



**Review of Child Protection
Mandatory Reporting Laws for the
Early Childhood Education and Care
Sector**

Discussion Paper

Queensland
Law Reform Commission

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ISBN: 978-0-9874889-3-0

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Abbreviations and Glossary

ACECQA	Australian Children's Education and Care Quality Authority
AIHW	Australian Institute of Health and Welfare
Approved Provider	<p>Under the national law, a person who holds a provider approval: National Law s 5(1) (definition of 'approved provider').</p> <p>Under the ECS Act, a 'Queensland approved provider' is a person who holds a Queensland provider approval and, in relation to a service approval, means the approved provider holding the service approval: ECS Act (Qld) sch 2 (definition of 'Queensland approved provider').</p>
Certified Supervisor	A person who holds a supervisor certificate: National Law s 5(1) (definition of 'certified supervisor' and 'supervisor certificate').
Child Concern Report	A report to Child Safety is recorded as a 'Child Concern Report' if it does not meet the threshold for a notification.
Child Safety	A reference to Child and Family Services (formerly Child Safety Services), which is the service area in the Department of Communities, Child Safety and Disability Services responsible for child protection.
CMC	The then Crime and Misconduct Commission (Qld) (now the Crime and Corruption Commission (Qld)).
Education and Care Service	<p>Under the National Law, any service providing or intending to provide education and care on a regular basis to children under 13 years of age, except for services that are specifically excluded by either the National Law or the National Regulations: National Law s 5(1) (definition of 'education and care service').</p> <p>Under the ECS Act (Qld), a Queensland education and care service is a service providing regulated education and care of children under 13 years of age, except for those excluded by the Act: ECS Act (Qld) s 8.</p>
Educator	An individual who provides education and care for children as part of an education and care service under the National Law, or a Queensland education and care service the ECS Act (Qld): National Law s 5(1) (definition of 'educator'); ECS Act (Qld) sch 2 (definition of 'educator').
ECEC	Early Childhood Education and Care
ECS Act	<i>Education and Care Services Act 2013</i> (Qld)
ECT	Early Childhood Teacher

Family day care service	An education and care service that is delivered through the use of 2 or more educators to provide education and care for children in residences whether or not the service also provides education and care to children at a place other than a residence. 'Residence' means the habitable areas of a dwelling: National Law s 5 (definition of 'family day care service' and 'residence').
Family Day Care Co-ordinator	A person employed or engaged by an approved provider of a family day care service to monitor and support the family day care educators who are part of the service: National Law s 5(1) (definition of 'family day care co-ordinator').
Family Day Care Educator	An educator engaged by or registered with a family day care service to provide education and care for children in a residence or at an approved family day care venue: National Law s 5(1) (definition of 'family day care educator').
Harm	In relation to a child, any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing: <i>Child Protection Act 1999</i> (Qld) s 9.
'In need of protection'	A child in need of protection is a child who has suffered, is suffering or is at unacceptable risk of suffering, significant harm, and does not have a parent able and willing to protect the child from the harm: <i>Child Protection Act 1999</i> (Qld) s 10.
Intakes	A term used to refer to all information received by Child Safety about harm or risk of harm to a child.
Kindergarten/Preschool Program	An early childhood educational program delivered by a qualified early childhood teacher to children in the year that is two years before grade one of school: National Law s 5(1) (definition of 'preschool program').
Limited hours care and occasional care	Limited hours care and occasional care centres primarily provide care and education on a casual or ad hoc basis for short periods of time for children from birth to school age.
Long day care	Long day care services provide care and education for children from birth to school age, including before and after school care, depending on the individual service. Services generally operate for at least 10 hours a day from Monday to Friday for a minimum of 48 weeks each year.
Mobile services	A service that provides education and care to children who are not schoolchildren, and transports equipment and material or staff from one or more locations on each occasion that the service is provided: <i>ECS Act 2013</i> (Qld) s 10.
National Quality Framework	The National Law and the National Regulations
National Law	Education and Care Services National Law
National Regulations	Education and Care Services National Regulations.

Nominated Supervisor	In relation to an education and care service, a person who is a certified supervisor; and who is nominated by the approved provider of the service under Part 3 of the National Law to be the nominated supervisor of that service; and who has consented to that nomination: National Law s 5(1) (definition of 'nominated supervisor').
Notification	A report to Child Safety is recorded as a 'notification' if it meets the threshold for notification; that is, it shows that there is an allegation of harm or risk of harm to a child, and a reasonable suspicion that a child is in need of protection.
Outside school hours care	Outside school hours care is provided for school age children before and after school and as vacation care for at least four weeks per year.
Personal arrangements	Education and care provided to a child by a family member or guardian of a child personally, otherwise than as a staff member of, or under an engagement with, a service providing education and care on a regular basis to children under 13 years of age, or by a friend of the family of the child personally under an informal arrangement where no offer to provide that education and care was advertised: National Law s 5(1) (definition of 'personal arrangement').
QCPCI	Queensland Child Protection Commission of Inquiry
Stand-alone care services	Care is provided for up to six children, usually in a person's home: <i>ECS Act 2013</i> (Qld) s 9.
Staff Member	<p>In relation to an education and care service, any individual (other than a nominated supervisor or volunteer) employed, appointed or engaged to work in or as part of an education and care service, whether as a family day care co-ordinator, educator or otherwise: National Law s 5(1) (definition of 'staff member').</p> <p>For a Queensland approved education and care service, any individual (other than a volunteer) employed, appointed or engaged to work in or as part of the service, whether as an educator or otherwise: <i>ECS Act</i> (Qld) sch 2 (definition of 'staff member').</p> <p>For a stand-alone service, a person engaged in a position in the service, or a person conducting the service and carrying out the functions of a position in the service: <i>ECS Act</i> (Qld) sch 2 (definition of 'staff member').</p>
Supervisor	An individual who is at least 18 years of age, who consents in writing to being appointed as a supervisor, and who holds a prescribed qualification or is actively working towards a prescribed qualification in the way prescribed under a regulation: <i>ECS Act</i> (Qld) sch 2 (definition of 'supervisor').
Substantiated Notification	A notification is 'substantiated' if it is assessed that the child is in need of protection.

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Chapter 1

Introduction

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INTRODUCTION

1.1 On 6 November 2014, the Attorney-General and Minister for Justice referred to the Queensland Law Reform Commission a review of child protection mandatory reporting laws for the early childhood education and care sector ('ECEC sector').

1.2 Mandatory reporting laws are contained in the *Child Protection Act 1999* (Qld).¹ The Act categorises particular professionals (including registered doctors, nurses, teachers, certain police officers, and statutory office holders) as 'mandatory reporters', and requires them to report suspected cases of the abuse of children to the Department of Communities, Child Safety and Disability Services ('Child Safety').²

1.3 The ECEC sector is not subject to these mandatory reporting laws. However, like any other person, staff within that sector can report concerns about a child at any time under the Act's voluntary reporting provision.³ The ECEC sector is also subject to other legislative requirements in relation to child protection.⁴

TERMS OF REFERENCE

1.4 The terms of reference for the Commission's review are set out in full in Appendix A.

1.5 The Commission's review is limited to the consideration of whether the legislative mandatory reporting requirements under the *Child Protection Act 1999* (Qld) should be expanded to cover the ECEC sector, including long day care and family day care services and kindergartens.

1.6 If the Commission considers there should be such an expansion, the terms of reference also require the Commission to make recommendations as to which

¹ See *Child Protection Act 1999* (Qld) ch 2, pt 1AA. A copy of the Act is available online at: <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/ChildProtectA99.pdf>.

² Child Safety Services is the part of the Department of Communities, Child Safety and Disability Services responsible for child protection. It is referred to throughout this paper as 'Child Safety'.

³ *Child Protection Act 1999* (Qld) s 13A.

⁴ See further at [2.29] ff below.

professionals, office holders or workers within that sector should be included in the legislative mandatory reporting scheme.

1.7 The terms of reference require the Commission, in considering whether the mandatory reporting requirements under the *Child Protection Act 1999* (Qld) should be expanded to cover the ECEC sector, to take into account the policy environment. In particular, it requires the Commission to take into account the implementation of the recommendations of the 2013 report of the Queensland Child Protection Commission of Inquiry ('QCPCI').⁵

1.8 The Commission has also been asked to 'ensure that any recommendations for reform are practical, workable and cost-effective both for the child care industry and government'.

BACKGROUND TO THE REVIEW

1.9 The terms of reference note that there has been some community interest in this issue. In recent years, two petitions have been lodged with the Queensland Parliament requesting that Queensland child care services and centres become mandatory reporters. The first petition had 711 signatures and was tabled in the Legislative Assembly on 11 February 2014. A second petition, with 160 signatures, was tabled on 30 October 2014.⁶

1.10 These petitions followed the death of an almost 17 month old child, who was murdered by his step-father in 2011. Eight days before the child's death, child care centre staff observed and photographed extensive bruising to the child.⁷ The child's grandparents have advocated for child care workers to be made mandatory reporters, on the grounds that immediate action by the child care staff may have made a difference in this case. The grandparents have also submitted that, because child care services are not obliged to report, young children and babies at risk of significant harm may not be identified.

1.11 Before 2015, different reporting obligations were spread across different pieces of legislation, and varied in scope and content.⁸ The following groups of people were required to report in particular circumstances:

- doctors and registered nurses;⁹

⁵ For further information about the QCPCI and access to its publications, see its website at <<http://www.childprotectioninquiry.qld.gov.au/>>.

⁶ Copies of these petitions, together with the government's response, are available online: Queensland Parliament, *Closed e-petitions*, <<http://www.parliament.qld.gov.au/work-of-assembly/petitions/closed-e-petitions>>, Petition 2203–13 and Petition 2251–14.

⁷ See *R v Reed* [2014] QCA 207. These photographs formed part of the evidence at the trial.

⁸ Mandatory reporting provisions have now been consolidated in the *Child Protection Act 1999* (Qld) ch 2, pt 1AA: see *Child Protection Reform Amendment Act 2014* (Qld). The relevant provisions commenced on 19 January 2015.

⁹ See, eg, *Public Health Act 2005* (Qld) ss 158 (definition of 'harm'), 191, omitted by *Child Protection Reform Amendment Act 2014* (Qld) s 103.

- school staff;¹⁰
- employees of the Department of Communities, Child Safety and Disability Services, and employees of departmental, and licensed, care providers;¹¹
- the Commissioner for Children and Young People and Child Guardian;¹² and
- personnel of the Family Court of Australia and the Federal Magistrates Court.¹³

1.12 In addition, police officers were required, pursuant to Queensland Police Service policy, to report cases of domestic violence where children normally resided at the residence, regardless of whether the incident was likely to meet the threshold for child protection intervention.¹⁴

1.13 The child protection system has been undergoing a process of reforms in accordance with the recommendations of the QCPCI. In particular, changes were recently made by the *Child Protection Reform Amendment Act 2014* (Qld) to:¹⁵

- consolidate and standardise mandatory reporting laws in the *Child Protection Act 1999* (Qld);
- clarify that any person who reasonably suspects that a child is in need of protection may make a report; and
- provide greater guidance about when a report should be made to child protection authorities.

ORIGINS AND DEVELOPMENT OF MANDATORY REPORTING

1.14 Mandatory reporting laws were originally developed and implemented in the United States of America. In 1962, a study led by Dr Henry Kempe coined the term ‘battered child syndrome’ in relation to a clinical condition in young children (often younger than three years old) who received serious physical abuse by their caregivers, frequently resulting in permanent injury or death. The study advocated that doctors have a duty to the child to fully examine the problem and prevent the

¹⁰ *Education (General Provisions) Act 2006* (Qld) ss 364–66. See [4.5]–[4.6] below.

¹¹ *Child Protection Act 1999* (Qld) s 148 (Current as at 1 January 2014).

¹² See *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 25 (Current as at 1 January 2014) The Commission for Children and Young People and Child Guardian ceased operation on 30 June 2014. Many of the Commission’s functions moved to other agencies (including the Office of the Public Guardian and the Queensland Family and Child Commission) from 1 July 2014 as part of the implementation of recommendations from the QCPCI: see *Public Guardian Act 2014* (Qld); *Family and Child Commission Act 2014* (Qld).

¹³ *Family Law Act 1975* (Cth) s 67ZA, inserted by the *Family Law Reform Act 1995* (Cth).

¹⁴ Queensland Child Protection Commission of Inquiry, *Emerging Issues* (September 2012) 2; Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 87–8. See now Queensland Police, *Operational Procedures Manual*, Issue 47 (June 2015) ch 7.

¹⁵ See further the discussion at [4.7] ff below.

continuation of abuse.¹⁶ It garnered significant media attention, generated political debate and raised public awareness of child protection issues. In 1963, a model mandatory law was drafted by the United States Children's Bureau and, by the end of the 1960's, almost all States had adopted mandatory reporting laws in some form. Initially, the duty to report was imposed only on medical practitioners. The laws have, however, since been expanded to include other professionals and, in some cases, the general public.¹⁷

1.15 Throughout the 1960's, public and political awareness of child protection issues was also increasing in Australia, with similar studies to Dr Kempe's being undertaken here.¹⁸ Australian states and territories moved to government-based child protection approaches and welfare departments were established.¹⁹

1.16 Mandatory reporting laws were enacted in South Australia, Tasmania and New South Wales during the 1970's, and in Queensland and the Northern Territory during the 1980's.²⁰ Victoria, the Australian Capital Territory and Western Australia introduced mandatory reporting laws in 1993, 1999 and 2008, respectively.²¹

1.17 As with the development of mandatory reporting laws in the United States of America, early mandatory reporting laws in Australia were often initially limited to health professionals. Over time, however, these laws have been expanded and adapted.

1.18 Currently, the legislation in the Australian Capital Territory, South Australia, Tasmania, Victoria, New South Wales and the Northern Territory specifically includes certain child care providers or employees as mandatory reporters (although the Victorian provision has not yet commenced operation).²² Queensland and Western

¹⁶ CH Kempe et al, 'The Battered-Child Syndrome' (1985) 9 *Child Abuse & Neglect* 143.

¹⁷ The designated professionals vary, but now commonly include physicians and nurses, teachers and principals, social workers, counsellors and therapists, law enforcement officers, and child care providers. Other examples of designated professionals include commercial film or photograph processors, substance abuse counsellors, probation and parole officers, domestic violence workers, members of the clergy and directors, and employees or volunteers at entities that provide organised activities for children (such as camps and youth centres): Child Welfare Information Gateway, US Department of Health and Human Services, Children's Bureau, 'Mandatory Reporters of Child Abuse and Neglect' (2014) <<https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda>>.

¹⁸ J Fogarty AM, 'Some aspects of the early history of child protection in Australia' (2008) 78 *Family Matters* 52, 58.

¹⁹ A Lamont and L Bromfield 'History of child protection services' (National Child Protection Clearinghouse Resource Sheet, October 2010) 3.

²⁰ See *Children's Protection Act Amendment Act 1969* (SA); *Child Protection Act 1974* (Tas) (repealed); *Community Welfare Act 1982* (NSW) (repealed); *Health Act Amendment Act 1980* (Qld); *Community Welfare Act* (NT) (repealed).

²¹ See *Children and Young Persons (Further Amendment) Act 1993* (Vic); *Children and Young People Act 1999* (ACT) s 159 (repealed); *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* (WA).

²² See further Table 5-1: Who is required to report in each State and Territory at [5.8], p 48 below. In relation to the Victorian provisions, see [5.81] ff below.

Australia are the only two Australian jurisdictions that do not extend mandatory reporting to the ECEC sector.²³

THE DISCUSSION PAPER

1.19 Chapter 2 of this Discussion Paper provides an overview of the diverse types of services that comprise the ECEC sector in Queensland and how they are regulated in relation to child protection obligations and staff qualification requirements.

1.20 Chapter 3 provides an overview of Queensland's child protection system and the reforms recommended by the QCPCI.

1.21 Chapter 4 outlines the current mandatory reporting law in Queensland under the *Child Protection Act 1999* (Qld). It also provides some historical background in relation to the development of, and recent amendments to, those laws.

1.22 Chapter 5 provides an overview of current mandatory reporting laws in other Australian jurisdictions. It also discusses the historical background of those laws in relation to who is required to report and, where relevant, the expansion and adaptation of those laws to the ECEC sector.

1.23 Chapter 6 examines the fundamental principles underpinning mandatory reporting laws and the arguments that are commonly made both for and against such laws.

1.24 Chapter 7 outlines relevant child protection reporting data and general trends in relation to who makes reports.

1.25 Chapter 8 raises for consideration whether the existing mandatory reporting provisions under the *Child Protection Act 1999* (Qld) should be expanded to apply to the ECEC sector and related issues.

CALL FOR SUBMISSIONS

1.26 The Commission invites submissions from members of the public, relevant professionals, organisations and individuals with an interest or expertise in this area, on the issues raised in this paper.

1.27 In particular, the Commission has asked a number of questions in chapter 8 of this paper. The Commission invites submissions on those questions, as well as on any other issues that are relevant to the terms of reference that are not the subject of a specific question.

1.28 Submissions may be in any format and may respond to some, or all, of the issues raised in this Discussion Paper. Details on how to make a submission, and

23

However, the mandatory reporting provisions in Qld and WA do apply to registered teachers. In WA, this includes teachers registered under the *Teacher Registration Act 2012* (WA) who teach in a kindergarten, a child care centre under the *Child Care Services Act 2007* (WA) s 4, or in a place where a centre-based service as defined under the Education and Care Services National Regulations 2012 operates: see [5.96]–[5.97] below. In relation to Qld, see [2.67]–[2.68] below.

on how the Commission will deal with any personal information contained in any submission, are set out at the front of this paper.

1.29 The closing date for submissions is **Wednesday 30 September 2015**.

TIMEFRAME FOR THE REVIEW

1.30 The terms of reference provide for the Commission's report for the review to be given to the Attorney-General by 31 December 2015.

Chapter 2

The Early Childhood Education and Care Sector

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INTRODUCTION

2.1 The ECEC sector is comprised of a diverse range of services, including long day care, family day care, kindergartens and occasional and casual care.

TYPES OF SERVICES

2.2 It is estimated that there are over 2600 regulated ECEC services in Queensland, with around 258 640 children enrolled in these services.¹

2.3 In 2013, the majority of regulated ECEC services were long day care services (51%). The remainder were outside school hours care services (26%),

¹

See Department of Education, Training and Employment (Qld), 'Early Childhood Education and Care Services Census Fact Sheets' (23 July 2014) <<http://deta.qld.gov.au/earlychildhood/news/sector-reports/census-factsheets.html>>.

kindergarten services (18%), family day care services (4%), and limited hours services (1%).²

2.4 Services are provided by private organisations, community organisations and government. In 2013, 37% of regulated ECEC services were privately managed for profit, 11% were privately managed not-for-profit, 48% were community managed, 2% were government mandated services, and 3% indicated they were non-government school managed.³

Long day care

2.5 Long day care services usually operate at least 10 hours per day, Monday to Friday, for at least 48 weeks of the year. They provide full or part time education and care for children from birth to 12 years old. Long day care services may also offer before and after school care and vacation care, and an approved kindergarten program taught by a qualified early childhood teacher.⁴

Family day care

2.6 Family day care services offer flexible education and care for children in the private homes of registered carers. They provide education and care for children from birth to 12 years old (for up to seven children; including up to four children not yet in school), and are available for a full day, part day, overnight or weekends.⁵

Kindergarten

2.7 Kindergarten services are generally administered by a volunteer parent management committee or operated by not-for-profit organisations with parent advisory committees. They may be operated by independent public schools and non-state schools.⁶

2.8 Most kindergarten services offer approved kindergarten programs (also referred to as 'preschool programs' or 'kinder'), delivered by a qualified early childhood teacher.⁷ Approved kindergarten programs are non-compulsory programs for children in the year before Prep (that is, children who are four years old by 31 July

² These figures are from the Early Childhood Education and Care Services Census 2013. See Department of Education, Training and Employment (Qld), 'Early Childhood Education and Care Services Census Fact Sheets' (23 July 2014) <<http://deta.qld.gov.au/earlychildhood/news/sector-reports/census-factsheets.html>>.

³ Ibid.

⁴ Queensland Government, 'Long day care' (11 Feb 2015) <<http://www.qld.gov.au/families/babies/childcare/types/pages/long.html>>.

⁵ Queensland Government, 'Family day care' (18 September 2014) <<http://www.qld.gov.au/families/babies/childcare/types/pages/family.html>>.

⁶ Queensland Government, 'Kindergarten' (11 Feb 2015) <<http://www.qld.gov.au/families/babies/childcare/types/pages/kindergarten.html>>.

⁷ Queensland Government, 'About approved kindergarten programs' (15 Jan 2015) <<http://www.qld.gov.au/education/earlychildhood/programs/pages/about.html>>.

in the year they start),⁸ that are provided for at least 15 hours per week for 40 weeks, or one school year.

2.9 Approved kindergarten programs may also be offered in long day care services and limited hours care services.

Nannies and babysitters

2.10 Nannies and babysitters usually provide care in the child's home. This may be arranged on an individual basis or through a registered agency.⁹

Occasional and casual care

2.11 There is a range of service types that may provide education and care to children on a casual basis or for short periods. They include services such as:¹⁰

- **Occasional care:** provides education and care to children primarily on an ad hoc basis, where most of the children are under school age and the service usually does not offer full-time or all day education and care on an ongoing basis;
- **Limited hours care:** provides care for children from birth to school age offered for short periods or on a casual basis, available for up to 20 hours per week and up to 30 children at a time;
- **Short-term care and kids clubs:** provide care for short periods of up to three hours, while the parent or carer stays on the premises (that is, offered in places such as shopping centres and gyms);
- **Vacation care:** offer a variety of programs from part day to full day care, including excursions (commonly run by community organisations);
- **Children's activity services:** offers particular activities such as dance, music or sport;
- **Resort care:** offered to children who are guests at some resorts and hotels;
- **Stand-alone care:** provided in a home, hall or church; and
- **Au pairs:** foreign nationals staying in Australia for up to one year for cultural exchange purposes, who live as part of the host family and receive a small allowance/salary in exchange for child care and household duties.

⁸ Prep is the first year of school in Queensland. It is a full-time program held in primary schools and children attend Monday to Friday, generally from 9 am to 3 pm. Children must be 5 by 30 June in the year they enrol, although there is an option for early or delayed entry in certain circumstances: see Qld Government, 'Prep Enrolments' (3 March 2015) <<http://www.qld.gov.au/education/earlychildhood/prep/pages/enrolments.html>>.

⁹ Queensland Government, 'Nannies and Babysitters' (18 September 2014) <<http://www.qld.gov.au/families/babies/childcare/types/pages/nannies.html>>.

¹⁰ Queensland Government, 'Occasional and casual care options' (18 September 2014) <<http://www.qld.gov.au/families/babies/childcare/types/pages/casual.html>>.

Before and after school care

2.12 This type of service generally offers care for school age children before and after school (7–9 am and 3–6 pm), and for 10–12 hours per day during school holidays and pupil free days.¹¹

OVERVIEW OF REGULATORY FRAMEWORK FOR ECEC SECTOR

2.13 Regulated ECEC services in Queensland are services that are approved under either the National Quality Framework or the *Education and Care Services Act 2013* (Qld) ('ECS Act').¹² To be approved, service providers must meet particular legal requirements, including operational requirements such as staff qualifications and educator-to-child ratios.

2.14 In Queensland, the Department of Education and Training is the regulatory authority responsible for granting service and provider approvals, assessing and rating the quality of services and monitoring and enforcing compliance with the relevant legislative requirements. In addition, the Australian Children's Education and Care Quality Authority ('ACECQA') is a national body that works with regulatory authorities and state and territory governments to implement the National Quality Framework.

2.15 The majority of ECEC services are regulated under the National Quality Framework, including long day care services, outside school hours care services, kindergartens, and family day care services.

2.16 The remaining ECEC services, including occasional care services and stand-alone care, are regulated under the ECS Act. These services are generally small scale services operating in regional and remote areas.¹³

2.17 Some services, including those that are arranged by private agreement or that are temporary and casual, remain unregulated.

National Quality Framework

2.18 The National Quality Framework is comprised of the Education and Care Services National Law ('National Law'), and the Education and Care Services National Regulations ('National Regulations').¹⁴

2.19 The National Quality Framework was introduced from 1 January 2012 and is the result of an agreement between all Australian governments. One of its aims is to reduce unnecessary compliance burden on ECEC services through a jointly-

¹¹ Queensland Government, 'Before and after school care' (18 September 2014) <<http://www.qld.gov.au/families/education/pages/care.html>>.

