

14. **What information should be routinely considered as part of a WWCC?**

The current WWCC only accesses information about persons who have been convicted of child related sexual offences. It does not routinely access information from the Child Safety system of a person who harms children in other ways (such as neglect or psychological harm) and who may be at a greater risk of harming children if involved in a child related activity. It also does not routinely access information from other states, nationally and from overseas.

State and national jurisdictions should be considered routinely as part of the WWCC and in the regular updating of the register.

Obtaining information from overseas jurisdictions may be unnecessary for holders of some visa subclasses if an overseas criminal history check has been undertaken as part of a visa grant process.

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.

15. **Does the current approach to decision making adequately prioritise the safety of children? Why/why not?**

There has been a lack of reliable reported data on how effectively the current system is operating. The decision-making process of determining whether or not a blue card can be

issued appears to be adequate, but the WWCC can only be considered as one element of a greater policy framework to prioritise the safety of children.

16. **Are there factors considered as part of the decision-making process sufficient to ensure consistency of decision making? Why/why not?**

ISQ is not aware of the details of the process of decision making, and so cannot comment on consistency decision making outcomes. This would require analysis and reporting on data related to decisions.

17. **When should a person be able to apply for a review of an adverse decision?**

We understand that currently it is two years from the time of receiving an adverse decision to when a person can apply for a review. If the initial decision making process is robust, then this would seem to be an appropriate time frame. However, there needs to be assurance that the principles of natural justice apply in the case of an incorrect decision as the decision can adversely affect a person's capacity to be employed in their work of choice and training.

18. **Is the current process the most effective way to review adverse decisions? Why/why not?**

The current process may not be appropriate in remote or culturally and linguistically diverse communities, where applicants can encounter difficulties in engaging with the review process. In these cases, processes may need be adjusted or to need to take special circumstances into account.

Strengthening the system: Compliance with the blue card system

19. **Should there be statutory powers to monitor compliance with the obligation to develop and maintain risk management strategies and undertake WWCC checks? Why/why not?**

An independent school has a regulatory obligation to provide a safe environment for children and to ensure that there are processes and policies to ensure that children are kept safe. This is subject to review by an external validator every five years.

As well, each time a school makes a change requiring regulatory approval (for example, adding a new site or another sector), these policies and procedures are again subject to regulatory approval.

As schools are recognised as charities, they are subject to regulation by the 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.

20. **Should there be legislative powers to enable the compulsion of information provision to assist with monitoring compliance? Why/why not?**

Please see our response above. Consideration needs to be given to the scope and scale of legislation that already regulates the functions of an organisation.

Strengthening the system: Information sharing

21. **Is the scope of information sharing adequate to protect children? Why/why not?**

ISQ would advocate for information to be shared as widely as possible to ensure that the most current and relevant information is available at the time of making a decision as to whether a person is/remains suitable to undertake child related activities.

22. **How could information sharing be improved to better inform the WWCC process?**

There should be provision for information to be shared and continually updated across state and national boundaries and for it to be accessible at one point of contact.

23. **Should information be able to be shared with other jurisdictions? If so, what information?**

Information on child related activities which includes information about any child related harm should be included in the information shared across jurisdictions, with the capacity for further enquiry to be made to the organisation from which the information was sourced (for example, police and child safety services, etc.).

Strengthening the system: Offences and penalties

24. **Are the current obligations and penalties under the Working with Children (Risk Management and Screening) Act 2000 (WWC Act) sufficient to create safe environments for children? Why/why not?**

ISQ believes that the current obligations are sufficient.

Streamlining the system: Child safe organisations

25. **Can organisations be better supported to create child-safe organisations?**

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.

26. **Can parents and communities be better supported in choosing child-safe organisations for their children? If so, how?**

It is important that parents understand the limitations of the WWCC and take steps to ensure the safety of their children. Communities would also benefit from a better education and awareness campaign that explains what a child-safe organisation should look and feel like.

27. **Are there opportunities to streamline processes associated with risk management strategies? If so, how?**

ISQ offers a template risk management strategy for use by its member schools. Resources such an online training module or a checklist of key important attributes and factors would assist schools and other organisations to know that they have met at least the minimum standards would be useful.

Streamlining the system: Working with children checks

28. **Should an online application process be implemented? Are there any implications for communities or individuals?**

An online process is essential. The paper based system is clunky and time-consuming and should only be maintained for those with limited online access.

29. **Should an individual be able to apply without being linked with an organisation? Why/why not?**

Linking an individual to an organisation is important so that the organisation receives updates on negative notices. If there was an online system of registering and obtaining a blue card that took only three to four days, then it is not unreasonable to expect a person to wait and to take steps to be linked to an organisation. If, however there was a database of those who were not authorised to operate in child related activities, then it would simply be a matter of linking the person (already approved as they have no negative notice against them) to an organisation at the time of employment or volunteering.

30. **Should there continue to be a physical card? Why/why not? If so, should it contain a photo?**

If there was an on-line portal that was easily searchable (similar to that used by the Queensland College of Teachers), then it would not be necessary to have a card for employment in a child related activity. However, it may still be helpful to have a physical volunteer card with a photograph for volunteers working in child related activities, particularly areas that are not regulated employment.

31. **How long should a WWCC be valid for?**

A WWCC could be valid indefinitely if there were state and national checks updating the required information regularly.

32. **What are the benefits and risks associated with extending the renewal period?**

The extension of the renewal period has limited risks if the information from other states and nationally is readily accessible for determining whether someone is approved to undertake child related activities.

However, while there is a time limit of three years on national checks, renewal periods should align with the expiry date of a national check.

Community participation and support: Supporting Aboriginal and Torres Strait Islander Communities

33. **What are the issues affecting Aboriginal and Torres Strait Islander Communities' participation in the blue card system?**

The remoteness of some communities is a barrier to entry into this system and has a big impact on capacity to source employment in those communities. Difficulties of engaging with the system, for example, for review of a negative notice, has already been noted, above. Support for Aboriginal and Torres Strait Islander community members should be a high priority.

34. **How can Aboriginal and Torres Strait Islander Communities be better supported to participate in the blue card system?**

Education and community liaison officers are needed to support the application process, as is community engagement to assist community members to register and to apply for reviews for the WWCC, and to contribute to the wider goal of creating a child-safe community.

35. **Does the approach adequately enable cultural considerations to form part of the decision-making process? Why/why not?**

ISQ is not aware of the current considerations used in the decision-making process. There are issues such as use of photographic images, literacy levels, and communication or other practices that may need to be considered.

Community participation and support: Building public confidence in the system

36. **Should the WWC Act contain provisions requiring regular review and reporting requirements? Why/why not?**

Yes. It would be good to have up to date and reliable data available that helps sectors (for example, schools, health and other service providers) to assess risks, areas of concern, etc.

37. How can stakeholders be more involved in the oversight of the system?

ISQ welcomes further stakeholder input into the oversight of the system. At least annual meetings of peak bodies or professional organisations to review data and identify trends or areas of concern that could be addressed in risk management strategies would be useful.

38. Should more data and information about the blue card system be reported? If so, what data and information?

Data on the number of negative notices issued and clearances revoked in sectors (for example, schools, health and other service providers) should be reported annually, or released as an alert if there is a spike for some reason.