



# A Stronger Blue Card System for Queensland

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## Executive Summary

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Queensland is currently in the process of strengthening and streamlining its blue card system, which is the state-wide system used to monitor the people who work with children and young people. A [comprehensive review](#) of the blue card system by the Queensland Family and Child Commission (QFCC) was carried out in 2016/2017. Although the review concluded that the state had one of the strongest working with children check (WWCC) systems in Australia, it listed 81 recommendations including that there be reforms to Queensland's blue card system.

In May 2019, the Queensland Parliament passed the Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2019 (Qld) (WWC Amendment Act) in order to further enhance the protection offered by the system.

The WWC Amendment Act amends the Working with Children (Risk Management and Screening) Act 2000 (Qld) (WWC Act) and institutes several significant changes. The WWC Amendment Act introduces four significant changes as follows:

1. Changes to the disqualification and serious offence framework
2. The introduction of a 'No Card, No Start' policy
3. The amendment of the definition of "minimum frequency for regulated employment"
4. The creation of offences related to "restricted employment" and "restricted persons".

The changes to the disqualification and serious offence framework came into effect on 1 July 2019, while the 'No Card, No Start' policy, the amendment of the definition of "minimum frequency for regulated employment" and the introduction of the "restricted employment" and "restricted persons" offences are expected to commence in early 2020.

## Overview of the Blue Card System

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The blue card system aims to create a safe and supportive environment for children when they are receiving services and participating in activities essential to their wellbeing and development. The system has three components which aim to deal with past, present and future risks:

- initial blue card screening to determine a person's eligibility to work with children and young people based on their past behaviour
- ongoing monitoring of the police information of all blue card holders, thereby enabling action to be taken to protect children and young people if the blue card holder is charged with certain offences
- mitigating future risks through the requirement for organisations providing child related services to develop and implement child and youth risk management strategies.

The initial WWCC (i.e. the blue card check) screens applicants in relation to:

- any national charge or conviction (including spent convictions and pending and non-conviction charges) for an offence (even if no conviction was recorded)
- child protection prohibition orders (whether a person is a respondent or subject to an application)
- disqualification orders
- if a person is subject to reporting obligations under the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (Qld) or Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)
- disciplinary information held by certain professional organisations including teachers, childcare licensees and foster carers
- 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.

A person whose application is approved is issued with a 'positive notice' and a 'blue card'. A 'p' blue card is issued for paid employees and allows them to work in any regulated child-related employment or conduct any regulated child-related business for three years while their police information continues to be monitored. A 'v' blue card is issued for volunteers and can only be used for volunteer work for three years-again, while their police information continues to be monitored. If a person's application is refused, they are issued with a 'negative notice' which prohibits them from carrying on a business or providing regulated child-related activities.

In Queensland, a person can undertake child-related work without a blue card if they are exempt (although, for certain exempt people, they must obtain an exemption card if they want to do particular kinds of work). One exemption is if the person has been screened under another specified process: being a registered teacher or a police officer fits within this category. Parents who volunteer at the school that their child attends are also exempt.

Schools should note that registered teachers don't need either a blue card or an exemption card when providing regulated child-related services as part of their professional duties. This means that a teacher registered with the Queensland College of Teachers does not require a blue card (or an exemption card) when teaching at a school or a boarding facility. However, teachers may require an exemption card if they are providing other child-related regulated services beyond their professional duties, such as privately tutoring a child or supervising after hours school care. Further information on whether a registered teacher needs an exemption card can be found [here](#).

## Changes to the Disqualification and Serious Offence Framework

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The WWC Amendment Act implements the recommendations of the QFCC and the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) in relation to expanding the range of disqualifying and serious offences that are included in the WWC Act.

## Disqualifying Offences

The WWC Act makes it an offence for a person who has been convicted of a disqualifying offence to apply for a blue card, unless an “eligibility declaration” has been granted. A person is disqualified from applying for a blue card if they:

- have been convicted of a disqualifying offence irrespective of the penalty imposed
- are a reportable offender with current reporting obligations under the Child Protection (Offender Reporting) Act 2004 (Qld)
- are subject to a child protection offender prohibition order or the respondent in an application for an offender prohibition order
- are subject to a disqualification order prohibiting them from applying for or holding a blue card
- are subject to a sexual offender order under the Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld).