¹² The *Education and Care Services Act 2013* (Qld) repealed and replaced the *Child Care Act 2002* (Qld).

¹³ Explanatory Notes, Education and Care Services Bill 2013 (Qld) 1.

¹⁴ For Queensland, see the *Education and Care Services National Law (Queensland) Act 2011* (Qld), which adopts the Education and Care Services National Law, as in force from time to time, set out in the schedule to the *Education and Care Services National Law Act 2010* (Vic).

The National Regulations are published on the NSW Legislation website at: <<http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+653+2011+cd+0+N>>.

governed standardised system of regulation.¹⁵ In a broad sense, a compliance burden can be understood as the cost imposed by regulation on business, government and the community.¹⁶

2.20 The National Quality Framework applies to an ‘education and care service’, which is broadly defined to mean ‘any service providing or intending to provide education and care on a regular basis to children under 13 years of age’, except for those services that are specifically excluded either by the National Law or the National Regulations.¹⁷

2.21 The National Quality Framework currently regulates the majority of child care services, including:

- long day care services;
- outside school hours care services;
- pre-schools (or kindergartens); and
- family day care services.

2.22 The following services are excluded by the National Law and are unlikely to be brought into the National Quality Framework in the future:¹⁸

- a school providing full-time education to children, including children in the year before Grade 1, but not including a preschool program delivered in a school or a preschool that is registered as a school;
- a preschool program delivered in a school if the program is delivered in a class or classes where a full-time education program is also being delivered to school children and the program is delivered to fewer than six children in the school;
- a personal arrangement;
- a service principally conducted to provide instruction in a particular activity (for example, a language class or ballet class);
- a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service; and
- care provided under a child protection law of a participating jurisdiction.

¹⁵ Australian Children’s Education & Care Quality Authority, *Report on National Quality Framework and Regulatory Burden — Wave II* (2014) 5.

¹⁶ For example, it may include financial costs, substantive compliance costs (such as hiring additional staff, investing in training and infrastructure, developing and maintaining new policies and procedures, and recording, monitoring and assessing compliance) and administrative costs: see Australian Children’s Education & Care Quality Authority, *Report on the National Quality Framework and Regulatory Burden* (2013) [3.2].

¹⁷ Education and Care Services National Law s 5 (definition of ‘education and care service’).

¹⁸ Education and Care Services National Law s 5; Australian Children’s Education and Care Quality Authority, *Guide to the Education and Care Services National Regulations 2011* (June 2014) 11.

2.23 The National Regulations also currently exclude a number of services, including:¹⁹

- disability services defined under state or territory law, and early childhood intervention services for children with additional needs;
- except in WA, education and care in a residence, other than as part of a family day care service;
- occasional care services (for example, offered at short notice or on a casual basis);
- education and care provided by a hotel or resort to children of short-term guests at the hotel or resort;
- education and care that is provided on an ad hoc basis to children of a guest, visitor or patron where the person who is responsible for the children is readily available at all times;
- education and care where it is primarily provided or shared by parents or family members;
- education and care provided at a secondary school to a child of a student attending the school, where the parent retains responsibility for the child;
- mobile services;
- services that provide education and care for no more than four weeks per calendar year during school holidays;
- transition to school programs provided by a school to orient children to that school;
- budget based funded services, other than where they receive Child Care Benefit;
- stand-alone services in Queensland; and
- licensed limited hours or short-term services in Queensland.

2.24 It is contemplated that some of these services may be brought into the National Quality Framework in the future by amending the National Regulations.²⁰

Education and Care Services Act 2013 (Qld)

2.25 The ECS Act repealed and replaced the *Child Care Act 2002* (Qld) with a new regulatory framework that is more closely aligned with the National Law.

¹⁹ Education and Care Services National Law s 5; Australian Children's Education and Care Quality Authority, *Guide to the Education and Care Services National Regulations 2011* (June 2014) 12.

²⁰ Australian Children's Education and Care Quality Authority, *Guide to the Education and Care Services National Regulations 2011* (June 2014) 11.

2.26 The ECS Act regulates Queensland education and care services that continued to be regulated by the *Child Care Act 2002* (Qld) after the commencement of the National Law, including:

- early childhood education and care services that are also disability services under the *Disability Services Act 2006* (Qld);
- limited hours care services that receive Queensland Government funding for occasional care services; and
- budget based funded services that do not receive child care benefit.

2.27 Stand-alone care services, where care is provided for up to six children, usually in a person's home, are also regulated by the ECS Act.²¹

Unregulated services

2.28 Certain types of care remain unregulated by either the National Quality Framework or the ECS Act. This includes, but is not limited to:²²

- personal arrangements (for example, care shared by parents, or provided by friends or relatives);²³
- care in a child's home;
- activity specific classes, coaching or tuition;
- disability or early childhood intervention services;
- hotel or resort care;
- conference, sport facility or shopping centre care;
- mobile services;²⁴
- transition to school programs; and
- vacation care offered for not more than four weeks per year.

²¹ See *Education and Care Services Act 2013* (Qld) s 9.

²² Department of Education, Training and Employment, Early Childhood Education and Care, 'Unregulated Services' (3 February 2014) <<http://deta.qld.gov.au/earlychildhood/service/unregulated-services.html>>. See also *Education and Care Services Act 2013* (Qld) s 8.

²³ 'Personal arrangement' means education and care provided to a child by a family member or guardian of a child personally, otherwise than as a staff member of, or under an engagement with, a service providing education and care on a regular basis to children under 13 years of age, or by a friend of the family of the child personally under an informal arrangement where no offer to provide that education and care was advertised: *Education and Care Services National Law* s 5 (definition of 'personal arrangement').

²⁴ A 'mobile service' is a service that provides education and care to children who are not school children; and transports equipment and material or staff from one or more locations on each occasion that the service is provided: *Education and Care Services Act 2013* (Qld) s 10.

STATUTORY CHILD PROTECTION REQUIREMENTS APPLICABLE TO ECEC SERVICES

2.29 ECEC services and their staff are subject to various legislative requirements to ensure the safety of children in the course of the provision of education and care.

2.30 Staff employed in ECEC services are not subject to the mandatory reporting obligation under the *Child Protection Act 1999* (Qld), and are therefore not required to report suspected harm that occurs outside of the service. However, they can report concerns about a child to Child Safety at any time under the Act's voluntary reporting provision.²⁵

2.31 It is recognised that workers who are in regular contact with children and their families can be 'well placed to observe and report when children appear to be at risk of harm and can play an important role in protecting the safety and wellbeing of those children'.²⁶

National Quality Framework

2.32 Services approved and regulated under the National Law are required to ensure the safety of children in the course of the provision of education and care by:

- ensuring every reasonable precaution is taken to protect children from harm and hazard that could cause injury;²⁷ and
- notifying the regulatory authority of the occurrence of harm or suspected harm to a child that occurs in the course of the provision of education and care.²⁸

2.33 Further, under the National Regulations, the approved provider²⁹ of an ECEC service must have in place policies and procedures to ensure that supervisors³⁰ and staff members³¹ who work with children understand the applicable child protection laws and any obligations they may have under those laws. This is

²⁵ *Child Protection Act 1999* (Qld) s 13A.

²⁶ Department of Education and Training (Qld), Early Childhood Education and Care, 'News and Publications' (18 April 2015) <<http://deta.qld.gov.au/earlychildhood/news/>>.

²⁷ Education and Care Services National Law s 167.

²⁸ Education and Care Services National Law s 174.

²⁹ 'Approved provider' means a person who holds a provider approval. Provider approvals are granted under pt 2 of the National Law: see Education and Care Services National Law s 5(1) (definition of 'approved provider' and 'provider approval'), pt 2.

³⁰ Certified supervisors hold a supervisor certificate under the National Law. Education and care services under the National Law are also required to have a nominated supervisor: see further Education and Care Services National Law Act s 5(1) (definition of 'certified supervisor', 'supervisor certificate' and 'nominated supervisor'), s 161. See generally Education and Care Services National Law Act pt 4.

³¹ A 'staff member', in relation to an education and care service, means any individual (other than the nominated supervisor or a volunteer) employed, appointed or engaged to work in or as part of an education and care service, whether as family day care co-ordinator, educator or otherwise: see Education and Care Services National Law s 5(1) (definition of 'staff member', 'family day care educator' and 'educator').

enforceable by monetary penalty (\$1000) and a compliance direction for failure to comply can be issued to the approved provider.³²

Education and Care Services Act 2013 (Qld)

2.34 Approved providers³³ of a Queensland education and care service³⁴ regulated under the ECS Act must ensure that 'every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury'.³⁵

2.35 The approved provider is required to notify the chief executive of a serious incident, or of a complaint alleging either that a child's safety, health or wellbeing has been or is being compromised while the child was or is being provided with education and care at the service, or that a provision of the ECS Act has been or is being contravened, within 24 hours after becoming aware of the incident or complaint. The approved provider must also notify the chief executive of any other matter prescribed by regulation within seven days of becoming aware of the matter.³⁶

Working with Children (Risk Management and Screening) Act 2000 (Qld)

2.36 ECEC services in Queensland are required to have certain risk management strategies in place in accordance with the *Working with Children (Risk Management and Screening) Act 2000 (Qld)*.³⁷

2.37 Among other things, risk management strategies must include:³⁸

- (a) a statement about commitment to the safety and wellbeing of children and the protection of children from harm;
- (b) a code of conduct for interacting with children;
- (c) procedures for recruiting, selecting, training and managing persons engaged or proposed to be engaged by the person, as the procedures

³² Education and Care Services National Regulations s 84. See also Australian Children's Education and Care Quality Authority, *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011* (June 2014) 59.

³³ Under the ECS Act, an 'approved provider' means a 'Queensland approved provider'. A Queensland approved provider generally means a person who holds a Queensland provider approval; and, in relation to a service approval, means the approved provider holding the service approval: see *Education and Care Services Act 2013 (Qld)* s 6, sch 1 (definition of 'approved provider' and 'Queensland approved provider').

³⁴ A Queensland education and care service is a service for providing regulated education and care of children under 13 years of age, except for those excluded by the Act: see *Education and Care Services Act 2013 (Qld)* s 8.

³⁵ *Education and Care Services Act 2013 (Qld)* s 122. Maximum penalty—100 penalty units. The prescribed penalty unit value is \$117.80 from 1 July 2015: *Penalties and Sentences Act 1992 (Qld)* s 5, amended by the *Penalties and Sentences Amendment Regulation (No. 1) 2015 (Qld)*.

³⁶ *Education and Care Services Act 2013 (Qld)* s 127. Maximum penalty—20 penalty units. See also *Education and Care Services Regulation 2013 (Qld)* s 22.

³⁷ See *Working with Children (Risk Management and Screening) Act 2000 (Qld)* ss 171–2 (formerly the *Commission for Children and Young People and Child Guardian Act 2000 (Qld)*).

³⁸ *Working with Children (Risk Management and Screening) Regulation 2011 (Qld)* s 3.

- relate to the safety and wellbeing of children and the protection of children from harm;
- (d) policies and procedures for handling disclosures or suspicions of harm, including reporting guidelines;
 - (e) a plan for managing breaches of the risk management strategy;
 - (f) policies and procedures for compliance with the Act, chapter 8, including policies and procedures about—
 - (i) implementing and reviewing the risk management strategy; and
 - (ii) keeping a written record of matters under the Act, chapter 8 about each person (engaged person) engaged by the person, ...
 - ...
 - (g) risk management plans for high risk activities and special events;
 - (h) strategies for communication and support, including—
 - (i) written information for parents and persons engaged by the person that includes details of the person's risk management strategy or where the strategy can be accessed; and
 - (ii) training materials for persons engaged by the person to—
 - (A) help identify risks of harm and how to handle disclosures or suspicions of harm; and
 - (B) outline the person's risk management strategy.

STAFF QUALIFICATION REQUIREMENTS

2.38 People employed in the ECEC sector have a variety of skills and qualifications and may have different types of interactions with children and their families.

2.39 In 2013, a departmental survey revealed that there were 28 744 people employed in regulated non-government ECEC services in Queensland.³⁹ Of these, 22 278 (77%) held some kind of qualification related to early childhood.⁴⁰ In particular:⁴¹

- 7138 (25%) held a Bachelor Degree or higher;

³⁹ See Department of Education, Training and Employment (Qld), 'Early Childhood Education and Care Services Census Fact Sheets' (23 July 2014) <<http://deta.qld.gov.au/earlychildhood/news/sector-reports/census-factsheets.html>> 3–4, Table 3. This data was generated from the departmental survey conducted in August 2013. At the time of the survey, regulated education and care services were services approved under the National Law and the *Child Care Act 2002* (Qld).

⁴⁰ At the time this data was collected (August 2013), approved qualifications for staff were regulated under the Education and Care Services National Regulations and the *Child Care Regulation 2003* (Qld), which required most staff to have, or be working towards, the qualification prescribed.

⁴¹ Department of Education, Training and Employment (Qld), 'Early Childhood Education and Care Services Census Fact Sheets' (23 July 2014) <<http://deta.qld.gov.au/earlychildhood/news/sector-reports/census-factsheets.html>> 3–4, Table 3.

- 3791 (13%) held a Diploma and 1851 (6%) held an Advanced Diploma;
- 9291 (32%) held a Certificate level 3 or 4, and 307 (1%) held a Certificate level 1 or 2 or other certificate.

2.40 Of the remaining staff, 6386 (22%) did not have any ECEC related qualifications.⁴² At the time of the 2013 survey, not all educators in outside school hours care or family day care services were required to hold early childhood qualifications.

2.41 The legislation also provided for circumstances in which an unqualified person could be engaged to work as an assistant in a limited hours care service or outside school hours care service. Of the 6386 staff (who did not have any ECEC related qualifications) 2600 were working in administrative, ancillary and non-contact roles and were not required to hold any qualifications.⁴³

2.42 Since 2013, changes have been introduced to improve the qualifications of ECEC staff. In particular, the National Law and the ECS Act introduced new minimum staffing requirements for ECEC services, including higher qualification requirements for educators and improving educator-to-child ratios. These changes are being phased in for Queensland services.⁴⁴

2.43 An 'educator' is an individual who provides education and care for children either under the National Law as part of an education and care service, or under the ECS Act as part of a Queensland Education and Care service.⁴⁵

National Law

2.44 There are three classes of qualified staff under the National Law: certificate 3 level educators, diploma level educators and early childhood teachers.⁴⁶

2.45 These classes may not directly correlate with existing job titles and position descriptions in the sector. In general, group leaders are likely to be diploma level educators under the National Law, while assistants are likely to be certificate 3 level educators. There are no direct equivalents for Directors who may hold any of the

⁴² The outstanding 1% did not state their qualifications.

⁴³ Department of Education, Training and Employment (Qld), 'Early Childhood Education and Care Services Census Fact Sheets' (23 July 2014) <<http://deta.qld.gov.au/earlychildhood/news/sector-reports/census-factsheets.html>> 3–4, Table 3.

⁴⁴ Department of Education and Training (Qld), Early Childhood Education and Care, Workforce Action Plan Review (11 May 2015) <<http://deta.qld.gov.au/earlychildhood/workforce/workforce-action-plan-review.html>>.

⁴⁵ Education and Care Services National Law s 5 (definition of 'educator'); *Education and Care Services Act 2013* (Qld) ss 6–8, sch 1 (definition of 'educator').

⁴⁶ See further Education and Care National Regulations s 4(1) (definition of 'approved certificate III level education and care qualification', 'approved diploma level education and care qualification', and 'approved early childhood teaching qualification'). A list of all approved and former approved early childhood teaching, diploma and certificate III level qualifications, including Queensland specific qualifications, is accessible online: Australian Children's Education and Care Quality Authority, 'Qualifications' <<http://www.acecqa.gov.au/Qualifications.aspx>>.

three classes of qualification or none, depending on their role within the service. Most are likely to be Diploma level educators.⁴⁷

2.46 The qualification requirements and educator-to-child ratios set out under the National Law vary depending on the type of service offered, as well as the size of the service and its operating hours.

Long day care and kindergarten services

2.47 From 1 January 2014, centre-based services with children under school age (primarily long day care and kindergarten services) must employ, engage or have access to a qualified early childhood teacher ('ECT'), depending on the size of the service (based on approved places), its operating hours and location.⁴⁸ In particular:⁴⁹

- services providing care to fewer than 25 children, or services located in remote or very remote areas until 1 January 2018, must have access to an ECT for at least 20% of the time that the service provides education and care (the ECT may be physically present, or accessible through information and communications technology);
- services providing care to 25 or more children on any given day must ensure that an ECT is in attendance for a minimum of:
 - six hours on that day (for a service that operates for 50 or more hours per week); or
 - 60% of the operating hours (for a service that operates for less than 50 hours per week).

2.48 In addition, at least 50% of the educators who are required to meet the educator-to-child ratio requirements⁵⁰ will need to have, or be actively working towards,⁵¹ an approved diploma level qualification. The remaining educators must have, or be actively working towards, an approved certificate level 3 qualification.⁵²

47 Department of Education and Training (Qld), Early Childhood Education and Care, 'Roles and responsibilities' (12 January 2015) <<http://deta.qld.gov.au/earlychildhood/workforce/educator-roles.html>>.

48 Education and Care Services National Law s 169.

49 Education and Care Services National Regulations ch 4, div 4.4, 5; ch 7, pt 7.5.

50 Educators must be working directly with children to be included in ratios. A person is 'working directly with children' at a given time if the person is physically present with the children, and is directly engaged in providing education and care to the children: Education and Care Services National Regulations ss 13, 122.

51 To be 'actively working towards' a qualification, the person must be enrolled and provide documentary evidence to the approved provider: see further Education and Care Services National Regulations s 10.

52 Education and Care Services National Regulations s 126. Educators who are under the age of 18 must not work alone and must be adequately supervised by an educator who has attained the age of 18: Education and Care Services National Regulations s 120.

2.49 The educator-to-child ratios vary depending on the age of child. For example, it currently ranges from 1:4 for children from birth to 24 months, to 1:13 for children from four years to younger than six years.⁵³

2.50 A new educator without an approved qualification can be counted towards educator-to-child ratios for a three month probationary period. This applies only for centre-based services that educate and care for children preschool age or under.⁵⁴

Outside school hours care services

2.51 The educator-to-child ratio for outside school hours care services is at least one educator for every 15 children.⁵⁵

2.52 For services that have up to 29 children, at least one educator must hold or be working towards an approved two year diploma level qualification or higher in a relevant area of study, and be of service:⁵⁶

- for at least 7 hours and 15 minutes of the time education and care is being provided, if provided for more than 7 hours 15 minutes on that day, or
- at all times that education and care is being provided.

2.53 Services that have 30 children or more must also meet that requirement, as well as having at least one educator (for every 30 children) who holds or is working towards an approved certificate level 3 or one year qualification or higher, in a relevant area of study.

2.54 Any other educators required to meet the educator-to-child ratio of 1:15 do not need to hold a qualification if they are 18 years of age or older.⁵⁷

Family day care services

2.55 The educator-to-child ratio for family day care services is at least one educator for every seven children.⁵⁸

2.56 All family day care coordinators⁵⁹ will need to have an approved diploma level education and care qualification or above.⁶⁰

53 See further Education and Care Services National Regulations s 123.

54 Education and Care Services National Regulations s 126(1A).

55 Education and Care Services National Regulations s 298.

56 Education and Care Services National Regulations s 299.

57 Education and Care Services National Regulations s 299.

58 Education and Care Services National Regulations s 124. A maximum of four children can be under school age. Until 31 December 2015, the ratio does not include the educator's own school-age children: s 304.

59 A 'family day care co-ordinator' means a person employed or engaged by an approved provider of a family day care service to monitor and support the family day care educators who are part of the service: Education and Care Services National Law s 5(1) (definition of 'family day care co-ordinator').

60 Education and Care Services National Regulations ss 128, 307.

2.57 All family day educators⁶¹ will be required to have (or be actively working towards) an approved certificate level 3 education and care qualification, or equivalent.⁶²

2.58 An approved provider of a family day care service may engage or register a family day care educator assistant to assist family day care educators in certain circumstances.⁶³ The family day care educator must obtain the written consent of a parent of each child being educated and cared for by the educator to the use of the assistant in the circumstances.⁶⁴

Education and Care Services Act 2013 (Qld)

2.59 From 1 January 2014, all educators counted in educator-to-child ratios for services approved under the ECS Act must be at least 17 years of age⁶⁵ and hold, or be actively working towards, a nationally recognised early childhood education and care qualification.⁶⁶

2.60 Each service must have a supervisor (this position was formerly known as 'director'), who must be at least 18 years of age and hold, or be actively working towards, an approved diploma level qualification or higher.⁶⁷

2.61 At least 50% of educators (previously referred to as 'Group leaders') who are required to meet educator-to-child ratios must hold, or be actively working towards, an approved diploma level qualification or higher. All other educators (previously known as 'assistants') must hold, or be actively working towards, an approved certificate level 3 qualification.⁶⁸

2.62 In addition, from 1 January 2015, at least one educator must hold a current qualification in first aid, asthma and anaphylaxis management and must be present at all times education and care are being provided.⁶⁹

⁶¹ A 'family day care educator' means an educator engaged by or registered with a family day care service to provide education and care for children in a residence or at an approved family day care venue: *Education and Care Services National Law* s 5(1) (definition of 'family day care educator').

⁶² *Education and Care Services National Regulations* ss 127, 306.

⁶³ *Education and Care Services National Regulations* ss 4(1) (definition of 'family day care educator assistant').

⁶⁴ *Education and Care Services National Regulations* s 144. For example, the assistant may provide transport to children, provide education and care to children as part of a family day care service in emergency situations, provide assistance to the educator, or enable the family day care educator to attend an appointment if the absence is less for 4 hours, the approved provider has approved that absence and notice of that absence has been given to the parents of the child.

⁶⁵ Educators who are under 18 years must be supervised by an educator who is 18 years or more: *Education and Care Services Act 2013 (Qld)* s 244(2)(f); *Education and Care Services Regulation 2013 (Qld)* s 45.

⁶⁶ *Education and Care Services Act 2013 (Qld)* s 110(1); *Education and Care Services Regulation 2013 (Qld)* s 48.

⁶⁷ *Education and Care Services Act 2013 (Qld)* ss 113, sch 1 (definition of 'supervisor'); *Education and Care Services Regulation 2013 (Qld)* s 49.

⁶⁸ *Education and Care Services Act 2013 (Qld)* s 244(2)(f); *Education and Care Services Regulation 2013 (Qld)* ss 39–40.

⁶⁹ *Education and Care Services Act 2013 (Qld)* s 244(2)(f); *Education and Care Services Regulation 2013 (Qld)* s 42.

Stand-alone care

2.63 Stand-alone care services are also regulated under the ECS Act. However, they are not required to hold an approval to operate. Carers⁷⁰ in stand-alone care services must be over 18 years of age and can care for up to 6 children under the age of 13 at the same time (maximum of four under school age).⁷¹

Other requirements

Blue Cards

2.64 The *Working with Children (Risk Management and Screening) Act 2000* (Qld)⁷² sets out a scheme to protect children by screening persons employed in particular employment or carrying on particular businesses. A 'blue card' is issued to a person whose application is approved under the Act.⁷³

2.65 In Queensland, all persons who work in ECEC services or in other regulated employment where child care is being provided must hold a 'blue card' or an exemption card to comply with the *Working with Children (Risk Management and Screening) Act 2000* (Qld).⁷⁴ This requirement applies to paid employees, volunteers and trainee students.⁷⁵

2.66 In addition, the requirement to have a 'blue card' applies to persons in ECEC services as well as other services where the usual functions of the employment includes, or is likely to include, providing education and care to children in the course of a commercial service. It therefore captures services that are otherwise unregulated by either the National Quality Framework or the ECS Act, including commercial babysitting and nanny services, services conducted by a hotel or resort to provide child care to children who are short term guests, or adjunct care.⁷⁶

⁷⁰ A 'carer', in relation to a stand-alone service, means a person who is engaged to provide education and care of a child in the course of a stand-alone service; or who is conducting a stand-alone service and providing education and care of children in the course of the service: *Education and Care Services Act 2013* (Qld) s 6, sch 1 (definition of 'carer').

⁷¹ *Education and Care Services Act 2013* (Qld) ss 9, 132, 134.

⁷² Previously named the *Commission for Children and Young People and Child Guardian Act 2000* (Qld).

⁷³ *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 220, sch 7 (definition of 'positive notice blue card').

⁷⁴ *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 4, 156, sch 1, pt 1. Certain people, such as police officers and registered teachers, do not apply for a blue card but should instead apply for an exemption card if they are providing child-related services which are outside their professional duties.

⁷⁵ However, exemptions apply to: volunteers under the age of 18 unless they are a trainee student doing a practical placement; volunteer parents providing services or conducting activities at an ECEC service that their own child regularly attends; and registered health practitioners if the work they are doing related to their function as a registered health practitioner.

⁷⁶ *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 4–4A. 'Adjunct care' is defined in sch 7 to mean education and care provided to a child:

- (a) in conjunction with a meeting, function or other activity involving a relative or guardian of the child other than the paid employment of the relative or guardian; and
- (b) on the premises in which the meeting, function or other activity is taking place; and
- (c) for not more than 3 hours on each occasion the care is provided.

Teacher registration

2.67 All teachers employed at a school (including Prep to Year 3 teachers) must be registered with the Queensland College of Teachers under the *Education (Queensland College of Teachers) Act 2005* (Qld).⁷⁷ Under section 13E(1)(c) of the *Child Protection Act 1999* (Qld), registered teachers employed at a school are mandatory reporters.⁷⁸

2.68 Registration is not compulsory for other early childhood teachers working in early childhood services, although individual employers may require it as a condition of employment.⁷⁹

⁷⁷ However, the requirement for registration does not apply to a teacher's aide, teacher's assistant or a student teacher.

⁷⁸ See *Child Protection Act 1999* (Qld) s 3, sch 3 (definition of 'teacher'); *Education (Queensland College of Teachers) Act 2005* (Qld) s 6, sch 3 (definition of 'approved teacher').

⁷⁹ Queensland Government, 'Roles, responsibilities and qualifications' (14 Jan 2015) <<http://www.qld.gov.au/education/earlychildhood/working/pages/quals.html>>.

Chapter 3

The Queensland Child Protection System

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INTRODUCTION

3.1 The terms of reference require the Commission, in considering whether the mandatory reporting requirements under the *Child Protection Act 1999* (Qld) should be expanded to cover the ECEC sector, to take into account the policy environment. In particular, it requires the Commission to take into account the government's implementation of the recommendations of the Queensland Child Protection Commission of Inquiry ('QCPCI').

THE QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

Background to the Commission of Inquiry

3.2 The QCPCI was established on 1 July 2012 to address widespread concern that the child protection system was failing vulnerable children and their families.¹

3.3 It was also a response to the Queensland Commission of Audit's warning that the existing range and level of expenditure on child protection was unsustainable, and could jeopardise the future financial position of the state.² In the eight years from 2003–4, direct expenditure on child protection almost quadrupled (from \$182.2 million to \$726.8 million) at an average annual rate of increase of 22%.³

¹ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 11.

² Ibid 59 ff; Queensland Commission of Audit, *Interim Report* (2012).

³ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 5.

The Commission of Audit noted that, without policy change, the ability to meet increasing costs was limited.

3.4 The QCPCI was tasked with reviewing the effectiveness of the child protection system in Queensland, and charting a new roadmap for child protection over the next decade.

Key findings

3.5 The QCPCI published its Final Report in June 2013. It found that the perception of a system under stress was justified,⁴ and that:⁵

Continuing in this way is not only unsustainable but contrary to both policy intent and reasonable community expectations. As this report comprehensively demonstrates, without changing risk-averse reporting rates and behaviours, curtailing over-inclusive risk and harm assessments, reducing over-servicing and overspending on high cost-low yield outcomes, altering errant funding policy and resource allocation, and finding viable safe alternatives to removal and retention, the statutory system is in jeopardy of collapsing under the weight of excess demand for reactive tertiary services and spiralling delivery costs.

3.6 The QCPCI identified two main factors contributing to the unsustainable demand on the Queensland statutory child protection system; namely:⁶

- the high number of reports (also referred to as ‘intakes’) made to Child Safety; and
- too many investigations being conducted at the notification stage.⁷

3.7 In particular, the QCPCI found that a large amount of time and resources is spent responding to reports and investigating cases that do not meet the threshold for statutory intervention. The QCPCI reported that the number of intakes⁸ tripled over the course of a decade (from 33 697 in 2001–02 to 114 503 in 2011–12).⁹ In 2011–12, 80% (or 89 680 of 114 503) of reports did not meet the threshold for a notification (that is, the information received did not indicate harm or risk of harm to a child, and a reasonable suspicion that the child was in need of protection, and therefore no further investigation and assessment was required). Of the 20% that did progress to the investigation and assessment phase,¹⁰ it reported that a third (6784)

⁴ Ibid 11.

⁵ Ibid xii.

⁶ Ibid 83.

⁷ The QCPCI noted that the department had a policy of investigating almost all reports once they had reached the status of a notification, an extremely resource intensive approach with a typical investigation taking about eight to nine hours over a period of weeks, at an average estimated cost of \$2236 per investigation: Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 96.

⁸ ‘Intakes’ is the term used to refer to all information received by Child Safety about harm or risk of harm to a child: see further the discussion at [3.36] ff below.

⁹ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 4.

¹⁰ See further [3.42] ff below.

were substantiated¹¹ and, of these, 4359 children were found to be in need of protection.¹² The QCPCI observed that:¹³

In the context of mounting workload pressures, finding the small proportion of children who actually need ongoing statutory intervention has been described as like ‘finding a needle in a haystack’.

3.8 The QCPCI identified a number of reasons for the significant increase in the number of reports, including:

- the fact that Child Safety was the only reporting destination for child protection concerns and therefore the main gateway into family support services, and the general lack of adequate and accessible family support services to offer a family at the intake stage;¹⁴ and
- a risk averse ‘better safe than sorry’ culture, which promotes a forensic, rather than therapeutic, approach to child protection.¹⁵

3.9 The QCPCI also considered that the high number of intakes was caused in part by the impact of mandatory reporting requirements.¹⁶

Observations in relation to mandatory reporting

3.10 In its 2012 Issues Paper, the QCPCI had raised the possibility of extending the categories of mandated reporters in Queensland to include the clergy and other religious bodies, or of taking a broader approach such as in the NT, where any person is required to report.¹⁷ The QCPCI observed that:¹⁸

The main justification for mandatory reporting is philosophical. It acknowledges that children have a basic right to safety and community protection and elevates the interests of child safety above the adult right of privacy.

Improving disclosure and reporting rates of child sexual and other forms of abuse is also widely recognised as a key requirement for better targeted police and child protection agency responses to the problem. Effective pre-emptive and remedial

¹¹ A notification is substantiated if there is evidence that the child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm. Once substantiated, it can be assessed either that the child is in need of protection, or that the child is not in need of protection (this might occur, for example, if the harm is proved, but there is a parent able and willing to protect the child): see further [3.46], n 60 below.

¹² Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 96. A child ‘in need of protection’ is a child who has suffered, is suffering, or is at unacceptable risk of suffering, significant harm, and does not have a parent able and willing to protect the child from the harm: see *Child Protection Act 1999* (Qld) s 10, discussed at [3.31] ff below.

¹³ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 84.

¹⁴ Ibid 65, 83, 91.

¹⁵ Ibid 2, 83.

¹⁶ Ibid 84 ff.

¹⁷ Queensland Child Protection Commission of Inquiry, *Emerging Issues* (September 2012) 3.

¹⁸ Ibid 2.

action depend on timely reporting from victims, supporters and those in the regulated employment sector, such as teachers.

3.11 However, the QCPCI noted concerns that mandatory reporting leads to over-reporting:¹⁹

there are some questions about the relative merits of mandatory reporting versus voluntary reporting in a child protection setting. One of the key outcomes of mandatory reporting is an increase in reports. Many would argue that mandatory reporting leads to over-reporting of incidents, with most reports falling short of the statutory threshold for a full child protection assessment. That is, the information received by Child Safety Services does not suggest a child may be in need of protection.

3.12 The QCPCI also commented on the difficulty that mandatory reporters face in recognising child abuse, and the counter productivity of a misreport both in terms of harm to the family and the burden on the child protection system.²⁰ It emphasised that reporting should not become a 'semi-automatic' reaction:²¹

The Munro Review of Child Protection²² notes that child maltreatment is difficult to recognise because signs are often equivocal and rarely present as a whole picture of the individual child's and family's circumstances. Munro suggests that this ambiguity can lead to over-reporting to statutory child protection services as a way for professionals to manage their own anxiety concerning a child or [the child's] family. Professor Dorothy Scott²³ agrees that assessing child abuse and neglect is complex and fraught even for child protection practitioners:

... this is an area where every single day child protection workers walk the tightrope between the false positive and the false negative and the potential consequences of that.

Reporting a family to statutory child protection authorities should be done with careful consideration rather than as a semi-automatic reaction. In many cases a report will not result in a service being provided to a child or family. Instead, very personal details will be recorded permanently, often with the family being unaware that this information even exists. (notes added)

Key recommendations

3.13 Ultimately, the QCPCI recommended the consolidation of mandatory reporting laws in the *Child Protection Act 1999* (Qld), but did not make any recommendations in relation to the expansion of the groups of people required to report.²⁴

¹⁹ Ibid.

²⁰ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 86.

²¹ Ibid 88.

²² Department of Education (UK), E Munro, *The Munro Review of Child Protection: a child centred system*, Final Report (2011).

²³ D Scott, 'Reducing child abuse and neglect: reviews, reforms and reflections', Australian Institute of Family Studies seminar series presentation, Melbourne, 6 September 2012.

²⁴ See further [4.8]–[4.10] below.

3.14 Instead, in the context of a child protection system that was already considered to be at risk, the QCPCI recommended wide ranging reforms to strengthen the broader child protection system.

3.15 The principle guiding these reforms is that parents and families have the primary responsibility for the care and protection of their children, with a shared responsibility belonging to the broader community. Parents should receive support and guidance from the government to keep their children safe at home, and statutory intervention in a family by the government should be a last resort.²⁵

3.16 A number of the QCPCI's recommendations were intended to target inefficiencies in the existing system in relation to the number of cases dealt with by Child Safety that do not meet the threshold for statutory intervention. The stated aims are to help families access the support services they need, and to divert children and families from entry to the statutory system where appropriate.²⁶ The recommendations were based on the concern that unnecessary contact with statutory systems can itself harm children and traumatise families, or prevent families from seeking help.²⁷

3.17 The QCPCI proposed a dual-reporting model, based on similar models in Victoria and Tasmania, where concerns may be reported either to Child Safety or to a regional community-based non-government intake service.²⁸ This enables families to have direct access to support services without first having to enter the statutory system. A child identified as being at risk of significant harm would be notified to the Child Safety regional intake service for further assessment, according to agreed policies and procedures.²⁹

3.18 The QCPCI also recommended the adoption of a differential response model once a notification is recorded. This would enable suitable families to be diverted to a non-government service provider for appropriate and targeted support services, rather than undergoing an investigation and assessment process.³⁰ However, Child Safety would continue to conduct investigations in cases where statutory intervention is required (that is, where it is assessed that the child is in need of protection).³¹

25 Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 7, 9.

26 Ibid 125.

27 Ibid 117.

28 Ibid 91 ff, 113.

29 Ibid 91 ff.

30 Ibid 97 ff, 117.

31 Ibid 113 ff. The QCPCI recommended the establishment of specialist investigation roles within the department so that the investigation teams are separate from the casework teams.

Government response

3.19 The terms of reference require the Commission to 'take into account the current policy environment, particularly the Queensland Government's implementation of the Queensland Child Protection Inquiry'.

3.20 On 16 December 2013, the then government released its response to the QCPCI final report. It accepted all of the QCPCI's recommendations (115 in full and six in principle) and committed to implementing the reform roadmap outlined in the QCPCI report over the next 10 years.³²

3.21 The main objectives of the reform program are to:³³

- reduce the number of children in the child protection system;
- revitalise frontline services; and
- refocus on learning, improving and taking responsibility for a better child protection system.

3.22 The first tranche of reforms have been implemented by the *Child Protection Reform Amendment Act 2014* (Qld).

3.23 The present government's commitments for Child Safety are to 'continue and build upon the child and family reform agenda initiated by the Queensland Child Protection Commission of Inquiry final report'.³⁴

OVERVIEW OF QUEENSLAND'S CHILD PROTECTION SYSTEM

3.24 The *Child Protection Act 1999* (Qld) is jointly administered by the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services.³⁵

3.25 The Director-General of the Department of Communities, Child Safety and Disability Services is the chief executive under the Act and Child Safety is the part of the department that is responsible for child protection services.

³² Queensland Government, *Response to the Queensland Child Protection Commission of Inquiry Final Report* (2013); Explanatory Notes, Child Protection Reform Amendment Bill 2014 (Qld) 1.

³³ Department of Communities, Child Safety and Disability Services (Qld), *Annual Report* (2013–2014) 34 ff.

³⁴ Ministerial Charter Letter from The Hon Anastacia Palaszczuk MP, Premier of Queensland and Minister for the Arts, to The Hon Shannon Fentiman MP, Minister for Communities, Women and Youth, Minister for Child Safety and Minister for Multicultural Affairs (19 May 2015), including the Portfolio Priorities Statement for the Department of Communities, Child Safety and Disability Services, available at: <http://www.cabinet.qld.gov.au/ministers/assets/Charter%20Letter_The%20Hon%20Shannon%20Fentiman%20MP.PDF>.

For example, the government recently committed \$54.5 million for the delivery of services for vulnerable families and their children (including Family and Child Connect services), in line with the 10 year reform roadmap for implementation of the QCPCI's recommendations: see Queensland Government, 2015–16 Queensland Budget Papers, *Service Delivery Statement: Department of Communities, Child Safety and Disability Services* (2015) 4, available at <<http://www.budget.qld.gov.au/budget-papers/documents/bp5-doccsds-2015-16.pdf>>.

³⁵ *Administrative Arrangements Order* (No 2) 2015.

Core principles of the *Child Protection Act 1999* (Qld)

3.26 Chapter 1 of the *Child Protection Act 1999* (Qld) sets out the purpose of the Act (namely, to provide for the protection of children),³⁶ as well as a number of general principles for administering the Act.

3.27 The main principle, to which all others are subject, is that ‘the safety, wellbeing and best interests of a child are paramount’.³⁷ In addition, every child has a right to be protected from harm or risk of harm.³⁸

3.28 A family has the primary responsibility for a child’s upbringing, protection and development and the preferred way of ensuring a child’s safety and wellbeing is through supporting the child’s family.³⁹ However, if a child does not have a parent who is able and willing to protect the child, the Department of Communities, Child Safety and Disability Services has a responsibility to do so.⁴⁰

3.29 If the chief executive reasonably suspects that a child is in need of protection, he or she must have an authorised officer investigate and take appropriate action.⁴¹

Meaning of ‘child’, ‘a child in need of protection’, ‘harm’ and ‘significant harm’

3.30 A ‘child’ is an individual under 18 years of age.⁴²

3.31 Section 10 of the Act defines a ‘child in need of protection’ as a child who:

- (a) has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm; and
- (b) does not have a parent able and willing to protect the child from the harm.

³⁶ *Child Protection Act 1999* (Qld) s 4.

³⁷ *Child Protection Act 1999* (Qld) ss 5–5A.

³⁸ *Child Protection Act 1999* (Qld) s 5B(a).

³⁹ *Child Protection Act 1999* (Qld) s 5B(c).

⁴⁰ *Child Protection Act 1999* (Qld) ss 5B(d), 14. The State should only take action that is warranted in the circumstances: s 5(e). See further the general principles set out in ss 5B(f)–(n).

⁴¹ *Child Protection Act 1999* (Qld) s 14.

⁴² *Child Protection Act 1999* (Qld) s 8. The child protection legislation in the ACT and NSW distinguishes between a ‘child’ (a person under the age of 12 in the ACT, and under the age of 16 years in NSW) and a ‘young person’ (a person aged 12–18 in the ACT, and 16–18 in NSW): see [5.16], n 32; [5.27], n 53 below. This distinction is not made in the *Child Protection Act 1999* (Qld), which defines ‘child’ to mean an individual under 18 years of age. However, the *Family and Child Commission Act 2014* (Qld) uses the term ‘young person’ to refer to ‘a person, at least 18 years but no more than 21 years, who is transitioning from being a child in care under the *Child Protection Act 1999* to independence’: sch 1 (definition of ‘young person’).

3.32 'Significant harm' is not defined in the Act.⁴³ However, 'harm' to a child is defined in section 9 to be 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing'. It is immaterial how the harm is caused. Harm can be caused by physical, psychological or emotional abuse or neglect, or by sexual abuse or exploitation, and can be caused by a single act, omission or circumstance or by a series or combination of acts, omissions or circumstances.⁴⁴

3.33 The term 'significant harm' was inserted in section 10 by the *Child Protection Reform Amendment Act 2014* (Qld), replacing the previous reference to 'harm'.⁴⁵ According to the Explanatory Notes, the addition of the word 'significant' was not intended to alter the threshold for intervention, but was 'included to reinforce the message to reporters that harm must be of a significant nature'.⁴⁶

Child Protection System Framework

3.34 The departmental child protection system framework describes the main pathways a child or young person⁴⁷ follows while in the statutory child protection system, the key departmental and whole-of-government responses at each stage, and the desired outcomes for children and young people while in the system.⁴⁸

3.35 The current departmental framework consists of three main phases: the intake phase, the investigation and assessment phase, and the ongoing intervention phase.

Intake phase

3.36 The intake phase is the initial decision making point where the department determines its response to the reports it has received of suspected harm (these reports are referred to collectively as 'intakes').⁴⁹

3.37 Once a report is made, the department makes a decision about whether the information received meets the statutory threshold for a 'notification'. The threshold is met if the information received shows that there is an allegation of harm or risk of

⁴³ The Act does, however, provide guidance on the matters that a person may consider in identifying significant harm: see *Child Protection Act 1999* (Qld) s 13C, which is discussed at [4.14] below.

⁴⁴ *Child Protection Act 1999* (Qld) s 9.

⁴⁵ *Child Protection Reform Amendment Act 2014* (Qld) s 5.

⁴⁶ Explanatory Notes, *Child Protection Amendment Bill 2014* (Qld) 7. Note that many other provisions of the Act continue to refer simply to 'harm'.

⁴⁷ Under the *Child Protection Act 1999* (Qld), a 'child' is an individual under 18 years of age. The term 'young person' is used in the *Family and Child Commission Act 2014* (Qld) to refer to 'a person, at least 18 years but no more than 21 years, who is transitioning from being a child in care under the *Child Protection Act 1999* to independence': *Family and Child Commission Act 2014* (Qld) sch 1 (definition of 'young person').

⁴⁸ See Department of Communities, Child Safety and Disability Services (Qld), *Our Performance* (10 October 2014) <<http://www.communities.qld.gov.au/childsafety/about-us/our-performance>>.

⁴⁹ See Department of Communities, Child Safety and Disability Services (Qld), *Intake Phase* (2 October 2014) <<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase>>.

harm to a child, and a reasonable suspicion that the child is 'in need of protection'.⁵⁰ This departmental decision is based on an assessment of available information about a child, relevant consultation, the use of professional judgement and the completion of screening criteria.⁵¹

3.38 A 'notification' is recorded if the information received meets the statutory threshold for notification. In response, the chief executive is then required under the *Child Protection Act 1999* (Qld) to:⁵²

- have an authorised officer investigate the allegation and assess whether the alleged harm or risk of harm can be substantiated and, if it can, assess the child's protective needs; or
- take other action the chief executive considers appropriate (for example, referral to a support service).

3.39 In addition, if the executive officer reasonably believes that the alleged harm to a child may involve the commission of a criminal offence relating to the child, the chief executive must immediately give details of the alleged harm to the police commissioner.⁵³

3.40 Alternatively, if the information received by the department does not reach the statutory threshold for a notification, a 'child concern report' is recorded.⁵⁴ The chief executive is not obliged under the Act to undertake a further investigation and assessment in response to child concern reports.

3.41 However, a child safety officer may respond to a child concern report by providing information and advice, making a referral to an appropriate agency or support service, or providing information to the police or another state authority.⁵⁵

Investigation and assessment phase

3.42 As noted above, if a report to the department meets the statutory threshold for a notification, the chief executive is required to undertake an investigation and assessment to determine whether the alleged harm is substantiated and assess what steps are required to meet the protection and care needs of the child.

⁵⁰ Under the *Child Protection Act 1999* (Qld), a child is 'in need of protection' if they have suffered, are suffering, or are at unacceptable risk of suffering, significant harm: see [3.31] above.

⁵¹ Department of Communities, Child Safety and Disability Services (Qld), *Child Safety Practice Manual* (July 2013) 53.

⁵² *Child Protection Act 1999* (Qld) s 14(1)(a)–(b).

⁵³ *Child Protection Act 1999* (Qld) s 14(2). This requirement applies whether or not the chief executive suspects the child is in need of protection: at s 14(3).

⁵⁴ Department of Communities, Child Safety and Disability Services (Qld), *Child Safety Practice Manual* (July 2013) 52–3.

⁵⁵ See Department of Communities, Child Safety and Disability Services (Qld), *Glossary of Terms*, Child Protection System (1 October 2014) <<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/glossary-of-terms>>; Department of Communities, Child Safety and Disability Services (Qld), *Child Safety Practice Manual* (July 2013) 53.

3.43 The investigation and assessment process involves reviewing the child protection history of the child and family, and gathering information by seeing and interviewing the child and the parents. Authorised officers and police have a number of investigative powers under the Act.⁵⁶ They may gather information from other agencies and individuals.⁵⁷

3.44 Investigations are preferably conducted with the consent of the parents. If interim protection is required during the investigation, this can be facilitated by the use of a 'care assessment agreement' between the department and the child's parents to place the child in the care of someone other than the parents for a short period of time.⁵⁸

3.45 Where parental consent is not possible or appropriate, an authorised officer or police officer may apply for an assessment order to enable the investigation to be carried out and an assessment to be made, and to ensure that the child is safe while this occurs. There are two types of assessment orders: court assessment orders made by the Childrens Court; and temporary assessment orders made by a magistrate.⁵⁹

3.46 The framework provides for three main categories of outcomes for a finalised investigation and assessment:⁶⁰

- **Substantiated** — it is assessed that the child is in need of protection. That is, the child has suffered, is suffering, or is at unacceptable risk of suffering significant harm, and does not have a parent able and willing to protect the child from the harm.

⁵⁶ For example, authorised officers and police have powers to: contact children at educational and care service facilities; have contact with children at immediate risk; consult with the recognised entity when the investigation relates to an Aboriginal and Torres Strait Islander child; take children at immediate risk into the custody of the chief executive; move children to a safe place; investigate allegations relating to unborn children; obtain a person's criminal history; and carry out medical examinations or treatment: see *Child Protection Act 1999* (Qld) ss 6, 16–18, 21–21A, 95, 97.

⁵⁷ See further Department of Communities, Child Safety and Disability Services (Qld), *Child Safety Practice Manual* (July 2013) ch 2.

⁵⁸ See further *Child Protection Act 1999* (Qld) ch 2, pt 3AA, div 3 (ss 51Z, 51ZD–51ZI).

⁵⁹ See further *Child Protection Act 1999* (Qld) ch 2, pts 2–3 (ss 23–51). If appropriate in the circumstances, provisions in these orders may authorise an authorised officer or police officer to have contact with the child, take the child into the chief executive's custody while the order is in force, authorise the child's medical examination or treatment, direct a parent not to have contact with a child (or for contact to be supervised), or enter and search any place the officer reasonably believes the child is, to find the child.

⁶⁰ Department of Communities, Child Safety and Disability Services (Qld), 'Investigation and assessment phase' (1 October 2014) <<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/investigation-and-assessment-phase>>.

It is possible for these categories to be broken down further. For example, a report can be assessed as:

- substantiated — child in need of protection;
- substantiated — child not in need of protection (that is, it is proved that harm has been experienced by the child or young person, but there is a parent able and willing to protect the child); or
- substantiated — ongoing intervention continues that is, when the child is already subject to ongoing intervention).

For a more detailed account of all possible outcomes, see Department of Communities, Child Safety and Disability Services (Qld), *Child Safety Practice Manual* (July 2013) 106 ff.

- **Unsubstantiated** — there is no evidence that the child has suffered, is suffering or is at unacceptable risk of suffering significant harm and does not have a parent able and willing to protect them. In these circumstances the family may be referred to a support service to help them address risk factors that may lead to possible harm in the future.
- **No investigation and assessment outcome** — the investigation has been unable to be commenced or completed due to circumstances beyond the control of the department and is subsequently closed. This may occur in circumstances where insufficient information is available or where a family is unable to be located.

Ongoing protection phase

3.47 Ongoing intervention by the department is required when it has been determined that a child is in need of protection.⁶¹ Protection may include interim, temporary or ongoing care.