Every blue card applicant must sign a declaration stating that they are not a disqualified person. Employers and organisations are also required to inform their employees and volunteers that it is an offence for a disqualified person to apply for a blue card. It is possible for a disqualified person to apply to Blue Card Services (the Queensland government body that manages the blue card system) for an eligibility declaration, but until declared eligible, it remains an offence for a disqualified person to sign a blue card application form.

As of 1 July 2019, 17 new offences were added (by the WWC Amendment Act) to the list of disqualifying offences in the WWC Act, including:

- bestiality (section 211 Criminal Code)
- kidnapping of a child (section 354 Criminal Code)
- kidnapping for ransom of a child (section 354A Criminal Code)
- child stealing (section 363 Criminal Code)
- abduction of a child under 16 (section 363A Criminal Code)
- cruelty to children under 16 (section 364 of the Criminal Code – currently a serious offence)
- attempt to commit rape of an adult (section 350 of the Criminal Code – currently a serious offence)
- assault with intent to commit rape of an adult (section 351 of the Criminal Code – currently a serious offence)
- torture, if the offence was committed against a child (section 320A of the Criminal Code – currently a serious offence)
- choking, suffocation or strangulation in a domestic setting (section 315A of the Criminal Code)
- attempt to murder (section 306 of the Criminal Code – currently a serious offence)
- conspiring to murder (section 309 of the Criminal Code – currently a serious offence)
- servitude offences, if the offence was committed against a child (section 270.5 of the Criminal Code (Commonwealth))
- offence of trafficking in children (section 271.4 of the Criminal Code (Commonwealth) – currently a serious offence)
- offence of domestic trafficking in children (section 271.7 of the Criminal Code (Commonwealth) – currently a serious offence).

Existing cardholders with a previous conviction for a new disqualifying offence will have their eligibility to continue holding a blue card assessed by Blue Card Services. For the purposes of reconsideration, the offence will be treated as a serious offence.

## Serious Offences

The WWC Act operates so that an applicant who has been convicted of a serious offence will not be issued with a blue card unless there are exceptional circumstances. As of 1 July 2019, two new offences were added to the list of serious offences:

- manslaughter (section 303 of the Criminal Code –previously neither a serious nor disqualifying offence)
- servitude offences (section 270.5 of the Criminal Code (Commonwealth) –previously neither a serious nor disqualifying offence)

Existing cardholders with a previous conviction of a new serious offence will have their eligibility to continue to hold a blue card assessed by Blue Card Services.

A new framework for serious offences was also introduced by the WWC Amendment Act. Under these changes:

- if a person applying for a blue card has been charged with a serious offence that has not been resolved (e.g. dismissed or found not guilty), then their blue card application will be withdrawn and the person will not be able to re-apply for a blue card until their charge has been finalised.
- if a person applying for a blue card to undertake paid employment has a conviction for a serious offence, the person must stop child-related work until their application has been assessed and they have been issued with a blue card.
- if a blue card holder has a change in their police information and they are charged with a serious offence, then the person’s blue card will be automatically suspended and they must cease child-related work (Blue Card Services will not be required to undertake a re-assessment until the charge has been resolved).

## **‘No Card, No Start’**

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The ‘No Card, No Start’ policy is designed to strengthen the blue card system by preventing applicants from commencing child-related work while their blue card application is pending. The WWC Amendment Act will bring in new provisions which prohibit an employer from employing a person in regulated employment (relevant child-related work) unless the person holds a WWCC and the employer has notified the chief executive that they are proposing to employ that person. The penalty for not abiding by this obligation will be increased to 100 penalty units (almost \$13,500 as at 1 July 2019). Queensland’s Attorney-General and Minister for Justice, Yvette D’Ath, has described the increased penalties as designed “to emphasise the significant responsibility that employers have as the gatekeepers of child-related employment”.

To minimise adverse impacts to jobseekers and employers, the ‘No Card, No Start’ requirement will be accompanied by complementary changes including:

- streamlining the application process to provide sufficient flexibility so that applications can be made manually or through an online process
- removing the requirement that a person must have an agreement to work with an organisation before applying for a working with children check as this is an unnecessary barrier to employment
- enabling organisations to manage their obligations as well as communications with the chief executive, including relevant notifications, through an online organisational portal.