3.48 When ongoing intervention is required, a case plan is developed in conjunction with the child and their family.⁶² Case plans are initially developed through family group meetings held by the department.⁶³

3.49 The department may work with parental agreement or intervene through the use of a child protection order granted by the court. If necessary, the child may be removed from their home to ensure their safety.⁶⁴

Family and Child Connect and other support services

3.50 One of the key recommendations of the QCPCI implemented by the *Child Protection Reform Amendment Act 2014* (Qld) was the introduction of a dual-reporting model in Queensland, enabling families to access support services without necessarily entering the statutory child protection system first.⁶⁵

3.51 New community-based intake and referral services, known as Family and Child Connect, provide an additional pathway for referring concerns about children and their families.⁶⁶ Twenty Family and Child Connect services are planned to be

⁶¹ Department of Communities, Child Safety and Disability Services (Qld), 'Ongoing intervention phase' (1 October 2014) <<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/ongoing-intervention-phase>>. See further Department of Communities, Child Safety and Disability Services (Qld), *Child Safety Practice Manual* (July 2013) 152.

⁶² See further *Child Protection Act 1999* (Qld) ss 51A–F.

⁶³ See further *Child Protection Act 1999* (Qld) ss 51G–P.

⁶⁴ Department of Communities, Child Safety and Disability Services (Qld), 'Ongoing intervention phase' (1 October 2014) <<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/ongoing-intervention-phase>>. See further Department of Communities, Child Safety and Disability Services (Qld), *Child Safety Practice Manual* (July 2013).

⁶⁵ See [3.17] above.

⁶⁶ Department of Communities, Child Safety and Disability Services (Qld), 'What is Family and Child Connect?', *Resource Sheet 2* <www.communities.qld.gov.au/.../family-child-connect.pdf>.

established across Queensland. Seven of these commenced in January 2015,⁶⁷ and an additional thirteen sites are planned from July 2015,⁶⁸ and January 2016.⁶⁹

3.52 The role of Family and Child Connect is to provide information and advice to people seeking assistance for children and families where there are concerns about their wellbeing, as well as to families who find themselves in need of support. Family and Child Connect will actively engage with families to assess their needs and refer them to appropriate support services, and will lead a local level alliance of government and non-government services.

3.53 A Principal Child Protection Practitioner employed by Child Safety will be based at each Family and Child Connect centre, to assist with identifying and responding to more serious concerns that may reach the threshold for statutory intervention. A report will be made to Child Safety in cases where the circumstances suggest that a child may be in need of protection.

NATIONAL TRENDS IN CHILD PROTECTION

3.54 Statutory child protection services are the responsibility of state and territory governments. However, the challenges addressed by the QCPCI — in particular, the increasing demand on the statutory child protection system and the need to strengthen support services and reduce demand on ‘front end’ services — are not unique to Queensland.

3.55 In 2009, the Council of Australian Governments endorsed the *National Framework for Protecting Australia’s Children 2009–2020*.⁷⁰ The aim of the National Framework is to ensure that Australia’s children are safe and well, as shown by ‘a substantial and sustained reduction in child abuse and neglect in Australia over time’.⁷¹ To achieve this target, the National Framework endorses a public health model for child protection.

3.56 The public health model distinguishes between primary, secondary and tertiary levels of services, which are targeted at different parts of the population based on the level of need, risk and harm.

3.57 Primary or universal services are targeted at the entire population to provide support and education and prevent risk of harm. This includes services such as health, education or welfare support.

3.58 Secondary support services are targeted at vulnerable families and children who have a moderate risk and a moderate need, including those who are at risk of

⁶⁷ The first seven sites are Townsville, the Sunshine Coast (including Gympie), Toowoomba, Roma (satellite service), Beenleigh/Bayside, Logan and the Gold Coast.

⁶⁸ Sites scheduled for July 2015 are Browns Plains/Beaudesert, Maryborough/Bundaberg, Rockhampton/Gladstone/Emerald, Kingaroy, Moreton Bay and Ipswich.

⁶⁹ Sites scheduled for January 2016 are Mackay, Mt Isa/Gulf, Brisbane North, Brisbane South, Brisbane South-West, Cairns, and Cape York/Torres Strait.

⁷⁰ Council of Australian Governments, *Protecting Children is Everyone’s Business: National Framework for Protecting Australia’s Children 2009–2020* (2009).

⁷¹ Ibid 11.

entering the statutory child protection system. These services are focused on preventing child abuse and neglect by addressing known risk factors such as poverty, parental substance abuse, mental health problems, relationship conflict and domestic violence. This category includes, for example, early intervention support services, parenting programs, child and family counselling, anger management programs, family violence services and drug and alcohol services.

3.59 Tertiary services target high risk, high need families and children where a child has suffered harm, or there is an unacceptable risk of harm occurring.

3.60 Under a public health model of child protection, prevention and early intervention services are given priority and risk factors for child abuse and neglect are addressed (risk factors include, for example, domestic violence, parental alcohol and drug abuse, parental mental health problems, poverty and social isolation, unstable family accommodation and homelessness). Tertiary child protection services are a last resort:⁷²

The basic assumption of a public health approach to protecting children is that by providing the right services at the right time vulnerable families can be supported, child abuse and neglect can be prevented, and the effects of trauma and harm can be reduced.

Providing the right supports at the right time will also ultimately reduce demand on state and Territory child protection systems, allowing them to improve their capacity to perform specific statutory functions and better support children at-risk.

3.61 The National Framework will run from 2009 to 2020. Progress on the implementation of the national framework is monitored through three-year action plans and annual reports to the Council of Australian Governments.⁷³

3.62 The *Child Protection Act 1999* (Qld) operated primarily at the tertiary level, enabling the government to investigate and assess cases of child abuse and to intervene by court processes, case management and the out-of-home care system.⁷⁴

3.63 The QCPCI's recommendations to shift the focus from the statutory protection system to family support services are consistent with developments at the national level, which emphasise the role of primary and secondary services.

⁷² Ibid 17.

⁷³ The Second Action Plan 2012–2015 was endorsed by the Standing Council on Community and Disability Services on 17 August 2012. That Action Plan (which will now be managed under new arrangements by the Standing Council on Community and Disability Services Advisory Council) focuses on key areas including working with children checks, professionalization of carers, health assessments for children in out-of-home care, and implementation of the Aboriginal and Torres Strait Islander Child Placement Principles, which are consistent with Queensland's child protection reform roadmap: Department of Communities, Child Safety and Disability Services (Qld), *Annual Report (2013–2014)* app 6, 165–6.

⁷⁴ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 17.

Chapter 4

Mandatory Reporting in Queensland

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INTRODUCTION

4.1 This chapter provides some historical background on the development of mandatory reporting laws in Queensland, particularly in relation to who is required to report. It also provides an overview of the current law in Queensland.

HISTORICAL BACKGROUND OF MANDATORY REPORTING IN QUEENSLAND

4.2 A mandatory reporting provision was first inserted in the *Health Act 1937* (Qld) in 1980, requiring medical practitioners to report all cases of suspected maltreatment.¹ This requirement was ‘designed to contribute significantly to the early detection of child abuse and to the protection and prompt treatment of the children concerned’.² In particular, it recognised that ‘notification is the first step in the management of child abuse’.³

4.3 This mandatory reporting provision was expanded to include registered nurses in 2004,⁴ as a result of recommendations made by the then Crime and Misconduct Commission (‘CMC’) in its 2004 Report on the Inquiry into the abuse of children in foster care.⁵ The CMC recommended that the mandatory reporting requirement under the *Health Act 1937* (Qld) should be expanded to include

¹ *Health Act 1937* (Qld) s 76k, inserted by *Health Act Amendment Act 1980* (Qld) s 4.

² Queensland, *Parliamentary Debates*, Legislative Assembly, 27 March 1980, 3046, 3047 (Sir W Knox, Minister for Health).

³ Ibid 3046.

⁴ See *Health Act 1937* (Qld) pt 3, div 6, as amended by the *Child Safety Legislation Amendment Act (No.2) 2004* (Qld), which was then repealed and replaced by the *Public Health Act 1995* (Qld) ss 191–196, 158 (definition of ‘professional’).

⁵ Crime and Misconduct Commission (Qld), *Protecting Children: an Inquiry into Abuse of Children in Foster Care*, Report (2004).

registered nurses, given the 'significant role that nurses play in Queensland, particularly in rural and remote communities'.⁶ However, the CMC did not believe:⁷

that a wholesale expansion of the categories of people required to report will deliver a better child protection system. The evidence presented to the Inquiry clearly shows that the major problem with the system is not the failure of people (external to the department) to make reports, but rather the failure of the department to properly respond to the reports it does receive.

4.4 The CMC observed that 'whatever the merits of the different views about mandatory reporting, there is little point to the extension of mandatory reporting in a system that cannot respond to the demands placed on it by such reporting'.⁸ It concluded that nurses should be included because they 'are well placed to make objective and reliable assessments of possible abuse', but that:⁹

any further extension of mandatory reporting can only be justified if it is clearly established that it would genuinely further the interests of children and not divert inappropriate cases to the child protection system. On the available evidence the Commission is not persuaded that further extension is justified.

4.5 In addition to the mandatory reporting provision for health professionals, there were some other reporting requirements relating to child protection spread across other pieces of legislation, which varied in scope and content.¹⁰

4.6 For example, in 2003 a provision was introduced requiring school staff (teaching and non-teaching) to report the actual or suspected sexual abuse of a child attending the school by another school employee. The report was required to be made to prescribed persons (usually the school principal, the principal's supervisor or a director of the school's governing body), who was required to pass the information on to police.¹¹

Child Protection Reform Amendment Act 2014 (Qld)

4.7 Chapter 2, part 1AA of the *Child Protection Act 1999* (Qld) was inserted by the *Child Protection Reform Amendment Act 2014* (Qld).

4.8 That amending Act implemented a number of recommendations made by the QCPCI 'to reduce the current levels of unsustainable demand on the child protection system'.¹² The QCPCI found that there was mounting pressure on the statutory child protection system due to a significant increase in the number of reports made to Child Safety, a substantial proportion of which did not meet the threshold for

6 Ibid 244, Recs 6.13–6.15.

7 Ibid 244.

8 Ibid.

9 Ibid.

10 See further [1.11] above.

11 See *Education (General Provisions) Act 1989* (Qld) ss 146A–B (repealed), inserted by the *Education and Other Legislation (Student Protection) Amendment Act 2003* (Qld). See now *Education (General Provisions) Act 2006* (Qld) ss 364–66.

12 Explanatory Notes, *Child Protection Reform Amendment Bill 2014* (Qld) 2 ff.

statutory intervention.¹³ The QCPCI identified that one reason for the large discrepancy between the number of reports received, and those that meet the threshold for statutory child protection intervention, was that Queensland's mandatory reporting obligations were 'fragmented, confusing and inconsistent'.¹⁴

4.9 Chapter 2, part 1AA of the *Child Protection Act 1999* (Qld) sought to address these concerns by:¹⁵

- making it clear that any person can report concerns when they reasonably suspect a child is in need of protection;
- consolidating the mandatory reporting requirements into one provision and establishing a consistent approach to reporting child protection concerns;¹⁶
- establishing a dual reporting pathway by clarifying that:
 - if a relevant person has a reportable suspicion,¹⁷ they are required to report to the department; however
 - if a relevant person has concerns about a child that do not amount to a reportable suspicion, they may take other appropriate action under the Act (such as referring the family to support services); and
- giving guidance to help relevant persons determine if any concerns they hold about a child are a reportable suspicion, and information on how and when to make reports.

4.10 These new provisions commenced on 19 January 2015.¹⁸

CURRENT LAW

***Child Protection Act 1999* (Qld)**

4.11 Chapter 2, part 1AA (ss 13A–13J) of the *Child Protection Act 1999* (Qld) provides for both voluntary and mandatory reporting of concerns about a child (an individual under 18 years).¹⁹

¹³ See [3.5] ff above.

¹⁴ Explanatory Notes, Child Protection Reform Amendment Bill 2014 (Qld) 2 ff. See further Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 83 ff.

¹⁵ Explanatory Notes, Child Protection Reform Amendment Bill 2014 (Qld) 7 ff.

¹⁶ Prior to this, mandatory reporting provisions were contained in separate pieces of legislation: see [1.11] above. See also Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 84 ff.

¹⁷ For the definition of 'reportable suspicion', see [4.18] below.

¹⁸ *Child Protection Reform Amendment Act 2014* (Qld) s 2(2); Proclamation made under the *Child Protection Reform Amendment Act 2014* (Qld), Subordinate Legislation 2014 No 284.

¹⁹ *Child Protection Act 1999* (Qld) s 8.

Voluntary reporting

4.12 Section 13A provides that any person may inform the chief executive if the person reasonably suspects that a child may be in need of protection, or that an unborn child may be in need of protection after he or she is born.

4.13 'Reasonably suspects' means 'suspects on grounds that are reasonable in the circumstances'.²⁰ The information that a person gives the chief executive may include 'anything the person considers relevant to the person's suspicion'.²¹

4.14 Section 13C sets out some matters that a person may consider in forming a reasonable suspicion about whether a child is in need of protection (that is, whether a child has suffered, is suffering, or is at unacceptable risk of suffering significant harm, and does not have a parent able and willing to protect the child).²² This includes detrimental effects on the child's physical or psychological state that are evident or likely to become evident, their nature and severity and the likelihood they will continue, and the child's age. These considerations will be informed by the person's observations and knowledge of the child, and any other relevant knowledge, training or experience the person may have.

4.15 A person who gives information under chapter 2, part 1AA about alleged harm or risk of harm is protected from liability under section 197A.²³ Pursuant to that provision, the person is not liable civilly, criminally, or under an administrative process, for giving the notification or information, if the person acted both reasonably and honestly.²⁴ Also, the person cannot, merely because the person gives the notification, be held to have breached any code of professional etiquette or ethics, or to have departed from accepted standards of professional conduct.²⁵

Mandatory reporting

4.16 Section 13E provides that, if a relevant person forms a reportable suspicion about a child in the course of the person's engagement as a relevant person, the person must give a written report to the chief executive.

4.17 A 'relevant person' is:

- a doctor;²⁶

²⁰ *Child Protection Act 1999* (Qld) s 3, sch 3 (definition of 'reasonably suspects').

²¹ *Child Protection Act 1999* (Qld) s 13A(2).

²² 'Harm' to a child means 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing'. See [3.32] above.

²³ *Child Protection Act 1999* (Qld) s 13D.

²⁴ *Child Protection Act 1999* (Qld) s 197A(1)–(2).

²⁵ *Child Protection Act 1999* (Qld) s 197A(3).

²⁶ A 'doctor', otherwise known as a 'medical practitioner' means 'a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student: *Acts Interpretation Act 1953* (Qld) s 36, sch (definition of 'doctor' and 'medical practitioner').

- a registered nurse;²⁷
- a teacher;²⁸
- a police officer who works in child protection;²⁹ and
- a person engaged to perform a child advocate function under the *Public Guardian Act 2014* (Qld).

4.18 A 'reportable suspicion' about a child is a reasonable suspicion that the child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse, and may not have a parent able and willing to protect the child from the harm.³⁰

4.19 Mandatory reporting requirements also apply in relation to children in the care of departmental or licensed care services. Section 13F provides that, if an authorised officer, a public service employee employed in the department, or a person employed in a departmental care service or licensed care service, forms a reportable suspicion about a child in care,³¹ the person must give a written report to the chief executive. For this section, a 'reportable suspicion' is a reasonable suspicion that the child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse.

4.20 In contrast to the voluntary reporting provision in section 13A,³² the mandatory reporting provision is expressed to apply only where a relevant person forms a reasonable suspicion that the child has suffered, or is at risk of suffering, 'significant harm caused by physical or sexual abuse'.³³

²⁷ A 'registered nurse' means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse, other than as a student; and in the registered nurses division of that profession: *Child Protection Act 1999* (Qld) s 3, sch 3 (definition of 'registered nurse').

²⁸ 'Teacher' means an approved teacher (that is, a person who is a registered teacher or who has permission to teach by the Queensland College of Teachers) under the *Education (Queensland College of Teachers) Act 2005* (Qld), employed at a school: *Child Protection Act 1999* (Qld) s 3, sch 3 (definition of 'teacher').

²⁹ The mandatory reporting requirement applies to a police officer who, under a direction given by the commissioner of the police service under the *Police Service Administration Act 1990* (Qld), is responsible for reporting under this section: *Child Protection Act 1999* (Qld) s 13E(d).

³⁰ *Child Protection Act 1999* (Qld) s 13E(2).

³¹ For this section, a 'child in care' means a child placed in the care of an entity conducting a departmental care service or a licensee: *Child Protection Act 1999* (Qld) s 13F(4).

³² Section 13A provides that a voluntary report may be made if a person reasonably suspects that a child may be 'in need of protection', which encompasses where a child has suffered, is suffering, or is at an unacceptable risk of suffering significant harm, including harm to the child's psychological or emotional wellbeing: see [4.13] above.

³³ See further the discussion at [5.11] below. Note also that it is ultimately the harm (or the effect) that is substantiated, not the abuse (the action, or lack of action in the case of neglect): Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) 109.

4.21 However, the departmental policy provides that ‘mandatory reporters should also report to Child Safety, if they form a reasonable suspicion that a child is in need of protection caused by any other form of abuse or neglect’.³⁴

4.22 Section 13G sets out what must be included in the written report to the chief executive. The report must state the basis on which the person has formed the reportable suspicion.³⁵ It must also include the following information prescribed by regulation, to the extent of the person’s knowledge:³⁶

- the child’s name and sex;
- the child’s age;
- details of how to contact the child;³⁷
- details of the harm to which the reportable suspicion relates;
- particulars of the identity of the person suspected of causing the child to have suffered, suffer, or be at risk of suffering, the harm to which the reportable suspicion relates; and
- particulars of the identity of any other person who may be able to give information about the harm to which the reportable suspicion relates.

4.23 Section 13G(3) provides that a person is not required to give a report about a matter if giving the report might tend to incriminate the person, or the person knows or reasonably supposes that the chief executive is aware of the matter.

4.24 There is no prescribed penalty for a report not being made under the Act.³⁸ However, professionals who fail to make a report may be subject to a breach of code of conduct or some other disciplinary action, in accordance with any professional policies, procedures and obligations that apply to them.³⁹

4.25 Section 13H provides that relevant persons may confer with colleagues when considering whether their concerns reach the threshold for a mandatory report.

³⁴ Department of Communities, Child Safety and Disability Services (Qld), *Protecting children and supporting families: a guide to reporting child protection concerns and referring families to support services* (2014) 6.

³⁵ *Child Protection Act 1999* (Qld) s 13E(2)(a).

³⁶ *Child Protection Act 1999* (Qld) ss 13E(2)(b), (4); *Child Protection Regulation 2011* (Qld) s 10.

³⁷ For example, the address at which the child usually lives or the name and address of the school the child attends.

³⁸ See *Child Protection Act 1999* (Qld) s 13G(5), which provides that:

To remove any doubt, it is declared that a person does not commit an offence against this or another Act only because the person omits to do an act required under section 13E(3) or 13F(3) or this section.

³⁹ See, eg, the procedure applicable to employees and visitors to state schools when dealing with student protection concerns: Department of Education and Training (Qld), ‘Student Protection’ (23 February 2015, v 7.2) <<http://ppr.det.qld.gov.au/education/community/Pages/Student-Protection.aspx>>.

4.26 Section 13I provides that, to remove any doubt, a relevant person is not required to give a report to the chief executive until the person has formed a reportable suspicion about the child. The reporting obligation arises once the reportable suspicion is formed, even though the person is taking, or has taken, other action in relation to the child.

Alternative referral pathways

4.27 Section 13B provides that, if a relevant person does not have a reportable suspicion about a child, but considers that the child is likely to become a child in need of protection if no preventative support is given, the person may take other appropriate action under the Act (for example, by referring a person to a service provider so the service provider can offer help and support).⁴⁰

4.28 The referrer's identity is not protected under the Act. However, in practice the service will keep the referrer's identity confidential unless disclosure is legally required (for example, by the direction of a court or tribunal).⁴¹

4.29 Generally, the family's consent must be sought before referring or sharing information about a family with family support services.⁴² However, under section 159M of the Act, certain professionals from particular prescribed entities can refer families to Family and Child Connect or other support services without their consent, in order to prevent a child from becoming in need of protection.⁴³

4.30 Similarly, Family and Child Connect must ordinarily have the consent of a family to share information about them with other agencies and organisations. The exception is that Family and Child Connect may share information without consent with the Queensland Police Service and/or Child Safety, provided it is relevant to their functions (for example, if the child may be a victim of crime, or the child may be in need of protection).⁴⁴

⁴⁰ In relation to the meaning of 'relevant person' and 'reportable suspicion', see [4.17]–[4.18] above. As to the meaning of 'in need of protection', see [3.31] above.

⁴¹ Department of Communities, Child Safety and Disability Services (Qld), *Sharing information to support families and protect children* (2015) <<https://www.communities.qld.gov.au/resources/gateway/stronger-families/sharing-information-dfv-service-providers.pdf>>. See further Department of Communities, Child Safety and Disability Services (Qld), *Protecting children and supporting families: a guide to reporting child protection concerns and referring families to support services* (2014) 6.

⁴² Department of Communities, Child Safety and Disability Services (Qld), *Sharing information to support families and protect children* (2015) 1 <<https://www.communities.qld.gov.au/resources/gateway/stronger-families/sharing-information-dfv-service-providers.pdf>>.

⁴³ The particular prescribed entities are: the chief executive or authorised officers of the department responsible for administering the Act; delegated officers of government such as community services, corrective services, disability services, education services, housing services, and health services; the police commissioner; the chief executive of the Mater Misericordiae Health Services Brisbane; and principals of non-state schools.

⁴⁴ Department of Communities, Child Safety and Disability Services (Qld), *Sharing information to support families and protect children* (2015) 1 <<https://www.communities.qld.gov.au/resources/gateway/stronger-families/sharing-information-dfv-service-providers.pdf>>.

The Child Protection Guide

4.31 The Child Protection Guide is an online decision support tool that was developed by government and non-government agencies to support Queensland professionals, such as teachers, doctors, nurses, child care workers, and others working with children and families, in deciding where to refer or report concerns about a child's safety or wellbeing.⁴⁵

4.32 The Child Protection Guide is publicly accessible on the department's website.⁴⁶ It asks a series of 'yes or no' questions about the concerns and provides a recommended 'decision point' based on the answers provided (that is, whether a report should be made to Child Safety, or a referral to a family support service).⁴⁷

4.33 The guide is designed to complement, not replace, a person's critical thinking, professional knowledge and experience, and does not preclude the person from taking any other course of action a professional reasonably believes is appropriate.⁴⁸

45 Resource Sheet 4, 'The Child Protection Guide' available online at Department of Communities, Child Safety and Disability Services (Qld), 'Training Resources' (12 March 2015) <<http://www.communities.qld.gov.au/gateway/stronger-families/resources>>.

46 Department of Communities, Child Safety and Disability Services (Qld), 'Online Child Protection Guide' (20 January 2015) <<http://www.communities.qld.gov.au/childsafety/partners/our-government-partners/queensland-child-protection-guide/online-child-protection-guide>>.

47 Department of Communities, Child Safety and Disability Services (Qld), 'Child Protection Guide' (27 January 2015) <<http://www.communities.qld.gov.au/childsafety/partners/our-government-partners/queensland-child-protection-guide>>.

48 Resource Sheet 4, 'The Child Protection Guide' available online at Department of Communities, Child Safety and Disability Services (Qld), 'Training Resources' (12 March 2015) <<http://www.communities.qld.gov.au/gateway/stronger-families/resources>>.

Chapter 5

Mandatory Reporting in Other Australian Jurisdictions

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INTRODUCTION

5.1 This chapter provides an overview of the mandatory reporting laws in other Australian jurisdictions. In particular, it provides information on:

- the historical development of these laws, with a focus on who is required to report;
- the current law; and
- the application of the laws to the ECEC sector.

OVERVIEW OF MANDATORY REPORTING LAWS

5.2 Each state and territory has enacted some form of mandatory reporting law as one part of their child protection legislation to promote the safety and well-being of children.¹ However, the provisions vary in scope, particularly in relation to who is required to report² and the types of abuse or maltreatment that must be reported.³

Who is required to report

5.3 The mandatory reporting legislation in the Australian Capital Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia includes a list of particular groups of professionals who are mandatory reporters.

5.4 In each jurisdiction, doctors, nurses, teachers and police officers are mandatory reporters.

5.5 Other categories of mandatory reporters in particular jurisdictions are:

- midwives (ACT, Tas, Vic, WA);⁴
- pharmacists (SA);
- dentists (ACT, SA, Tas);
- psychologists (SA, Tas, Vic) and school counsellors (ACT);
- corrections officers (SA), probation officers (Tas), and youth justice and youth parole officers (Vic);
- social workers (SA, Vic);
- a minister of religion, or a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes (SA);
- school principals (Tas, Vic);
- kindergarten teachers (SA, Tas, WA);⁵

¹ See *Children and Young People Act 2008* (ACT) s 356; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27; *Care and Protection of Children Act* (NT) s 26; *Child Protection Act 1999* (Qld) s 13E; *Children's Protection Act 1993* (SA) s 11; *Children, Young Persons and Their Families Act 1997* (Tas) s 14; *Children, Youth and Families Act 2005* (Vic) s 184; *Children and Community Services Act 2004* (WA) s 124B.

² See below Table 5-1: Who is required to report in each state and territory.

³ See below [5.9] ff.

⁴ Note that the Queensland legislation includes registered nurses in the midwifery profession: see [4.17], n 27 above.

⁵ Victoria has introduced legislation to make registered early childhood teachers mandatory reporters, although it is not yet in operation: see *Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014* (Vic) s 89. The Act has been structured to allow for a staged commencement of a scheme for the registration by the Victorian Institute of Teaching of early childhood teachers, to commence on a date that allows sufficient time for the Institute and the early childhood sector to prepare for the scheme: see further Explanatory Memorandum, *Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014* (Vic).

- certain child care providers/employees in the ECEC sector (ACT, SA, Tas, Vic).⁶

5.6 The New South Wales mandatory reporting provision applies to:⁷

- (a) A person who, in the course of his or her professional work or other paid employment delivers health care, education, children's services, residential services, or law enforcement, wholly or partly, to children, and
- (b) A person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children.

5.7 The Northern Territory provision applies to 'any person' who forms a reasonable suspicion of abuse.⁸

5.8 The table on the following page provides a jurisdictional summary of the different persons who are required to report.

⁶ These provisions vary and are set out in more detail below under the headings 'Application to the ECEC sector' for each relevant State and Territory. Note that the requirement to report child sexual abuse in WA applies to a teacher registered under the *Teacher Registration Act 2012* (WA), who teaches in a child care centre under the *Child Care Services Act 2007* (WA) s 4, or in a place where a centre-based service as defined under the Education and Care Services National Regulations 2012 operates: see [5.96]–[5.97] below.

⁷ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27.

⁸ *Care and Protection of Children Act* (NT) s 26(1).

	ACT	QLD	SA	TAS	VIC*	WA	NT	NSW
Doctors	Yes	Yes	Yes	Yes	Yes	Yes	Any Person	A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children, or a person who holds a management position with duties that include direct responsibility for, or supervision of, such services.
Nurses	Yes	Yes	Yes	Yes	Yes	Yes		
Police	Yes	Yes	Yes	Yes	Yes	Yes		
Teachers	Yes	Yes	Yes	Yes	Yes	Yes ⁹		
Midwives	Yes	No	No	Yes	Yes	Yes		
Dentists	Yes	No	Yes	Yes	No	No		
Pharmacists	No	No	Yes	No	No	No		
Psychologists	Yes	No	Yes	Yes	Yes*	No		
School Counsellors	Yes	No	No	No	No	No		
Certain Childcare Providers/ Employees	Yes	No	Yes	Yes	Yes*	No		
Ministers of Religion	No	No	Yes	No	No	No		
Particular Social workers	No	No	Yes	No	Yes*	No		
Community Corrections/ Probation/Parole Officers	No	No	Yes	Yes	Yes*	No		
Certain Public Servants	Yes	Yes	No	Yes	Yes*	No		
Others	Yes ¹⁰	Yes ¹¹	Yes ¹²	Yes ¹³	Yes ¹⁴	No		

Table 5-1: Who is required to report in each State and Territory

- * Victorian provisions marked with an asterisk apply 'on and from the relevant date' to be fixed by an Order in Council. No order has been made.

⁹ Including teachers registered under the *Teacher Registration Act 2012* (WA), who teach in a kindergarten, child care centre under the *Child Care Services Act 2007* (WA) s 4, or in a place where a centre-based service as defined under the Education and Care Services National Regulations 2012 operates; and persons employed to teach detainees at a detention centre under the *Young Offenders Act 1994* (WA).

¹⁰ Home education inspectors, the official visitor and the public advocate.

¹¹ A person engaged to perform a child advocate function under the *Public Guardian Act 2014* (Qld).

¹² Employees and volunteers in religious or spiritual organisations and employees or volunteers in organisations providing health, education, welfare, sporting or recreational services to children who are engaged in the delivery of those services or who hold a management position with duties that include direct responsibility for, or supervision of, such services.

¹³ Principals in any education institution, and government agencies that provide health, welfare, education, child care or residential services for children (or an organisation that receives funding from the Crown for the provision of such services).

¹⁴ School principals.

Circumstances when a report is required

5.9 A report must be made where the potential reporter forms a belief or suspicion on reasonable grounds that a child has been or is at risk of abuse.¹⁵ It has been noted that:¹⁶

Especially for physical abuse, psychological abuse and neglect, the laws are generally not intended to require reports of any and all behaviour perceived to be abusive or neglectful. Accidental injuries and trivial incidents of less-than-ideal parenting practices are not the intended object of the laws. Rather, the laws are concerned with acts and omissions that are significantly harmful to the child's health, safety, wellbeing or development.

5.10 A mandatory reporter must make a report if he or she has reasonable grounds to believe or suspect that a child:

- has been the subject of sexual abuse or is the subject of ongoing sexual abuse (WA);¹⁷
- has experienced, or is experiencing, sexual abuse or non-accidental physical injury (ACT);¹⁸
- has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse (Qld);¹⁹
- has suffered, or is likely to suffer, significant harm as a result of physical injury, sexual abuse, or psychological harm (Vic);²⁰
- has been or is being abused (including sexual abuse or physical or emotional injury) or neglected, or that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides (Tas);²¹
- is at risk of significant harm, including physical and sexual abuse, serious psychological harm or neglect (NSW);²²
- has suffered or is likely to suffer harm (including any significant detrimental effect on the physical, psychological or emotional wellbeing of a child caused,

¹⁵ In the ACT, NT, Vic and WA the person must have formed a *belief* on reasonable grounds. In NSW, SA and Qld the person must report if they *suspect* on reasonable grounds. The Tasmanian provision applies if a person knows, or believes or suspects on reasonable grounds. It has been observed that, 'technically, belief requires a higher level of certainty than suspicion': B Mathews and K Walsh, 'Mandatory reporting laws' in Hayes, Alan and Higgins (eds), *Families, Policy and the Law: Selected Essays on Contemporary Issues for Australia* (Australian Institute of Family Studies, 2014) 131, 136.

¹⁶ Ibid.

¹⁷ *Children and Community Services Act 2004* (WA) ss 124A–B.

¹⁸ *Children and Young People Act 2008* (ACT) s 356.

¹⁹ *Child Protection Act 1999* (Qld) s 13E (as amended by the *Child Protection Reform Amendment Act 2014* (Qld)). 'Harm' is defined to mean any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing: *Child Protection Act 1999* (Qld) s 9.

²⁰ *Children, Youth and Families Act 2005* (Vic) ss 162, 184(1).

²¹ *Children, Young Persons and Their Families Act 1997* (Tas) ss 3(1) (definition of 'abuse or neglect'), 14(2).

²² *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 23, 27.

for example, by physical, psychological or emotional abuse or neglect) or exploitation, or is a child aged less than 14 who has been or is likely to be a victim of a sexual offence, or has been or is likely to be a victim of an offence against section 128 of the *Criminal Code* (NT);²³

- has been or is being abused (including sexual, physical or emotional abuse) or neglected (SA).²⁴

5.11 The legislative provisions differ as to the types of abuse that must be reported (for example, sexual, physical, psychological or emotional abuse and neglect), and whether they apply to past, present or potential future abuse.

5.12 The types of abuse that a mandatory reporter must notify are generally narrower than the types of abuse that warrant statutory intervention by child protection services. For example, in the Australian Capital Territory, Queensland and Victoria, mandatory reporting is limited to concerns about harm caused by physical and sexual abuse, whereas the grounds for statutory intervention more broadly encompass harm caused by psychological and emotional abuse. It has been observed that:²⁵

Mandatory reporting laws that require suspicions of only physical abuse or neglect to be reported may be a reflection of social values that rank physical and sexual abuse as being more severe than psychological maltreatment and neglect ... Alternatively, the limiting of mandatory reporting requirements to physical and sexual abuse could reflect an attempt to minimise the rise in notifications occurring as a consequence of the introduction of mandatory reporting laws.

AUSTRALIA CAPITAL TERRITORY

Historical background

5.13 The Australian Capital Territory first sought to introduce the mandatory reporting of physical and sexual abuse of children in 1986.²⁶ On the recommendation of the Australian Law Reform Commission ('ALRC'), doctors, dentists, nurses, police officers, teachers, school counsellors, certain public servants whose duties included matters relating to children's welfare, and persons in charge of licensed child care centres, were included as mandatory reporters. The ALRC considered that:²⁷

Both medical practitioners and other professional persons should be required to notify cases of child abuse. The other professional persons required to notify should be those who fall within specified categories of persons who come into contact with children in the course of practising their profession ... professionals such as school teachers, kindergarten and pre-school teachers and child care

²³ *Care and Protection of Children Act* (NT) ss 15, 16, 26(1).

²⁴ *Children's Protection Act 1993* (SA) ss 6 (definition of 'abuse or neglect'), 11.

²⁵ L Bromfield and D Higgins, 'National Comparison of child protection systems' in Australian Institute of Family Studies National Child Protection Clearinghouse (2005) 22 *Child Abuse Prevention Issues* 1, 8.

²⁶ See *Children's Services Act 1986* (ACT) s 103(2).

²⁷ Australian Law Reform Commission, *Child Welfare*, Report No 18 (1981) [396].

workers are, through their regular day-to-day contact with children, often aware of child abuse long before it is brought to the attention of a medical practitioner.

5.14 The ALRC also made the observation that ‘a requirement to notify places a serious responsibility upon the professional concerned to identify cases of child abuse and to fulfil the notification requirement whilst marshalling all the sensitivity and skill with which such a professional should be equipped by training and experience’.²⁸

5.15 This provision did not come into operation at that time, due in part to ‘the diversity of opinion within the community about mandatory reporting’.²⁹ It was not until 1999 that mandatory reporting laws in similar terms were enacted,³⁰ following a comprehensive community education program.³¹

Current law

5.16 Section 356 of the *Children and Young People Act 2008 Act* (ACT) provides that a ‘mandated reporter’ who is an adult and who believes on reasonable grounds that a child or young person³² has experienced or is experiencing physical or sexual abuse must report the child’s or young person’s name or description and the reasons for the person’s belief to the director-general. The person’s reasons for the belief must arise from information obtained by the person during the course of, or because of, the person’s work (whether paid or unpaid).

5.17 Each of the following people is a ‘mandated reporter’:³³

- a doctor, dentist, nurse, enrolled nurse and a midwife;³⁴
- a teacher at a school (including a teacher’s assistant or aide in paid employment at the school);³⁵
- a person authorised to inspect education programs, materials or other records used for home education of a child or young person under the *Education Act 2004* (ACT);
- a person employed to counsel children or young people at a school;

28 Ibid.

29 Community Law Reform Committee of the ACT, *Mandatory Reporting of Child Abuse*, Report No 7 (1993) [36].

30 *Children and Young People Act 1999* (ACT) s 159. The professionals required to report included, among others, a person caring for a child at a child care centre, or a person coordinating or monitoring the provision of home based care on behalf of a family day care scheme licensee: at s 159 (g), (h). The 1999 Act has since been repealed and replaced by the *Children and Young People Act 2008* (ACT).

31 ACT, *Parliamentary Debates*, Legislative Assembly, 1 July 1999, 1955 (Mr Smyth, Minister for Urban Services).

32 A ‘child’ is a person under 12 years old and a ‘young person’ is a person who is 12 years old or older but not yet 18: *Children and Young People Act 2008* (ACT) ss 11, 12; *Legislation Act 2001* (ACT) s 2, Dictionary pt 1 (definition of ‘adult’).

33 *Child Protection and Young People Act 2008* (ACT) s 356(2).

34 See further *Legislation Act 2001* (ACT) ss 2, 144, Dictionary pt 1 (definition of ‘doctor’, ‘dentist’, ‘nurse’, ‘enrolled nurse’ and ‘midwife’).

35 *Children and Young People Act 2008* (ACT) s 356(2) (definition of a ‘teacher’).

- a police officer;
- a person caring for a child at a childcare centre (including a childcare assistant or aide caring for a child at the childcare centre if the assistant or aide is in paid employment at the childcare centre, but does not include anyone caring for a child as an unpaid volunteer);³⁶
- a person coordinating or monitoring home-based care for a family day care scheme proprietor,
- a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families,
- the public advocate;
- an official visitor;³⁷ and
- a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation.

5.18 A person who gives information honestly and without recklessness under section 356 does not breach confidence, professional etiquette or ethics and is protected from civil and criminal liability.³⁸

5.19 A mandated reporter who does not meet the obligation to report to the director-general as soon as practicable after forming the belief commits an offence. The maximum penalty is 50 penalty units, imprisonment for 6 months or both.³⁹ It is also an offence to make a false or misleading report.⁴⁰

Application to the ECEC sector

5.20 In the Australian Capital Territory, mandatory reporting applies to:⁴¹

- a person caring for a child at a childcare centre; and
- a person coordinating or monitoring home-based care for a family day scheme proprietor.

5.21 A 'person caring for a child at a childcare centre' includes a childcare assistant or aide caring for a child at the childcare centre if the assistant or aide is in

³⁶ *Children and Young People Act 2008* (ACT) s 356(2) (definition of a 'person caring for a child at a childcare centre').

³⁷ An 'official visitor' means an official visitor for the *Children and Young People Act 2008* (ACT) appointed under the *Official Visitor Act 2012* (ACT), s 10: *Child Protection and Young People Act 2008* (ACT) s 3, Dictionary (definition of 'official visitor').

³⁸ *Child Protection and Young People Act 2008* (ACT) s 874.

³⁹ *Children and Young People Act 2008* (ACT) s 356(1).

⁴⁰ *Child Protection and Young People Act 2008* (ACT) ss 355, 358. The maximum penalty is 50 penalty units, imprisonment for 6 months or both.

⁴¹ *Children and Young People Act 2008* (ACT) s 356(2)(j)–(k).

paid employment at the childcare centre, but does not include anyone caring for a child as an unpaid volunteer.⁴²

5.22 The decision to regulate child care centres and family day care schemes, rather than individual carers, reflected child care licensing reforms that were made by the *Children and Young People Act 1999* (ACT). At the time, it was noted that:⁴³

Regulating schemes, not individual carers, is further example of the Bill making active provision for government cooperation with the community and for ensuring State intervention in the field is not overly restrictive.

NEW SOUTH WALES

Historical background

5.23 In New South Wales, mandatory reporting requirements were introduced in 1982 requiring medical practitioners to report the abuse of children.⁴⁴ The legislation also provided a mechanism for other 'professions, vocations and callings' to be prescribed by regulations.⁴⁵ The *Children (Care and Protection) Regulation 1996* (NSW) required any body that provided particular services to a child on a formal or regular basis to report abuse.⁴⁶ In addition, school staff, including teachers, counsellors, social workers, early childhood teachers, principals and deputy principals, were required to report sexual assault.⁴⁷

5.24 In 1998 the legislation was changed so that, instead of specifying particular professionals as mandatory reporters, an obligation to report was placed on all professionals working partly or wholly with children in health care, welfare, education, children's services, residential services, or law enforcement services.⁴⁸ This change followed a review of the legislation undertaken by the NSW Department of Community Services, where it was recommended that:⁴⁹

Mandatory reporting should apply to all those who, in the course of their professional work or other employment, provide health, welfare, education, child care or residential services wholly or partly for children or young people.

⁴² *Children and Young People Act 2008* (ACT) s 356(2) (definition of a 'person caring for a child at a childcare centre').

⁴³ ACT, *Parliamentary Debates*, Legislative Assembly, 1 July 1999, 1960 (Mr Smyth, Minister for Urban Services).

⁴⁴ *Community Welfare Act 1982* (NSW) ss 4(1) (definition of 'abuse'), 44(4) and 102(1)(a) (repealed), replaced by the *Children (Care and Protection) Act 1987* (NSW) s 22(2)(a) (repealed).

⁴⁵ *Community Welfare Act 1982* (NSW) s 102(1)(b) (repealed), replaced by the *Children (Care and Protection) Act 1987* (NSW) s 22(2)(b), (3)(a) (repealed).

⁴⁶ *Children (Care and Protection) Act 1987* (NSW) s 22(2)(b) (repealed); *Children (Care and Protection) Regulation 1996* (NSW) s 16A (repealed). Services included health care services, children's services (for example, child care centres), educational services, recreational services, counselling and therapy services, disability support services, accommodation services, information services and youth services.

⁴⁷ *Children (Care and Protection) Act 1987* (NSW) s 22(3) (repealed); *Children (Care and Protection) Regulation 1996* (NSW) s 16 (repealed).

⁴⁸ *Children and Young Persons (Care and Protection) Bill 1998* (NSW) s 27 (Act as passed).

⁴⁹ Department of Community Services (NSW), Legislation Review Unit, *Review of the Children (Care and Protection) Act 1987* (NSW): *Recommendations for Law Reform* (1997) 22, Rec 2.5.

5.25 It was found that ‘there is overwhelming community support for mandatory reporting’, and that ‘the strong view emerging from all consultations is that those working professionally with children or young people should be required to report’.⁵⁰

5.26 The comment was made that, at that time, much of the sector working with children had no direction about notification. It was considered that the change would allow for a consistent approach across the sector and made ‘a clear statement to the community about the high expectations placed on those who are in the privileged position of working with children and young people’.⁵¹ However, it was also noted that, although mandatory reporting ‘is a useful procedure which can raise awareness about the role of professionals working with children and can increase the likelihood of abused children coming to the attention of the relevant authorities’, it ‘is clear that mandatory reporting is not a fix-all strategy’.⁵²

Current law

5.27 Section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides that a person to whom the section applies has a duty to report to the director-general as soon as practicable if the person has reasonable grounds to suspect that a child⁵³ is at risk of significant harm, and those grounds arise during the course of or from the person’s work.⁵⁴ There is no penalty for failure to report.⁵⁵

5.28 ‘Significant harm’ is defined in detail in section 23 of the Act and includes neglect as well as psychological, physical and sexual abuse:⁵⁶

23 Child or young person at risk of significant harm

(1) For the purposes of this Part and Part 3, a child or young person is at risk of **significant harm** if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

(a) the child’s or young person’s basic physical or psychological needs are not being met or are at risk of not being met,

50 Ibid 22.

51 Ibid 23.

52 Ibid.

53 A ‘child’ is a person under the age of 16 years. A ‘young person’ is aged 16 years or above but under the age of 18 years: *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 3 (definition of ‘child’ and ‘young person’).

54 The threshold was increased to ‘significant harm’ by the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* (NSW), which implemented the recommendations of the Special Commission of Inquiry into Child Protection Services in NSW (2008). The Special Commission found that NSW had one of the lowest thresholds for making a report on a child or young person suspected of being at risk of harm, and that too many of the reports that are made do not warrant the exercise of the Government’s considerable statutory powers. The amending Act also introduced the alternative reporting arrangements in s 27A of the NSW Act.

55 See The Hon J Wood AO QC, *Special Commission of Inquiry into Child Protection Services in New South Wales*, Report (2008) vol 1, [6.139]–[6.142], Rec 6.2(d). That Inquiry recommended the repeal of a penalty provision for breach of mandatory reporting in NSW on the grounds that it may result in over cautious reporting and should be unnecessary in the presence of adequate internal systems to ensure compliance with the legislation.

56 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 23. Psychological abuse may be caused by exposure to domestic violence.

- (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
- (b1) in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990*— the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
- (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- (d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
- (e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,
- (f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Note. Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

- (2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions.

Note. See also sections 154(2)(a) and 156A(3) for other circumstances in which a child or young person is taken to be at risk of significant harm.

5.29 The making of a report in good faith does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct. The reporter will not be liable for defamation incurred because of the report, and the making of the report does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.⁵⁷

Application to the ECEC sector

5.30 In New South Wales, the mandatory reporting provision applies to:⁵⁸

- (a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children, and
- (b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.

⁵⁷ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 29.

⁵⁸ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27(1).

5.31 In 2008, the Special Commission of Inquiry into Child Protection Services in New South Wales expressed the view that, with sufficient training and guidelines, mandatory reporters would have the necessary knowledge and skills to make reports:⁵⁹

reporters need good training to gain knowledge of the indicators of abuse and neglect, to know when a report is and is not required, and to know how to make a report that provides useful assistance to child protection authorities.

Whether mandatory reporters have the qualifications, skills, or judgement necessary to form a suspicion of risk of significant harm has been raised with the Inquiry. The data indicate that 60 per cent of reports are made by police, health and school/child care reporters. In the main, most of those who have sufficient contact with children to consider reporting, are required to exercise professional judgement daily about the safety, welfare and well-being of a child or young person. Teachers assess such matters in the learning environment, health workers do so in the context of making complex decisions about diagnosis and treatment and police officers are expected to do so in relation to making applications for Apprehended Violence Orders (AVO) and other matters.

With the exception of police and domestic violence incidents... none of those with whom the Inquiry spoke suggested any difficulty in having sufficient expertise to form the necessary suspicion. The Inquiry is confident that with sufficient quality training and guidelines mandatory reporters can be equipped to properly satisfy any amended statutory test.

5.32 The Inquiry did not consider that there was any need to change the categories of people who were personally obliged to report.⁶⁰

5.33 It did, however, note the benefits of developing centralised reporting systems within organisations.⁶¹ The Inquiry generally supported 'the greater centralisation of reporting, while preserving the right of individual members of the relevant agencies to make a direct report where, by reason of the imminent nature of the risk, a considered decision is made to follow that course'.⁶²

⁵⁹ The Hon J Wood AO QC, *Special Commission of Inquiry into Child Protection Services in New South Wales*, Report (2008) vol 1, [6.86]–[6.88].

⁶⁰ Ibid [6.106].

⁶¹ Ibid [6.108]–[6.121]. One example given was of an agreement between the NSW Department of Community Services, Education, the Catholic Education Commission NSW and the NSW Association of Independent Schools, whereby each school had a designated central officer (usually the principal) who reported to the department on behalf of school staff. The Inquiry noted that such systems prevented the making of multiple reports and facilitated the development of a common assessment framework.

⁶² Ibid.

NORTHERN TERRITORY

Historical background

5.34 Mandatory reporting laws were first introduced in the Northern Territory in 1983, requiring a person to report a reasonable belief that a child has suffered or is suffering maltreatment to the Minister or a member of the police.⁶³

5.35 In 2007, those provisions were repealed and replaced by the current *Care and Protection of Children Act* (NT). That Act implemented a number of recommendations of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, which had found that many were unaware of their broad reporting obligation.⁶⁴

Current law

5.36 The *Care and Protection of Children Act* (NT) contains mandatory reporting requirements for children⁶⁵ at risk of harm and exploitation.

5.37 'Harm' to a child is any significant detrimental effect caused by any act, omission or circumstance on the physical, psychological or emotional wellbeing or development of the child. It can be caused by physical, psychological or emotional abuse or neglect of the child, sexual abuse or other exploitation of the child,⁶⁶ or exposure of the child to physical violence (for example, a child witnessing violence between the child's parents at home).⁶⁷

5.38 Under section 26(1) of the *Care and Protection of Children Act* (NT), any person who believes, on reasonable grounds, that:

- a child has suffered or is likely to suffer harm or exploitation;
- a child aged less than 14 years has been or is likely to be a victim of a sexual offence;⁶⁸ or

⁶³ *Community Welfare Act* (NT) s 14. Under s 13 of the Act, police were empowered to investigate maltreatment of a child and were required to report to the Minister.

⁶⁴ See Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Little Children are Sacred*, Report (2007).

⁶⁵ A child is any person less than 18 years of age (or a person apparently less than 18 years of age if the person's age cannot be proved): *Care and Protection of Children Act* (NT) s 13 (definition of 'child').

⁶⁶ 'Exploitation' of a child includes sexual and other forms of exploitation to a child: *Care and Protection of Children Act* (NT) s 16.

⁶⁷ *Care and Protection of Children Act* (NT) s 15.