[According to Minister D’Ath](#), this streamlining and modernisation will be achieved through an injection of \$17 million into the blue card system’s reform over the next three years.

## **“Minimum Frequency for Regulated Employment”**

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The definition of “minimum frequency for regulated employment” in the WWC Act is confusing and is difficult to find. The WWC Amendment Act attempts to make the definition clearer and accords with the definition recommended by the Royal Commission.

Under the WWC Amendment Act, the minimum frequency aspect will be subsumed into the definition of “regulated employment”. Under the definition of “regulated employment” in the WWC Amendment Act a person’s employment won’t fall within the definition if the person is employed to work and works “in the employment” for seven days or fewer in a calendar year.

## “Restricted Employment” and “Restricted Persons”

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Currently, a person can undertake certain child-related work without having a WWCC if a relevant exemption applies to them. These exemptions include if the person:

- is a volunteer parent, in certain circumstances
- is a volunteer under the age of 18
- does not meet the minimum frequency for regulated employment.

This means a person with a negative notice (i.e. a person who had their blue card application refused) or any other ‘high risk’ person could still carry out child-related work if they were exempted.

The QFCC recommended that changes be made to the WWC Act in order to prevent negative notice holders and other ‘high risk’ persons from relying on these exemptions. The WWC Amendment Act achieves this through the introduction of two new terms – “restricted employment” and “restricted person”.

“Restricted employment” is defined as:

- infrequent employment which does not meet the minimum frequency under the new section 156 of the amended WWC Act
- the unpaid employment of a person under the age of 18
- volunteer parents who undertake regulated employment in the following settings: schools, education and care services, child care, churches, clubs and associations and sport and active recreation.

“Restricted person” captures the following ‘high risk’ people

- negative notice holders
- persons with a suspended working with children authority
- a disqualified person
- a person charged with a disqualifying offence.

The WWC Amendment Act makes it an offence for a restricted person to start or continue in restricted employment. It will also be an offence under the amended WWC Act for an employer to employ or continue to employ a person in restricted employment if they know or ought reasonably to know that the person is a restricted person. It is important for schools to be aware of this latter offence. For example, if a school knows or ought to know that a parent would be considered a “restricted person” under the amended WWC Act, then they must not allow that parent to volunteer at the school. The penalty for this offence is 200 penalty units (almost \$27,000 as at 1 July 2019) or up to two years imprisonment. In practice, it may be difficult for a school to obtain information about whether a person is a “restricted person” (particularly, based on advice that CompliSpace has received from Blue Card Services, as those seeking to undertake “restricted employment” are not permitted to submit an application for a WWCC). It will depend on whether the school in fact knew or ought to have known that the person was a “restricted person”. Hopefully Blue Card Services will provide more guidance on some of these issues.

## What Does this Mean for Schools?

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It is important for schools to be aware of their obligations in relation to the amended WWC Act, particularly given the increased penalties and new offences that will come into force in early 2020. Although not all the provisions in the WWC Amendment Act are in force yet, it is prudent for schools to be ready for the changes in advance. This will not only ensure compliance with legal obligations but also will help schools provide the best protection to children and young people that they can.

## How CompliSpace can help

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CompliSpace combines specialist governance, risk and compliance (GRC) consultancy services with practical, technology-enabled solutions. We are the leading provider of student duty of care and child protection GRC services in Australia, working with leading non-government schools and educational authorities in all Australian states and territories.

Our team of lawyers and industry experts actively monitor changes to relevant laws and standards and deliver a full suite of online policies, procedures and governance programs that enable schools to continuously comply with their legal and regulatory obligations.

In response to the introduction of the Reportable Conduct Scheme, the new WWCC requirements, the new Duty of Care to Prevent Child Abuse and the changes to the sexual offences in the Crimes Act, CompliSpace has developed detailed policies and procedures that address the provisions under the legislation. The new policies and procedures are designed to integrate into a school's existing Child Protection Program and be tailored to the particular circumstances of each school. CompliSpace has also developed detailed online child protection training which includes information on the Reportable Conduct Scheme, WWC Act and duty of care.

CompliSpace works with schools to tailor compliance and risk management systems to a school's individual needs and characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

If you are looking to update your existing child protection content, contact us on:

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