⁶⁸ It is also required for a health practitioner to make a report if he or she believes, on reasonable grounds, that a child aged at least 14 years (but less than 16 years) has been or is likely to be a victim of a sexual offence and that the difference in age between the child and alleged sexual offender is more than 2 years: *Care and Protection of Children Act* (NT) s 26(2).

- a child has been or is likely to be a victim of an offence against section 128 of the *Criminal Code*;⁶⁹

is required to report (orally or in writing) to the chief executive officer or a police officer as soon as possible after forming that belief. Failure to report is an offence with a maximum penalty of 200 penalty units.⁷⁰

5.39 A person acting in good faith in making a report is not civilly or criminally liable, or in breach of any professional code of conduct for making the report or disclosing any information in the report.⁷¹

Application to the ECEC sector

5.40 As explained above, all persons are required to report a reasonable suspicion of abuse pursuant to section 26(1) of the *Care and Protection of Children Act* (NT).

5.41 Section 30 of that Act places an additional obligation on particular persons to ensure that staff are aware of reporting obligations under section 26.

5.42 Each of the following persons must ensure that everyone providing services for a child under the person's control or direction is aware of the reporting obligations under section 26(1):

- an operator of child-related services;
- an approved provider of an education and care service operated under the *Education and Care Services National Law* (NT);
- the person in charge of a hospital or any other facility for health services; and
- the person in charge of a school or any other educational institution.

5.43 In addition, each person who engages another person in child-related employment must ensure the other person is aware of the obligations under section 26(1).

5.44 Section 185(1) provides that a person is engaged in 'child-related employment' if the person is engaged to perform child-related work. 'Child-related work' is defined in section 185(2) as any work that involves or may potentially involve contact with children in connection with any of the following:

- (a) child protection services provided by or for the Department;
- (b) an education and care service operated under the *Education and Care Services National Law* (NT);

⁶⁹ The victim of an offence against s 128 of the *Criminal Code* (NT) is a child who is of or over the age of 16 years and under the offender's special care as mentioned in that section (for example, because the offender is a step-parent or teacher of the victim).

⁷⁰ *Care and Protection of Children Act* (NT) s 26.

⁷¹ *Care and Protection of Children Act* (NT) s 27.

- (c) an educational facility for children, including a government school established under the *Education Act* and a school registered under Part VII of that Act, other than a facility prescribed by regulation;
- (d) juvenile detention centres;
- (e) refuges or other residential facilities used by children;
- (f) wards of hospitals or any other facilities for health services in which children are ordinarily patients;
- (g) clubs, associations or movements (including those that are of a cultural, recreational or sporting nature) with significant child membership or involvement;
- (h) religious organisations;
- (i) babysitting or childminding services;
- (j) fostering of children;
- (k) transportation services for children;
- (l) private tuition services for children;
- (m) counselling or other support services for children;
- (n) overnight camps for children;
- (o) road crossing services for school children;
- (p) any of the following services, activities or facilities that are provided or arranged for children:
 - (i) gym or play facilities;
 - (ii) photographic services;
 - (iii) talent or beauty competitions;
 - (iv) entertainment or party services;
- (q) any other services, activities or facilities prescribed by regulation.

5.45 A person may be engaged in child-related employment under a contract of employment or any other contract or arrangement (whether written or unwritten and whether for a reward or not).⁷²

5.46 Anyone who enters into such a contract or arrangement for a person or body to perform child-related work must be regarded as someone who engages the person or body in child-related employment.⁷³

⁷² *Care and Protection of Children Act* (NT) s 185(3).

⁷³ *Care and Protection of Children Act* (NT) s 185(4).

5.47 Without limiting subsections (1) to (4), any of the following is a person engaged in child-related employment:⁷⁴

- (a) anyone performing child-related work:
 - (i) as a minister of religion or as part of a religious vocation; or
 - (ii) as a student for the practical training of an educational or vocational course; or
 - (iii) as a voluntary worker;
- (b) if a body is engaged to perform child-related work, any of the following:
 - (i) for a body corporate as defined in the Corporations Act 2001 — an officer of the body corporate as defined in that Act;
 - (ii) for any other body corporate — anyone (however described) who takes part in the management of the body corporate;
 - (iii) for any unincorporated body or association — a member of the committee of management (however described) of the body or association;
- (c) if a partnership is engaged to perform child-related work — a partner in the partnership.

SOUTH AUSTRALIA

Historical background

5.48 South Australia was the first state to introduce a mandatory reporting law. In 1969, it enacted a provision requiring doctors and dentists to report reasonable suspicions of harm to a child.⁷⁵

5.49 The provision was implemented on the recommendation of the Law Reform Committee of South Australia. The Law Reform Committee had noted an increase in the number of cases identified by medical and even dental practitioners, where babies were suspected of having been ill-treated by their parents or caregivers. It also noted that the number of cases being identified greatly exceeded the number where charges were laid, or a prosecution was successful.⁷⁶ The Law Reform Committee considered that one obstacle to law enforcement in these cases was the reluctance of medical and dental practitioners to report for fear that 'if they reported their suspicions, but the charge was not successfully prosecuted, they ran the risk of being charged with unprofessional conduct, being sued (for defamation or for malicious prosecution or conspiracy), or of being obliged to reveal a report given in

⁷⁴ *Care and Protection of Children Act* (NT) s 185(5).

⁷⁵ *Children's Protection Act 1936* (SA) s 5A, inserted by the *Children's Protection Act Amendment Act 1969* (SA). The *Children's Protection Act 1936* (SA) was repealed and replaced by the *Community Welfare Act 1972* (SA), which was repealed and replaced by the *Children's Protection Act 1993* (SA).

⁷⁶ Law Reform Committee of South Australia, *The Evidence Act 1929–1968 and the Children's Protection Act 1936–1961*, Report No 1 (1969) 8.

confidence in a public court or other tribunal'.⁷⁷ To overcome this, it recommended the introduction of a provision requiring a medical or dental practitioner to report a reasonable suspicion of harm to a child. It also recommended that, as a corollary to the duty to report, the legislation should give the greatest possible protection to persons who report their suspicions.⁷⁸

5.50 The duty to report has been expanded over time, including to:

- nurses, teachers, police officers, and employees of an agency established to promote child welfare or community welfare (in 1976);⁷⁹
- registered psychologists, pharmaceutical chemists, teachers' aides, social workers, and persons employed in kindergartens (in 1981);⁸⁰
- probation officers, as well as both employees and volunteers in agencies that provide health, welfare, educational, child care or residential services for children (in 1988);⁸¹ and
- ministers of religion, employees or volunteers in an organisation formed for religious or spiritual purposes, and employees and volunteers in a government or non-government organisation that provides sporting or recreational services wholly or partly for children (in 2005).⁸²

5.51 The most recent expansion implemented recommendations made in the 2003 report of the Review of Child Protection in South Australia, which concluded that 'it is preferable to adopt the broadest approach to mandated notification because of legal technical issues associated with determining who is a mandated notifier and who is not'.⁸³

5.52 It was also observed generally in that Report that the education and children's services system is an essential part of the child protection system:⁸⁴

Teachers, other school staff and childcare workers are an essential part of the network of professionals involved in the early detection of child abuse and neglect. Teachers and child-care workers are people who occupy positions of trust and continuous relationship that for many children enables them to disclose abuse. In recognition of the roles and responsibilities that schools and children's services play in child protection and the prevention of child abuse and neglect,

⁷⁷ Ibid.

⁷⁸ Ibid. See also South Australia, *Parliamentary Debates*, House of Assembly, 4 November 1969, 2695 (Hon R Millhouse Minister of Social Welfare); South Australia, *Parliamentary Debates*, House of Assembly, 12 November 1969, 2899 (Hon CM Hill, Minister of Local Government).

⁷⁹ *Community Welfare Act 1972* (SA) s 82d, inserted by the *Community Welfare Act Amendment Act 1976* (SA).

⁸⁰ *Community Welfare Act 1972* (SA) s 91, inserted by the *Community Welfare Act Amendment Act 1981* (SA).

⁸¹ *Community Welfare Act Amendment Act 1988* (SA), which implemented recommendations from the 1986 Report of the Task Force on Child Sexual Abuse.

⁸² *Children's Protection (Miscellaneous) Amendment Act 2005* (SA) s 10.

⁸³ R Layton QC (Chair), Review of Child Protection in South Australia, *Our Best Investment: A State Plan to Protect and Advance the Interests of Children*, Report (2003) Rec 54.

⁸⁴ Ibid [19.2].

more comprehensive approaches to the integration of child protection in education and children's services need to be developed in other jurisdictions.

Current law

5.53 In South Australia, mandatory notification requirements are contained in section 11 of the *Children's Protection Act 1993* (SA). A person to whom that section applies must notify the Department as soon as practicable if he or she suspects on reasonable grounds that a child⁸⁵ has been or is being abused or neglected, and the suspicion is formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties.

5.54 'Abuse or neglect', in relation to a child, means sexual abuse of the child, or physical or emotional abuse, or neglect, to the extent that the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing, or the child's physical or psychological development is in jeopardy.⁸⁶

5.55 Section 11 applies to the following persons:

- a medical practitioner;
- a pharmacist;
- a registered or enrolled nurse;
- a dentist;
- a psychologist;
- a police officer;
- a community corrections officer (an officer or employee of an administrative unit of the Public Service whose duties include the supervision of young or adult offenders in the community);
- a social worker;
- a minister of religion;⁸⁷
- a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes;
- a teacher in an educational institution (including a kindergarten);
- an approved family day care provider;
- any other person who is an employee of, or volunteer in, a government or non-government organisation that provides health, welfare, education,

⁸⁵ A child means a person under 18 years of age: *Children's Protection Act 1993* (SA) s 6(1) (definition of 'child').

⁸⁶ *Children's Protection Act 1993* (SA) ss 6(1) (definition of 'abuse or neglect'), 10.

⁸⁷ However, this section does not require a priest or other minister of religion to divulge information communicated in the course of a confession made in accordance with the rules and usages of the relevant religion: *Children's Protection Act 1993* (SA) s 11(4).

sporting or recreational, child care or residential services wholly or partly for children, being a person who:

- is engaged in the actual delivery of those services to children; or
- holds a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children.

5.56 The maximum penalty for failing to report is \$10 000.⁸⁸ It is a defence for the defendant to prove that:⁸⁹

- their suspicion was due solely to having been informed of the suspected abuse or neglect by a police officer acting in the course of his or her official duties; and
- their suspicion was due solely to having been informed of the suspected abuse or neglect by another person to whom this section applies, and they believed on reasonable grounds that the other person had given a notification under this section in respect of the suspected abuse or neglect.

5.57 Any person who notifies the department of a suspicion that a child has been or is being abused or neglected or provides any information to the department in respect of such a notification is protected from liability (provided he or she has acted in good faith), and cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct.⁹⁰

Application to the ECEC sector

5.58 The South Australian provision applies to approved family day care providers. It also applies to both employees and volunteers in an organisation that provides child care services, if they are engaged in the actual delivery of those services to children, or hold a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children.⁹¹

5.59 The inclusion of all volunteers working with children was recommended in the 2003 report of the Review of Child Protection in South Australia.⁹² At the time, the review noted that expanding the reporting requirement to volunteers raised the issue of:⁹³

⁸⁸ *Children's Protection Act 1993* (SA) s 11(1).

⁸⁹ *Children's Protection Act 1993* (SA) s 11(2a)–(2b).

⁹⁰ *Children's Protection Act 1993* (SA) s 12.

⁹¹ *Children's Protection Act 1993* (SA) s 11(2)(i)–(j).

⁹² R Layton QC (Chair), Review of Child Protection in South Australia, *Our Best Investment: A State Plan to Protect and Advance the Interests of Children*, Report (2003) Rec 54.

⁹³ *Ibid* [10.11]–[10.12].

whether a distinction should be made in relation to those volunteers working with children in supervised settings and those working with children in unsupervised settings and the implications this will have for determining who qualifies and who does not qualify as a mandated notifier within organisations where both types of volunteers provide services directly to children.

5.60 It concluded that:⁹⁴

In view of this difficulty, it was considered preferable to adopt a streamlined approach and support the inclusion of all volunteers who work with children, given the difficulty that is presented in determining which volunteer qualifies and which volunteer does not. A further reason for adopting this approach is the consideration of the relationship that volunteers may develop with children irrespective of whether they are working in supervised situations or not and the opportunity that this may present for liaising with children outside the place of service.

TASMANIA

Historical background

5.61 Mandatory reporting was first enacted in Tasmania in 1974.⁹⁵ The legislation empowered the Governor to declare that persons of specified professions, callings, or vocations, or in the exercise of certain offices, must report a reasonable suspicion that a child under 12 years has suffered injury through cruel treatment. Prescribed persons included particular probation officers, child welfare and other social workers and welfare officers appointed under particular Acts, persons holding children's boarding home licences or day nursery licences, school principals, mistresses in charge of infant schools, kindergarten teachers, psychologists, and medical practitioners.⁹⁶ In 1977, it was expanded to include registered nurses employed in child health and school health services and guidance officers under the *Education Act 1932*.⁹⁷

Current law

5.62 Section 14 of the *Children, Young Persons and Their Families Act 1997* (Tas) requires a prescribed person to inform the Secretary or a Community-Based Intake Service as soon as practicable if, in carrying out official duties or in the course of his or her work (whether paid or voluntary), he or she knows, believes, or suspects on reasonable grounds:⁹⁸

⁹⁴ Ibid.

⁹⁵ See *Child Protection Act 1974* (Tas) s 8(2), repealed and replaced by the *Children, Young Persons and Their Families Act 1997* (Tas).

⁹⁶ See *Child Protection Order (No 2) 1975* (Tas) (repealed).

⁹⁷ *Child Protection Order 1977* (Tas) (repealed).

⁹⁸ *Children, Young Persons and Their Families Act 1997* (Tas) s 14(2).

- that a child⁹⁹ has been or is being abused or neglected or is an affected child within the meaning of the *Family Violence Act 2004* (Tas),¹⁰⁰
- that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides, or
- while a woman is pregnant, that there is a reasonable likelihood that after the birth the child will suffer abuse or may be killed by a person with whom the child is likely to reside, or will require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman resides or is likely to reside.

5.63 'Abuse or neglect' means sexual abuse, or physical or emotional injury or other abuse, or neglect, to the extent that the injured, abused or neglected person has suffered, or is likely to suffer, physical or psychological harm detrimental to the person's wellbeing, or the injured, abused or neglected person's physical or psychological development is in jeopardy.¹⁰¹

5.64 Each of the following is a 'prescribed person' under section 14(1) of the Act:

- a medical practitioner;
- a registered nurse or enrolled nurse;
- a person registered under the Health Practitioner Regulation National Law (Tas) in the midwifery profession;
- a person registered under the Health Practitioner Regulation National Law (Tas) in the dental profession as a dentist, dental therapist, dental hygienist or oral health therapist;
- a person registered under the Health Practitioner Regulation National Law (Tas) in the psychology profession;
- a police officer;
- a probation officer appointed or employed under section 5 of the *Corrections Act 1997* (Tas);
- a principal and a teacher in any educational institution (including a kindergarten);
- a person who provides child care, or a child care service, for fee or reward;

⁹⁹ A 'child' means a person under 18 years of age: *Children, Young Persons and Their Families Act 1997* (Tas) s 3(1) (definition of 'child').

¹⁰⁰ An 'affected child' means a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence: *Family Violence Act 2004* (Tas) s 4 (definition of 'affected child').

¹⁰¹ *Children, Young Persons and Their Families Act 1997* (Tas) s 3 (definition of 'abuse or neglect').

- a person concerned in the management of an approved education and care service, within the meaning of the *Education and Care Services National Law* (Tas), or a child care service licensed under the *Child Care Act 2001* (Tas);
- any other person who is employed or engaged as an employee for, of or in, or who is a volunteer in:
 - a Government Agency that provides health, welfare, education, child care or residential services wholly or partly for children;
 - an organisation that receives any funding from the Crown for the provision of such services; and
- any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons.

5.65 The penalty for failing to notify as required under this provision is a fine not exceeding 20 penalty units.¹⁰²

5.66 It is a defence if the person charged can prove that they honestly and reasonably believed that the Secretary or a Community-Based Intake Service had been informed of all the reasonable grounds on which their belief, suspicion or knowledge was based by another person, or if the person charged has complied with approved guidelines issued under section 14(4) that apply to them in respect of the organisation, body or other person for whom or in which the person works.¹⁰³

Application to the ECEC sector

5.67 The Tasmanian mandatory reporting provision applies to:¹⁰⁴

- a person who provides child care, or a child care service, for fee or reward; and
- a person concerned in the management of an approved education and care service, within the meaning of the *Education and Care Services National Law* (Tas), or a child care service licensed under the *Child Care Act 2001* (Tas).

5.68 'Child care' means the provision of care or accommodation to a child by a person other than the child's parent or a member of the child's extended family. 'Child care service' means operations concerned with child care, including a person or agency that is involved with organising or arranging placements for children in child care or placements of child carers with children.¹⁰⁵

¹⁰² *Children, Young Persons and Their Families Act 1997* (Tas) s 14(2).

¹⁰³ *Children, Young Persons and Their Families Act 1997* (Tas) s 14(6).

¹⁰⁴ *Children, Young Persons and Their Families Act 1997* (Tas) s 14(1)(i)–(j).

¹⁰⁵ *Children, Young Persons and Their Families Act 1997* (Tas) s 3(1) (definition of 'child care' and 'child care service').

VICTORIA

Historical background

5.69 In 1988, the Law Reform Commission of Victoria recommended the introduction of mandatory reporting of child sexual abuse.¹⁰⁶ It considered that this would encourage reporting by persons who might otherwise be reluctant to act, out of reasons arising from their own self-interest.¹⁰⁷ However, the recommendation was not implemented.

5.70 A broader review of child protection followed and, in its 1993 report, that review recommended the introduction of mandatory reporting for the physical and sexual abuse of children.¹⁰⁸ A number of reasons were given for introducing mandatory reporting, including that it would: redress the lower reporting rates of physical and sexual abuse in Victoria; formalise responsibility and remove choice from mandated professionals (who would have a legal responsibility to report in addition to the moral and social responsibility to do so); raise general community awareness of child abuse; and assert the principle that child protection is the responsibility of everyone in society.¹⁰⁹ However, it was also noted in the report that 'mandatory reporting is but one of the weapons to be employed in the fight against child abuse' and that its significance or importance should not be exaggerated or over-emphasised in isolation.¹¹⁰

5.71 It was recommended that the duty to report should apply to medical practitioners, psychiatrists, nurses, school teachers, the operators, owners and professional employees of children's service centres (including kindergartens), psychologists, police officers, probation officers, youth parole officers, persons working as youth and child care workers for the department, and qualified social workers, welfare workers and youth workers who are working in the health, education or community or welfare services field. These groups were selected 'as they are the groups considered to have the most significant professional involvement with children and most likely to come into contact with child abuse'.¹¹¹ However, it was also recommended that mandatory reporting should be implemented in stages, 'to enable the particular professional groups to be adequately briefed beforehand of their obligations', and to 'spread over a period of time the anticipated increase in the number of notifications and thus enable protection services to meet the additional work load on a sound, professional, basis'.¹¹²

5.72 Mandatory reporting was first introduced in Victoria in 1993. The legislation required medical practitioners, nurses and police, and from July 1994, teachers and school principals, to report the suspected serious physical or sexual abuse of

¹⁰⁶ Law Reform Commission of Victoria, *Sexual Offences against Children*, Report No 18 (1988) 73, [176].

¹⁰⁷ Ibid 73 [175].

¹⁰⁸ Justice Fogarty, *Protective Services for Children in Victoria*, Report (1993).

¹⁰⁹ Ibid 114.

¹¹⁰ Ibid 115.

¹¹¹ Ibid 116.

¹¹² Ibid 118.

children.¹¹³ Those provisions were replaced by the *Children, Youth and Families Act 2005* (Vic).

Current law

5.73 Section 184(1) of the *Children, Youth and Families Act 2005* (Vic) applies to a mandatory reporter who, in the course of his or her profession or carrying out the duties of his or her office, position or employment, forms the belief on reasonable grounds that a child¹¹⁴ is in need of protection on the ground that the child has suffered, or is likely to suffer, significant harm as a result of physical injury or sexual abuse, and the child's parents have not protected, or are unlikely to protect, the child from harm of that type. In those circumstances, a mandatory reporter must report that belief and reasonable grounds to the Secretary as soon as practicable after forming the belief.

5.74 The following persons are mandatory reporters for the purposes of the Act:¹¹⁵

- a registered medical practitioner, a nurse, or a midwife;
- a person who is registered as a teacher, or who has been granted permission to teach, under the *Education and Training Reform Act 2006* (Vic);
- the principal of a Government school or a non-Government school;
- a police officer; and
- on and from the relevant date:
 - the proprietor of, or a person with a post-secondary qualification in the care, education or minding of children who is employed by a children's service to which the *Children's Services Act 1996* (Vic) applies or a person who is a nominee within the meaning of that Act for the children's service;
 - the approved provider or nominated supervisor of, or a person with a post-secondary qualification in the care, education or minding of children who is employed or engaged by an education and care service within the meaning of the *Education and Care Services National Law* (Victoria);
 - a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field;

¹¹³ See *Children and Young Persons (Further Amendment) Act 1993* (Vic), amending the *Children and Young Persons Act 1989* (Vic) (repealed).

¹¹⁴ In this case, a 'child' is a person who is under the age of 17 years or, if a protection order, a child protection order within the meaning of Schedule 1 or an interim order within the meaning of that Schedule continues in force in respect of him or her, a person who is under the age of 18 years: *Children, Youth and Families Act 2005* (Vic) s 3(1) (definition of 'child').

¹¹⁵ *Children, Youth and Families Act 2005* (Vic) s 182.

- a person employed under Part 3 of the *Public Administration Act 2004* (Vic) to perform the duties of a youth and child welfare worker;
- a registered psychologist;
- a youth justice officer;
- a youth parole officer;
- a member of a prescribed class of persons.

5.75 ‘The relevant date’, in relation to a person or class of persons referred to in that paragraph, means the date fixed for the purposes of that paragraph by an Order made by the Governor in Council and published in the Government Gazette.¹¹⁶ However, no orders have yet been made fixing the relevant date and therefore these categories of professionals remain non-mandated.¹¹⁷

5.76 A penalty of 10 penalty units applies if a mandatory reporter fails to make a report as required.¹¹⁸ However, it is a defence for the person charged to prove that he or she honestly and reasonably believed that all of the reasonable grounds for his or her belief had been the subject of a report to the Secretary made by another person.¹¹⁹

5.77 A belief is a belief on reasonable grounds if a reasonable person practising the profession or carrying out the duties of the office, position or employment, as the case requires, would have formed the belief on those grounds.¹²⁰

5.78 Section 162(1) of that Act provides that a child is ‘in need of protection’ if any of the following grounds exist:¹²¹

- (a) the child has been abandoned by his or her parents and after reasonable inquiries—
 - (i) the parents cannot be found; and
 - (ii) no other suitable person can be found who is willing and able to care for the child;
- (b) the child’s parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;
- (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child’s parents have not protected, or are unlikely to protect, the child from harm of that type;

¹¹⁶ *Children Youth and Families Act 2005* (Vic) s 182(2).

¹¹⁷ See further [5.83] ff below.

¹¹⁸ *Children, Youth and Families Act 2005* (Vic) s 184(1).

¹¹⁹ *Children, Youth and Families Act 2005* (Vic) s 184(2).

¹²⁰ *Children, Youth and Families Act 2005* (Vic) s 184(4).

¹²¹ *Children, Youth and Families Act 2005* (Vic) s 162(1).

- (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.

5.79 A report does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made, and people who report under this provision are protected from liability provided that the report is made in good faith.¹²²

5.80 Victoria has also recently introduced a new offence for failure to disclose child sexual abuse, which is distinct from the mandatory reporting scheme.¹²³ The offence provides that any adult (aged 18 and over) who holds a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child (aged under 16) must disclose that information to police (unless they have a reasonable excuse).¹²⁴

Application to the ECEC sector

5.81 In Victoria, the mandatory reporting provision applies to the following persons, among others, on and from the relevant date:¹²⁵

- the proprietor of, or a person with a post-secondary qualification in the care, education or minding of children who is employed by a children's service to which the *Children's Services Act 1996* (Vic) applies or a person who is a nominee within the meaning of that Act for the children's service; and
- the approved provider or nominated supervisor of, or a person with a post-secondary qualification in the care, education or minding of children who is

¹²² *Children, Youth and Families Act 2005* (Vic) s 189.

¹²³ The new offence came into force on 27 October 2014. It was introduced as part of the *Crimes Amendment (Protection Children Act) Act 2014* (Vic) in response to a recommendation from the report of the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations: See further Parliament of Victoria, Family and Community Development Committee, *Inquiry into the Handling of Child Abuse by Religious and Other Organisations: Betrayal of Trust* (2013).

¹²⁴ See *Crimes Act 1958* (Vic) s 327. The penalty provided in the Act is 3 years imprisonment. This offence differs from the mandatory reporting requirement under the *Children, Youth and Families Act 2005* (Vic) in that: it applies to all adults (not just certain professionals who work with children); it is limited to the reporting of sexual abuse (whereas mandatory reporting applies to suspected physical and sexual abuse); and it requires the crime to be disclosed to police (instead of to Child Protection).

¹²⁵ *Children Youth and Families Act 2005* (Vic) ss 182(1)(f),(fa). 'The relevant date' means the date fixed for the purposes of that paragraph by an Order made by the Governor in Council and published in the Government Gazette: *Children Youth and Families Act 2005* (Vic) s 182(2). As no Order has yet been made to fix the relevant date, these categories effectively remain non-mandated. See [5.75] above.

employed or engaged by an education and care service within the meaning of the *Education and Care Services National Law* (Victoria).¹²⁶

5.82 In its 2012 report, the Inquiry into Protecting Victoria's Vulnerable Children considered that the provision should be limited in this way to maintain its original policy focus:¹²⁷

the scope of children's services covered by the *Children's Services Act* has broadened since the enactment of the mandatory reporting provisions. If section 182(1)(f) were to be gazetted in its current form, the category of child care workers covered by the [Children Youth and Families] Act and under section 3 of the *Children's Services Act* would be any child care worker employed by any child-minding facility for four or more children aged under 13 years. This would include not only child care centres, but also smaller child-minding facilities such as those attached to shopping centres and gymnasiums and family day care.

The Inquiry considers that in order to maintain the original policy focus of the mandatory reporting provision, amendments will be required to both the [Children Youth and Families] Act and the *Children's Services Act* to ensure that the types of child-care professionals that should be the subject of the reporting requirement are licensed proprietors of, and qualified employees who are managers or supervisors of, a children's service facility that is a long day care centre.

5.83 As noted above, no relevant date has been set for the commencement of these provisions. The Inquiry into Protecting Victoria's Vulnerable Children considered that this was largely due to concerns that, if all professions were mandated, 'a spike in reporting numbers would overwhelm the system'.¹²⁸

5.84 However, the Inquiry went on to note that 'all these reporting categories were chosen for their particular expertise in and window into the lives of children'.¹²⁹ It concluded that the remaining categories of reporters should be progressively gazetted to strengthen the protection of children, while preventing unmanageable spikes in reports.

5.85 The Inquiry observed that 'the expansion of reporters will create particular challenges in implementation both in a global sense and in each category of reporters'. In relation to the ECEC sector, it observed that while child care workers have frequent contact with children, they might lack the expertise to recognise indicators of physical and sexual abuse.¹³⁰

While child care workers have frequent contact with infants and young children, signs of physical and sexual abuse in infants and young children are difficult to detect and are often only accurately assessed by paediatricians.

Child care workers are unlikely to receive targeted training on mandatory reporting in the course of their qualifications, as qualifications are attained

126 This excludes volunteers.

127 The Hon P Cummins, Emeritus Professor D Scott OAM and Mr Bill Scales AO, *Protecting Victoria's Vulnerable Children Inquiry*, Report (2012) vol 2, 349.

128 Ibid 348.

129 Ibid.

130 Ibid.

through courses of shorter duration than many other mandated professionals, with less ongoing training required.

5.86 The Inquiry suggested that ‘clear and specific guidelines in what constitutes a serious concern may assist child care workers in their duty as mandatory reporters’.¹³¹

5.87 The Inquiry also noted that there has been increasing regulation over, and professionalisation of, the provision of children’s services.¹³²

The Inquiry notes that section 182(1)(f) of the [Children Youth and Families] Act has not been amended since its enactment. However, there have been a number of amendments to the *Children’s Services Act 1996* in the intervening period reflecting a greater degree of regulation over, and professionalisation of, the provision of children’s services in Victoria. For example, when mandatory reporting was first introduced, only managers and supervisors of children’s services had a post-secondary qualification. Under the current *Children’s Services Act*, all child care workers must have a post-secondary qualification.

WESTERN AUSTRALIA

Historical background

5.88 Western Australia was the last state to introduce mandatory reporting,¹³³ having favoured the voluntary reporting system and the facilitation of reporting through protocols and procedures.¹³⁴ In 2008, a mandatory reporting law was introduced requiring teachers, doctors, nurses and police to report the sexual abuse of children.¹³⁵ The government considered that:¹³⁶

children are more likely to disclose sexual abuse to doctors, nurses, midwives, teachers and police officers and that doctors, nurses and midwives are in the best position to identify clinical signs of sexual abuse. Accordingly, these professional groups will now be required to report. The bill is a significant commitment by the state government to protect children from the scourge of sexual abuse.

131 Ibid.

132 Ibid 349.

133 *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* (WA), amending the *Children and Community Services Act 2004* (WA).

134 S Gordon et al, *Putting the Picture Together: Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Report, (2002) [4.1], citing C Goddard, *Child Abuse and Child Protection: A Guide for Health, Education and Welfare Workers* (1996) 100.

135 *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* (WA), amending the *Children and Community Services Act 2004* (WA).

136 Western Australia, *Parliamentary Debates*, Legislative Council, 8 April 2008, 1904c–1905a (Hon Sue Ellery, Minister for Child Protection).

Current law

5.89 The *Children and Community Services Act 2004* (WA) places a duty on certain people to report the sexual abuse of children.¹³⁷

5.90 'Sexual abuse', in relation to a child, includes sexual behaviour in circumstances where:¹³⁸

- (a) the child is the subject of bribery, coercion, a threat, exploitation or violence; or
- (b) the child has less power than another person involved in the behaviour; or
- (c) there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour.

5.91 A doctor, nurse, midwife, police officer or teacher who believes on reasonable grounds that a child has been the subject of sexual abuse (that occurred on or after commencement day), or is the subject of ongoing sexual abuse, and who forms the belief in the course of the person's work (whether paid or unpaid) must report the belief as soon as practicable after forming the belief.¹³⁹

5.92 The report must be made to the CEO, a person approved by the CEO, or a person who is a member of a class of persons approved by the CEO.¹⁴⁰

5.93 This obligation is stated to be in addition to, and does not affect, any other function that the person has in respect of the child in the course of the person's work as a doctor, nurse, midwife, police officer or teacher.¹⁴¹

5.94 Failing to make a report is an offence, and the penalty is a fine of \$6000.¹⁴²

5.95 It is a defence for the person charged to prove that he or she honestly and reasonably believed that:¹⁴³

- (a) all of the reasonable grounds for his or her belief were the subject of a report made by another person; or
- (b) the CEO had caused, or was causing, inquiries to be made under section 31 about the child's wellbeing; or

¹³⁷ A 'child' means a person who is under 18 years of age: *Children and Community Services Act 2004* (WA) s 3 (definition of 'child').

¹³⁸ *Children and Community Services Act 2004* (WA) s 124A (definition of 'sexual abuse').

¹³⁹ See further *Children and Community Services Act 2004* (WA) s 124B(1); see also s 124A (definition of 'doctor', 'nurse', 'midwife' and 'teacher').

¹⁴⁰ *Children and Community Services Act 2004* (WA) s 124B(2).

¹⁴¹ *Children and Community Services Act 2004* (WA) s 124B(4).

¹⁴² *Children and Community Services Act 2004* (WA) s 124B(1).

¹⁴³ *Children and Community Services Act 2004* (WA) s 124B(3).

- (c) the CEO had taken, or was taking, action under section 32 in respect of the child's wellbeing.

Application to the ECEC sector

5.96 The requirement to report child sexual abuse applies to teachers; that is, a person who is registered under part 3 of the *Teacher Registration Act 2012* (WA), who is a member of the teaching staff delivering or administering an educational programme¹⁴⁴ at an educational venue.¹⁴⁵ An 'educational venue' includes:

- a kindergarten,¹⁴⁶
- a child care centre under the *Child Care Services Act 2007* (WA) that provides education and care on a regular basis to children under 13 years of age,¹⁴⁷ or
- a place where a centre-based service as defined under the Education and Care Services National Regulations 2012 operates.¹⁴⁸

5.97 The requirement does not extend to employees who provide care in a child care centre (who are not engaged or employed to teach at that centre). It also does not apply to teacher's aides, teacher's assistants and student teachers or unpaid volunteers,¹⁴⁹ except to the extent that may be prescribed by regulation.¹⁵⁰

COMMONWEALTH

5.98 Child Protection is the responsibility of states and territories. However, section 67ZA of the *Family Law Act 1975* (Cth) requires certain court personnel, family counsellors and family dispute resolution practitioners or arbitrators to report suspected child abuse.¹⁵¹

5.99 The provision applies to the following people in the course of performing their duties or functions, or exercising powers:

¹⁴⁴ An 'educational programme' means 'an organised set of learning activities designed to enable a student to develop knowledge, understanding, skills and attitudes relevant to the student's individual needs': *Teacher Registration Act 2012* (WA) s 3 (definition of 'educational programme').

¹⁴⁵ *Children and Community Services Act 2004* (WA) s 124A (definition of 'teacher'); *Teacher Registration Act 2012* (WA) s 3 (definition of 'teach' and 'educational venue'), pt 3.

¹⁴⁶ This includes both kindergartens at a school and community kindergartens (an alternative to kindergartens offered at a school): *Teacher Registration Act 2012* (WA) s 3 (definition of 'educational venue'); *School Education Act 1999* (WA) s 4, pt 5.

¹⁴⁷ *Teacher Registration Act 2012* (WA) s 3 (definition of 'educational venue'); *Child Care Services Act 2007* (WA) s 4.

¹⁴⁸ *Teacher Registration Act 2012* (WA) s 3 (definition of 'educational venue'); *Teacher Registration (General) Regulations 2012* (WA) r 5.

¹⁴⁹ *Teacher Registration Act 2012* (WA) s 3 (definition of 'teach').

¹⁵⁰ An unpaid volunteer is teaching if the volunteer is solely or principally responsible for the delivery of, and the assessment of student participation in, an educational programme designed to implement a curriculum referred to in reg 6; or the volunteer is administering an educational programme designed to implement a curriculum referred to in reg 6 and is solely or principally responsible for its administration: see *Teacher Registration (General) Regulations 2012* (WA) reg 7.

¹⁵¹ In relation to the Family Court of Western Australia, see *Family Court Act 1997* (WA) s 160.

- the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia;
- the Registrar or a Deputy Registrar of the Family Court of Western Australia;
- a Registrar of the Federal Circuit Court of Australia;
- a family consultant;
- a family counsellor;
- a family dispute resolution practitioner;
- an arbitrator; or
- a lawyer independently representing a child's interests.

5.100 Section 67ZA(2) provides that, if the person has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

5.101 'Abuse', in relation to a child, means:¹⁵²

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- (c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- (d) serious neglect of the child.

5.102 In addition, section 67ZA(3) provides that, if the person has reasonable grounds for suspecting that a child has been, or is at risk of being, ill-treated, or exposed or subjected to behaviour which psychologically harms the child, the person may notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

5.103 A 'prescribed child welfare authority', in relation to abuse of a child, means:

- (a) if the child is the subject of proceedings under Part VII in a State or Territory — an officer of the State or Territory who is responsible for the administration of the child welfare laws of the State or Territory, or some other prescribed person; or
- (b) if the child is not the subject of proceedings under Part VII — an officer of the State or Territory in which the child is located or is believed to be

¹⁵² *Family Law Act 1975* (Cth) s 4 (definition of 'abuse').

located who is responsible for the administration of the child welfare laws of the State or Territory, or some other prescribed person.

5.104 If the person knows that the authority has previously been notified about the abuse or risk, the person may notify the prescribed child welfare authority but is not required to.

5.105 Notice can be given orally. However, a written notice confirming the oral notice is to be given to the prescribed child welfare authority as soon as practicable after the oral notice.

5.106 If the person notifies a prescribed child welfare authority, the person may make such disclosures of other information as the person reasonably believes are necessary to enable the authority to properly manage the matter the subject of the notification.

Chapter 6

Aspects of Mandatory Reporting Laws

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INTRODUCTION

6.1 The general principles behind mandatory reporting laws are that:¹

many cases of severe child abuse and neglect occur in private, cause substantial harm to extremely vulnerable children, and are unlikely to be brought to the attention of helping agencies. Governments have chosen — as a social policy and public health measure — to enact these laws to draw on the capacity of professionals who typically deal with children in the course of their work (such as teachers, police, doctors and nurses) and who encounter cases of serious child abuse and neglect, to report these situations to helping agencies. Generally, the primary aim is to protect the child from significant harm. The secondary aim is to assist the child's parents or caregivers to decrease the likelihood of recurrence.

6.2 However, there is debate about the benefits and disadvantages of mandatory reporting laws and their overall effectiveness in protecting children.

ARGUMENTS FOR MANDATORY REPORTING

6.3 The ultimate aim of mandatory reporting is to protect children from abuse. Mandatory reporting laws seek to achieve this by facilitating the timely identification of cases of child abuse that might otherwise remain undetected, and to enable the provision of appropriate responses and services to protect the child.

6.4 Mandatory reporting laws are founded on three main assumptions:²

¹ B Mathews and K Walsh, 'Mandatory reporting laws' in Hayes, Alan & Higgins (eds), *Families, Policy and the Law: Selected Essays on Contemporary Issues for Australia* (Australian Institute of Family Studies, 2014) 131, 133.

² A Takis, 'The Mandatory Reporting Debate' (2008) 8 *Macquarie Law Journal* 125, 132.

first, that children are unable to protect themselves and need others to act for them, second, that abusive parents generally will not request assistance voluntarily, and third that persons who deal directly with children are best placed to detect abuse or neglect.

Enables timely detection of child abuse

6.5 It is considered that the main advantage of mandatory reporting laws is that, by requiring persons other than the child or the child's family to report child abuse to the appropriate authorities, cases that might otherwise remain undetected are brought to the attention of appropriate agencies.³ This is especially important in relation to infants and young children who are vulnerable and may be unable (for example, because they are preverbal, immobile and/or dependent on caregivers), or unlikely to seek help for themselves (for example, in circumstances where the parent or primary caregiver is the abuser, or is unable to protect the child).⁴

Requires certain professionals to detect child abuse

6.6 As child abuse usually occurs in private, the protection of children relies on concerns being brought to the attention of appropriate agencies. Professionals such as doctors and teachers are considered to be particularly well-placed to detect child abuse, because their work brings them in direct and frequent contact with children and they have appropriate knowledge, experience and training. By requiring such professionals to report, mandatory reporting laws draw on their capacity to recognise and report child abuse.⁵ These laws also seek to overcome any reluctance professionals may have to report by protecting professionals from liability for reports that are made in good faith.⁶

Raises public awareness

6.7 Mandatory reporting laws are seen as having an important role in raising public awareness about child abuse and in sending a strong message that child abuse is not tolerated by society.⁷ However, it has also been observed that mandatory reporting should not be introduced 'simply to create a symbol', but that it 'is only warranted if there are reasons for believing it will contribute significantly to improving child protection and to reducing the level of sexual abuse of children'.⁸

³ B Mathews and D Bross, 'Mandatory Reporting is Still a Policy with Reason: Empirical Evidence and Philosophical Grounds' (2008) 32 *Child Abuse & Neglect* 511; A Takis, 'The Mandatory Reporting Debate' (2008) 8 *Macquarie Law Journal* 125, 131.

⁴ B Mathews, 'Mandatory Reporting Laws and Identification of Child Abuse and Neglect: Consideration of Differential Maltreatment Types, and a Cross-Jurisdictional Analysis of Child Sexual Abuse Reports' (2014) 3 *Social Sciences* 460, 461–2; B Mathews, 'Exploring the Contested Role of Mandatory Reporting Laws' in M Freeman (ed), *Law and Childhood Studies Current Legal Issues* (Oxford University Press, 2011) vol 14, 302; A Takis, 'The Mandatory Reporting Debate' (2008) 8 *Macquarie Law Journal* 125, 131.

⁵ A Takis, 'The Mandatory Reporting Debate' (2008) 8 *Macquarie Law Journal* 125, 133.

⁶ J Yelas, 'Mandatory Reporting of Child Abuse and the Public/Private Distinction' (1994) 7(3) *Auckland University Law Review* 781, 788.

⁷ See, eg, Law Reform Commission of Victoria, *Sexual Offences against Children*, Report No 18 (1988) [172].

⁸ Ibid [173].

Recognises and protects children's rights

6.8 Mandatory reporting laws are also seen as important in recognising and protecting a child's right to personal safety.⁹ It has been observed that the mandatory reporting debate 'must also be considered in the context of a child's needs', which are 'informed by a child's rights-based approach including the right of a child to be protected from abuse and harm of all kinds'.¹⁰

6.9 Australia is a signatory to the United Nations Convention on the Rights of the Child, which includes rights against abuse and neglect.¹¹ In particular, Article 19 provides that:¹²

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

CRITICISMS OF MANDATORY REPORTING

Causes overreporting

6.10 The main criticism of mandatory reporting is that it causes overreporting, and that the resulting increase in unsubstantiated notifications puts a strain on resources and detracts from the ability to respond to legitimate serious cases of child abuse.¹³

⁹ See, eg, A Takis, 'The Mandatory Reporting Debate' (2008) 8 *Macquarie Law Journal* 125, 133; B Mathews and D Bross, 'Mandatory Reporting is Still a Policy with Reason: Empirical Evidence and Philosophical Grounds' (2008) 32 *Child Abuse & Neglect* 513–14.

¹⁰ Hon P Cummins, Emeritus Professor D Scott OAM and Mr B Scales AO, *Protecting Victoria's Vulnerable Children Inquiry*, Report (2012) vol 1, 347.

¹¹ United Nations Convention on the Rights of the Child [GA Res 44/25 (New York, 20 November 1989), entered into force 2 September 1990; entry into force for Australia 16 January 1991] arts 19, 34.

¹² Convention on the Rights of the Child [1991] ATS 4.

¹³ A Takis, 'The Mandatory Reporting Debate' (2008) 8 *Macquarie Law Journal* 125, 126; DJ Besharov, 'Child Protection: Past progress, present problems, and future directions' (1983) 17(2) *Family Law Quarterly* 151, 162.

Shifts the focus and resources of child protection to an investigative role

6.11 It is also argued that mandatory reporting shifts the focus and resources of child protection to an investigative role, at the expense of providing family support services and addressing underlying social, personal and financial problems.¹⁴

Negatively impacts on relationships with clients

6.12 Concerns have also been raised that the obligation to report can negatively impact on a professional's relationship with their client, as it directly conflicts with the duty of confidentiality.¹⁵ In the context of a therapeutic relationship with a psychiatrist, for example, it has been argued that mandatory reporting laws might discourage people from seeking help or otherwise disrupt the relationship in a way that does not serve the wider protection of children's best interests.¹⁶

Scope of laws may be expanded too far

6.13 Some commentators have argued that mandatory reporting laws should remain limited to the narrow scope that they were initially designed to address; namely, cases involving severe physical or sexual abuse where direct intervention (usually by removing the child from the situation) is clearly necessary to protect the child and prevent further harm.¹⁷ They argue that expanding the scope of these laws, for example by lowering the threshold for reporting to include less severe cases or other types of harm, widens the net too far and leads to a substantial increase in reports that burden the system and obscure the identification of severe cases.

Does not address underlying socio-economic problems

6.14 It has also been argued that many cases do not concern severe abuse, but are cases of neglect 'directly related to ability to cope with poverty'.¹⁸ In such cases, it is accepted that there may be 'a multiplicity of serious personal, social and economic problems', which must be addressed.¹⁹ Mandatory reporting schemes have been criticised as poorly adapted to address these underlying socio-economic causes and provide families with the help and support they need.²⁰

¹⁴ GB Melton, 'Mandated reporting: a policy without reason' (2005) 29 *Child Abuse and Neglect* 9; DJ Besharov, 'Child Protection: Past progress, present problems, and future directions' (1983) 17(2) *Family Law Quarterly* 151, 162.

¹⁵ A Takis, 'The Mandatory Reporting Debate' (2008) 8 *Macquarie Law Journal* 125, 142, 145; L Bell and P Tooman, 'Mandatory reporting laws: a critical overview' (1994) 8 *International Journal of Law and the Family* 337, 349–50.

¹⁶ P Budai, 'Mandatory reporting of child abuse: is it in the best interests of the child?' (1996) 30 *Australian and New Zealand Journal of Psychiatry* 794. See also J Yelas, 'Mandatory Reporting of Child Abuse and the Public/Private Distinction' (1994) 7(3) *Auckland University Law Review* 781, 790.

¹⁷ GB Melton, 'Mandated reporting: a policy without reason' (2005) 29 *Child Abuse and Neglect* 9, 11.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid 14.

DATA ON THE IMPACT OF MANDATORY REPORTING

6.15 As observed above, one of the main reasons for mandatory reporting is its role in case-finding and, in particular, in uncovering cases of child abuse that might otherwise remain hidden. On the other hand, the main criticism of mandatory reporting is that it leads to 'overreporting' in terms of unsubstantiated reports that burden the system and detract from the ability to respond to legitimate cases. This raises for consideration whether data supports either assertion.

6.16 One commentator has noted that issues of overreporting and underreporting/case-finding are linked:²¹

Child protective agencies are plagued simultaneously by the twin problems of under- and overreporting of child abuse and neglect. On one hand, many abused and neglected children go unreported because they are afraid to come forward on their own or they are overlooked by informed professionals. The price is great: Failure to report exposes children to serious injury and even death. On the other hand, a large proportion of reports are dismissed after investigations find insufficient evidence upon which to proceed. These cases, variously called 'unfounded', 'unsubstantiated', or 'not indicated', divert resources from already understaffed agencies, thus limiting their ability to protect children in real danger. In addition, such reports trigger what may be deeply traumatic experiences for all members of the families involved.

Does mandatory reporting cause overreporting?

6.17 Data from both the United States of America and Australia shows that the introduction of mandatory reporting laws (and the attendant publicity, education and training) leads to an increase in both substantiated and unsubstantiated reports.²²

raw descriptive data about report numbers and outcomes appear to show that reporting laws produce both desirable consequences (identification of severe cases) and problematic consequences (increased numbers of unsubstantiated reports).

6.18 An increase in the number of unsubstantiated reports is often cited as evidence of 'overreporting' caused by mandatory reporting laws.

6.19 However, commentators have cautioned against interpreting existing data in an overly simplistic way, noting a lack of detailed quantitative and qualitative data and the need for this to be rectified so that patterns of reporting can be analysed in more detail, including by different reporter groups (both mandated and non-mandated), by the type of abuse, and over time.²³

6.20 Others have argued that simply counting the number of notifications that are substantiated out of the total of all the notifications received does not of itself provide

²¹ DJ Besharov, 'Overreporting and Underreporting are Twin Problems', in DR Loseke, RJ Gelles and MM Cavanaugh (eds), *Current Controversies on Family Violence* (SAGE publications, 2nd ed, 2005) ch 18.

²² B Mathews, 'Exploring the Contested Role of Mandatory Reporting Laws' in M Freeman (ed), *Law and Childhood Studies Current Legal Issues* (Oxford University Press, 2011) vol 14, 304.

²³ B Mathews, 'Mandatory Reporting Laws and Identification of Child Abuse and Neglect: Consideration of Differential Maltreatment Types, and a Cross-Jurisdictional Analysis of Child Sexual Abuse Reports' (2014) 3 *Social Sciences* 460, 466 ff.

an accurate measure of the success or failure of such laws.²⁴ They assert that it is inaccurate to deem all unsubstantiated reports as indicative of 'overreporting'. Many unsubstantiated cases may in fact involve abuse or neglect, but lack either the evidence or degree of severity required to be recorded as substantiated. In addition, a large number of notifications are dealt with by means other than investigation (for example, by referral to police or family services or by giving other advice), and do therefore receive necessary services, even if not substantiated.²⁵ Finally, simply comparing the number of reports made to the number substantiated is unreliable because reports are recorded on the basis of one report per child, and does not account for re-reporting and multiple reports relating to the same child.²⁶

6.21 In 2008, the Special Commission of Inquiry into Child Protection Services in New South Wales concluded that 'evidence of a flood of reports with a reduction in outcomes, at least by reference to investigations and substantiations, is not evident'.²⁷

Does mandatory reporting assist in uncovering cases of child abuse?

6.22 While acknowledging the limitations of the available data, various Australian inquiries have concluded that mandatory reporting does increase the number of reports made by professionals who are required to do so.

6.23 In 1981, the Australian Law Reform Commission favoured the view that the introduction of compulsory reporting 'is likely, on the evidence, to be accompanied by a significant increase in reported cases of abuse'.²⁸

6.24 In 1988, the Law Reform Commission of Victoria examined the data available to it in order to assess the likely impact that the introduction of mandatory reporting for the first time might have in that State. In particular, it considered 'before-and-after' data in relation to the introduction of a requirement for teachers in New South Wales to report sexual abuse of children. The Law Reform Commission of Victoria concluded that the research suggested that mandatory reporting does increase the number of reports made by those professionals who are mandated to do so (due to the legal duty imposed on them as well as the training that accompanies the imposition of the duty). Interestingly, it also found that the number of reports made by non-mandated sources increased, due to community education campaigns

24 See, eg, B Drake and M Jonson Reid, 'A Response to Melton based on the best available data' (2007) 31 *Child Abuse and Neglect* 343.

25 B Mathews, 'Exploring the Contested Role of Mandatory Reporting Laws' in M Freeman (ed), *Law and Childhood Studies Current Legal Issues* (Oxford University Press, 2011) vol 14, 334–5; B Mathews, 'Protecting Children from Abuse and Neglect' in G Monahan and L Young, *Children and the Law in Australia* (LexisNexis Butterworths, 2008) 204, 213.

26 B Mathews, 'Exploring the Contested Role of Mandatory Reporting Laws' in M Freeman (ed), *Law and Childhood Studies Current Legal Issues* (Oxford University Press, 2011) vol 14, 304, 333.

27 The Hon James Wood AO QC, *Special Commission of Inquiry into Child Protection Services in New South Wales*, Report (2008) vol 1, 181.

28 Australian Law Reform Commission, *Child Welfare*, Report No 18 (1981) [391], although it also observed that that 'it is doubtful whether it could ever be conclusively proved that compulsory reporting causes more cases of abuse to come to notice' and that 'clearly, other factors, such as publicity or the provision of services, may be relevant to any change in the number of cases reported'.

directed to the public at large and which usually accompany the introduction of such laws.²⁹

6.25 In contrast, a 2004 review of child protection in the Australian Capital Territory concluded that mandatory reporting laws should not be expanded in the context of a system that was already insufficiently resourced.³⁰ In relation to the impact of mandatory reporting, it was found that:³¹

It is not known how effective mandatory reporting is in informing the Department of child abuse and generating an appropriate departmental response. There is no clear evidence that mandatory reporting provides greater protection for children.

6.26 An extensive examination of the evidential basis for arguments for and against mandatory reporting was undertaken in a 2002 report for the Western Australian Child Protection Council. It concluded overall that:³²

What mandatory reporting systems attempt to do is probably twofold. They attempt to convey a vitally important message that children should be protected, that governments believe this and that it is the duty of certain people to be vigilant about protecting children. Secondly, they attempt to compel people to report, record, investigate and remove children if they are at risk. There is considerable evidence that mandatory reporting increases reporting figures: indeed this is inevitable when one legislates for data collection. There is also evidence that the subjectivity plus the contextual variability for reporting means that an inordinate amount of time and money is spent in attempting to understand what figures mean rather than in looking after children and families. There is no evidence that mandatory reporting increases the quality, quantity or benefits to children who are 'at risk of harm' or to families who are vulnerable. Indeed there is some evidence that it does the reverse.

CONCLUSIONS

6.27 Although the available data on the impact of mandatory reporting laws is not conclusive, such laws have been accepted in Australia as an important component of the broader child protection system.

6.28 In particular, Inquiries in South Australia, New South Wales and Victoria have considered the merits of mandatory reporting laws and expressly recommended their retention as one part of child protection legislation.³³

²⁹ Law Reform Commission of Victoria, *Sexual Offences Against Children*, Report No 18 (1988) 53 ff.

³⁰ C Vardon (Commissioner for Public Administration), *The Territory as Parent: Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management*, Report (2004) Rec 6.1.

³¹ Ibid 118.

³² Dr M Harries and Assoc Prof M Clare, *Mandatory Reporting of Child abuse: Evidence and Options*, Report for the Western Australian Child Protection Council (University of Western Australia, 2002) 49.

³³ R Layton QC (Chair), Review of Child Protection in South Australia, *Our Best Investment: A State Plan to Protect and Advance the Interests of Children*, Report (2003) [10.2]–[10.6], Rec 5; The Hon James Wood AO QC, *Special Commission of Inquiry into Child Protection Services in New South Wales*, Report (2008) vol 1, 178; Hon P Cummins, Emeritus Professor D Scott OAM and Mr B Scales AO, *Protecting Victoria's Vulnerable Children Inquiry*, Report (2012) vol 1, 347.

6.29 The Special Commission of Inquiry into Child Protection Services in South Australia concluded in its 2003 Report that:³⁴

Mandatory reporting has significant support within the community across all professional groups as well as the wider community. The statutory requirement to report is seen as an obligation that should be upheld in law as part of broader social and community responsibility and is an effective means of ensuring that vulnerable children and young people are assessed, protected and supported.

6.30 In its 2008 Report, the Special Commission of Inquiry into Child Protection Services in New South Wales expressed the view that:³⁵

Mandatory reporting has the useful effect of overcoming privacy and ethical concerns by compelling the timely sharing of information where risk exists and of raising awareness among professionals working with children and young persons. There are other mechanisms by which professionals such as health workers and teachers are obliged to report, with the failure to do so sometimes carrying with it disciplinary consequences. To abolish mandatory reporting may leave such people obliged to report, but without the protections in the current [Act], and could also weaken the opportunity for interagency collaboration which the Inquiry considers essential for an effective child protection system.

6.31 The Inquiry into Protecting Victoria's Vulnerable Children considered in its 2012 report that:³⁶

The reason mandatory reporting remains required is that, unless specified professionals like doctors are required to report suspicions of maltreatment, severe cases of abuse that are inflicted in private on young children are less likely to come to the attention of helping agencies. As noted by the then Minister for Community Services when introducing the scheme in 1993, the primary policy basis for mandatory reporting is to use professionals who have significant contact with children and are most likely to be able to detect abuse to bring such to the attention of authorities. While there may be a range of systems and responses available to support children and young people who are the victims of abuse and to deal with the perpetrators of the abuse, the laws are designed to ensure that child physical and sexual abuse is, as much as is possible, not one of society's hidden problems.

6.32 At the same time, however, it has been recognised that mandatory reporting laws can not be considered in isolation and that their impact will ultimately depend on resourcing and the capacity of the child protection system to appropriately deal with and respond to reports.

6.33 In 1993, it was observed in a report on protective services for children in Victoria that:³⁷

³⁴ R Layton QC, Review of Child Protection in South Australia, *Our Best Investment: A State Plan to Protect and Advance the Interests of Children*, Report (2003) [10.2]–[10.6], Rec 50.

³⁵ The Hon James Wood AO QC, *Special Commission of Inquiry into Child Protection Services in New South Wales*, Report (2008) vol 1, 178.

³⁶ Hon P Cummins, Emeritus Professor D Scott OAM and Mr B Scales AO, *Protecting Victoria's Vulnerable Children Inquiry*, Report (2012) vol 1, 347.

³⁷ Mr Justice Fogarty, *Protective Services for Children in Victoria*, Report (1993), 119.

It can generally be said that there is now a wide public acceptance of mandatory reporting and the reasons for it. On the other hand, there is a level of anxiety amongst members of some of the mandated groups and concerns as to whether steps will be taken to ensure that it is introduced properly and that the existing service is not swamped by additional notifications with a consequent drop in the quality of the service provided for the protection of all children in Victoria.

6.34 It was also noted that the significance of a mandatory reporting scheme as a formalisation of moral and social responsibility to report protective concerns should not be considered in isolation, exaggerated or overemphasised.³⁸ It was also observed that it was an essential part of the government's responsibility to ensure the costs of implementation were met, noting that it would be 'tragic if the reform was jeopardised by the lack of modest, but essential funding' and 'there is little point in setting up a system which encourages increased notifications if the overall system is unable to cope with that increase'.³⁹

6.35 Overall, criticisms of mandatory reporting laws relate primarily to issues regarding their implementation, rather than the underlying principles.⁴⁰ As one commentator has noted, 'problems that stem from inadequate resourcing do not inform a principled argument against mandatory reporting'.⁴¹

6.36 Concerns of overreporting, for example, relate to issues such as the training and education of mandatory reporters about what is and is not reportable, the capacity of departments to adequately screen and respond to notifications, and the availability of services.

6.37 Mandatory reporting laws must be adequately resourced, supported by appropriately skilled staff and services, and accompanied by relevant training and education.⁴²

6.38 Ultimately, these laws must strike the proper balance between promoting reports that enable cases of child abuse to be detected and responded to, while not overwhelming the system with over-reporting of unsubstantiated reports.

38 Ibid 114–15.

39 Ibid 133.

40 Law Reform Commission of Victoria, *Sexual Offences Against Children*, Report No 18 (1988) [155].

41 B Mathews, 'Protecting Children from Abuse and Neglect' in G Monahan and L Young, *Children and the Law in Australia* (LexisNexis Butterworths, 2008) 204, 225.

42 See, eg, Law Reform Commission of Victoria, *Sexual Offences Against Children*, Report No 18 (1988) [178]; The Hon James Wood AO QC, *Special Commission of Inquiry into Child Protection Services in New South Wales*, Report (2008) vol 1, 181.

Chapter 7

Reporting Data

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INTRODUCTION

7.1 This chapter outlines relevant child protection reporting data and general trends in relation to who makes reports. The data collected does not, however, distinguish between voluntary and mandatory reporting.

QUEENSLAND REPORTING DATA

Summary of intake data by primary source, 2011–2012

7.2 The Department of Communities, Child Safety and Disability Services (Qld) collects data on the number of reports received by Child Safety (referred to as 'intakes'), among other things.¹ The most recent data published on the department's website is for the period from 1 July 2011 to 30 June 2012.

7.3 The 'Intake type by Primary Source by Substantiated Status' includes reports of suspected harm, or risk of harm, to a child or unborn child by source of intake information (where notification is recorded during the period, investigation and assessment has been finalised and the investigation outcome was recorded as substantiated within two months after the end of the reference period, 2011–12).

7.4 If a report relates to more than one child, a notification or child concern report is counted for each child. If a child was subject to more than one report during the period, a notification or child concern report is counted for each instance.²

¹ The intake phase is the initial decision making point where the department determines its response to reports of suspected child abuse and neglect. For an explanation of the child protection system framework, see [3.34] ff above.

² Queensland Government, Qld Government Data, 'Intake type by Primary Source by Substantiated Status' <<https://data.qld.gov.au/dataset/child-safety-services-intakes/resource/2da7f094-1343-4b71-8d1f-b4ae260c9d0c>>.

7.5 In the period from 2011–12, 11 4503 intakes³ were recorded by the department.⁴ Of these, 603 were made by child care personnel, consisting of 423 child concern reports⁵ and 180 'notifications'.⁶ Of the 180 notifications, 40 were substantiated.⁷

7.6 While there is no statutory mandatory reporting requirement under the Queensland child protection legislation for service providers in the ECEC sector, the available data shows that these service providers have reported a small but significant number of child concern reports and notifications. Compared to other groups which have mandatory reporting requirements, the numbers of reports made by service providers in the ECEC sector are much smaller. However, the numbers of notifications that are substantiated tend to be at similar rates to those of the mandatory reporting groups.

7.7 The data is set out in the table on the following page.

³ 'Intakes' refers to all reports of suspected harm received by Child Safety: see [3.36] above.

⁴ Queensland Government, *Qld Government Data*, 'Intake type by Primary Source by Substantiated Status' <<https://data.qld.gov.au/dataset/child-safety-services-intakes/resource/2da7f094-1343-4b71-8d1f-b4ae260c9d0c>>.

⁵ A 'child concern report' is recorded when the information received does not reach the threshold for a notification: see [3.40] above.

⁶ A 'notification' is recorded when the information received indicates harm or risk of harm to a child, and a reasonable suspicion the child is in need of protection: see [3.37] above.

⁷ A notification is 'substantiated' if it is assessed that the child is in need of protection (that is, the child has suffered, is suffering, or is at unacceptable risk of suffering significant harm, and does not have a parent able and willing to protect the child from the harm): see [3.46] above.

Primary Source	Total Intakes	Child Concern Report*	Notifications**	Substantiated Notifications***
Police	42 303	34 353	7950	2528
Health sources	14 529	10 370	4159	1433
School personnel	13 551	10196	3355	946
Departmental officer	3550	2267	1283	510
Non-government organisation	4623	3339	1284	403
Parent or guardian	13 424	11 810	1614	494
Sibling	388	260	128	30
Other relative	6505	4983	1522	464
Friend or neighbour	6087	4685	1402	346
Child care personnel	603	423	180	40
Subject child	389	231	158	59
Anonymous	3378	2697	681	162
Other	4825	3766	1059	253
Not stated	348	300	48	13
Total	114 503	89 680	24 823	7681

Table 7-1: Breakdown of Intakes⁸

* A 'child concern report' is recorded when the information received does not reach the threshold for a notification.

** A 'notification' is recorded when the information received indicates harm or risk of harm to a child, and a reasonable suspicion the child is in need of protection.

*** A notification is 'substantiated' if it is assessed that the child is in need of protection (that is, the child has suffered, is suffering, or is at unacceptable risk of suffering significant harm, and does not have a parent able and willing to protect the child from the harm).

Intake trends

7.8 The department has identified some general trends in relation to intakes for the period from 2009–10 to 2013–14.⁹

7.9 Based on the recorded data, the department found that there has been an increase in the total intakes over the past four years:¹⁰

⁸ This table is based on material from the Department of Communities, Child Safety and Disability Services and covers the period from 1 July 2011 to 30 June 2012: see Queensland Government Data, *Intake type by Primary Source by Substantiated Status* <<https://data.qld.gov.au/dataset/child-safety-services-intakes/resource/bc175bdd-2c6b-47b6-8f9d-8e518c9d6b9d>>.

⁹ Department of Communities, Child Safety and Disability Services (Qld), 'Intake phase' (2 October 2014) <<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase>>.

¹⁰ Ibid.

From 2009–10 to 2013–14 total intakes increased by 27.9 per cent, from 101 356 to 129 615. The number of child concern reports increased by 33.8 per cent over this period while the number of notifications increased by only 6.3 per cent.

7.10 The department stated that the growth in intakes was ‘due in part to increased reporting obligations for professionals working with children and to raised community awareness’.¹¹ In particular, it found that there had been an increase in the number of intakes from school personnel and child care centres:¹²

Over the past year the number of intakes has increased by 0.8 per cent from 128 534 in 2012–13 to 129 615 in 2013–14. The number of intakes received from police decreased from 48 890 in 2012–13 to 48 790 (0.2 per cent). There was a significant increase in intakes from school personnel (14.3 per cent). The number of intakes from child care centres also increased by 10.1 per cent from 911 in 2012–13 to 1 003 in 2013–14.

7.11 The main sources of intakes in 2013–14 were police (37.6%), followed by school personnel (14.7%), parents/guardians (11.6%), and health services (11.2%).¹³

NATIONAL REPORTING DATA

7.12 The Australian Institute of Health and Welfare (‘AIHW’) collects statistical information on state and territory child protection and support services, including rates of notifications, investigations and substantiations.¹⁴

7.13 The national child protection data collection only includes notifications that are deemed to require further action (also referred to as ‘child protection notifications’), where an investigation is undertaken. A notification is ‘substantiated’ if, after investigation, it is determined that there is reason to believe that the child has been, is being, or is likely to be, abused or neglected.

7.14 The number of notifications and the percentage of those notifications investigated are not directly comparable across jurisdictions, because of the broad variation in child protection legislation and policies.¹⁵ However, some national trends and patterns have been identified by the AIHW.

National trends

7.15 In Australia in 2013–14, there were 304 097 notifications involving 198 966 children (persons under the age of 18). Of the notifications, 137 585 (45%) were

11 Ibid.

12 Ibid.

13 Ibid.

14 Australian Institute of Health and Welfare, ‘Child Protection Australia 201314’, *Child Welfare Series No 61* (Australian Government, Canberra, 2015).

15 Ibid 19.

investigated,¹⁶ with 54 438 substantiations (after investigation) relating to 40 844 children.¹⁷

7.16 The AIHW reported that the overall trend, since 2009–10, is that the numbers of notifications and substantiations have risen, while the number of investigations have dropped. The decline in investigations since 2009–10, coupled with a rise in substantiations, particularly over the past three years, has narrowed the gap between the number of investigations and substantiations.¹⁸

Notifications

7.17 The rate of children who were the subjects of notifications decreased from 37.2 per 1000 children in 2009–10 to 32.3 per 1000 in 2010–11. However, this downward trend then reversed between 2010–11 and 2013–14. The rate of children who were the subjects of notifications in 2013–14 (37.8 per 1000 children) returned to a level similar to 2009–10.¹⁹

Substantiated notifications

7.18 Over the five year period there has been a 31% increase in the number of children who were the subjects of substantiated notifications, rising from 31 295 in 2009–10 to 40 844 in 2013–14.²⁰ The AIHW said:²¹

Legislative changes, enhanced public awareness and inquiries into child protection processes, along with real rises in abuse and neglect could influence increases in the number of notifications and substantiations, and the children who were the subject of them. Additionally, recent increases could be related to an increased focus on providing statutory responses to those who are most likely to need intervention and protection. This may have resulted in a more targeted approach to investigations and a rise in the number of children who were the subjects of substantiations.

7.19 Substantiated notifications were more likely to be made for children in younger age groups. In particular, substantiated notifications were most likely to be made for infants (children aged under 1).²² The rate of substantiated notifications in relation to infants ranged from 7.4 per 1000 children in Western Australia to 42.8 in the Northern Territory. Overall, the Northern Territory rates were higher than other jurisdictions for all age categories, while Western Australia had the lowest rates for

¹⁶ The remaining 55% (166 512) were dealt with by other means, including referral to a support service.

¹⁷ Australian Institute of Health and Welfare, 'Child Protection Australia 2013–14', *Child Welfare Series No 61* (Australian Government, Canberra, 2015) 17, fig 3.1: Key notifications, investigations and substantiations statistics, 2013–14.

¹⁸ Ibid 27.

¹⁹ Ibid 28, fig 3.8.

²⁰ Ibid 28.

²¹ Ibid.

²² Ibid 22.

the 'less than 1' category and the Australian Capital Territory had the lowest rates for all other categories.²³

7.20 Across states and territories, rates of children who were the subjects of substantiated notifications have fluctuated over the past five years. Since 2009–10, rates have increased overall for all jurisdictions except for Tasmania and the Australian Capital Territory. The largest increase over this period was for the Northern Territory (from 16.7 per 1000 children in 2009–10 to 21.9 in 2013–14). Over the past 12 months, rates have risen in Victoria, Western Australia, South Australia and the Northern Territory and dropped in New South Wales, Queensland, Tasmania and the Australian Capital Territory.²⁴

Sources of notifications

7.21 For investigations in 2013–14, the most common source of notifications was police, followed by school personnel. Nationally, 1560 of 137 585 notifications (or 1%) came from child care personnel.

7.22 Direct comparisons in relation to the sources of notifications cannot be made across jurisdictions, due to differences in legislation relating to mandatory reporting and recording practices. However, the number of reports made by child care personnel in jurisdictions where reporting is mandatory (NSW, Tas, ACT, NT) remains much lower than the number received by other professionals who are required to report, such as police and school personnel. In this regard, although the number of reports made by child care personnel in Queensland is low compared to other categories of reporters, this is not necessarily out of step with the data in other jurisdictions.

7.23 Data on this from the Australian Institute of Health and Welfare is shown in the table on the following page.

²³ Ibid 22, Table 3.4: Rates of children aged 0–17 who were the subjects of substantiations of notifications received during 2013–14, by age group, states and territories (number per 1000 children).

²⁴ Ibid 29, Table A18.

Source of notification	NSW ²⁵	Vic	Qld	WA	SA ²⁶	Tas ²⁷	ACT	NT	Total
Police	11 863	6247	7048	3349	n/a	378	249	1764	30 898
School personnel	12 102	3778	3812	1894	n/a	278	167	740	22 771
Hospital/health centre	3739	72		500	n/a	0	205	771	5287
Parent/guardian	3316	1103	1332	814	n/a	33	40	82	6720
Non-government organisation	3603	2243	1228	n/a	n/a	5	187	291	7557
Sibling/other relative	3909	1195	1681	857	n/a	59	95	211	8007
Other ²⁸	2232	584	1080	1293	n/a	31	92	197	5509
Anonymous	4298	0	565	0	n/a	34	0	48	4945
Friend/neighbour	3181	662	1326	320	n/a	48	49	139	5725
Social worker	11 033	745		1438	n/a	455	19	19	13 709
Medical practitioner	1288	954	3791	552	n/a	41	11	88	6725
Departmental officer	2263	0	928	893	n/a	5	177	398	4664
Other health personnel	1835	1116		188	n/a	91	19	143	3392
Child care personnel	1007	196	271	53	n/a	10	6	17	1560
Subject child	168	0	153	64	n/a	1	11	1	398
Not stated	0	2348	41	772	n/a	0	17	0	3178
Total	65 837	21 243	23 256	12 987	6540	1469	1344	4909	137 585

Table 7-2: Number of investigations, by source of notification, 2013–14²⁹ (notes in original)

²⁵ New South Wales figures are not comparable with those of other jurisdictions. New South Wales has a differential investigation response whereby an investigation can be undertaken over two stages (stage 1—information gathering; stage 2—assessment).

²⁶ Data for source of notification were not available for South Australia for 2013–14. As such, South Australia are excluded from the row totals, but are included in the total number of investigations.

²⁷ Data reported for Tasmania aligns with the AIHW technical specifications except in the case of notifications received from departmental officers, which could also be classified in another category (for example, social worker). Notifications from departmental officers were assigned to the category of 'departmental officer' regardless of whether the source of notification could be classified in other categories.

²⁸ 'Other' category may include the person responsible.

²⁹ This table is sourced from Australian Institute of Health and Welfare, *Child Protection Australia 2013–14*, Child Welfare Series No 61 (2015) app A, 70, Table A5. Investigations include 'investigations finalised', 'investigations in process' and 'investigations closed—no outcome possible'.

Chapter 8

Questions for Discussion

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INTRODUCTION

8.1 This chapter poses a number of questions for consideration about whether the legislative mandatory reporting requirements under the *Child Protection Act 1999* (Qld) should be expanded to apply to the ECEC sector.

SHOULD MANDATORY REPORTING LAWS APPLY TO THE ECEC SECTOR?

8.2 Mandatory reporting laws are one part of the broader child protection system. The main aim of mandatory reporting laws is to protect children by facilitating the timely detection of abuse and enabling an appropriate response. To achieve this, the laws impose a mandatory reporting obligation on professionals who come into direct and frequent contact with children, and who have appropriate skills, experience, training and knowledge to recognise and report harm.¹

8.3 The mandatory reporting requirement under the *Child Protection Act 1999* (Qld) currently applies to registered doctors, nurses, teachers, certain police officers who work in child protection, and persons engaged to perform child advocate functions under the *Public Guardian Act 2014* (Qld).² These professionals are required to report a reasonable suspicion that a child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse, and may not have a parent able and willing to protect the child from the harm.³

8.4 Staff employed in ECEC services are not mandatory reporters under the *Child Protection Act 1999* (Qld). However they may, like any other person, voluntarily report their concerns to Child Safety at any time under the Act.⁴ In addition, regulated ECEC services are subject to a number of other statutory requirements, including in relation to child protection and creating a safe environment. ECEC services must, for example, have in place policies and procedures for handling disclosures or suspicions of harm, including reporting guidelines.⁵

¹ See further [6.1], [6.3]–[6.9] above.

² *Child Protection Act 1999* (Qld) s 13E(1).

³ *Child Protection Act 1999* (Qld) s 13E(2)–(3). See further [4.16] ff above.

⁴ *Child Protection Act 1999* (Qld) s 13A. See [4.12]–[4.15] above. Child care workers and others working with children have access to the department's Child Protection Guide to assist in decision-making: see [4.31]–[4.33] above.

⁵ *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 3(d). See further [2.29] ff above.

8.5 Currently, the child protection legislation in the Australian Capital Territory, South Australia, Tasmania, Victoria, New South Wales and the Northern Territory applies to certain child care providers or employees as mandatory reporters (although the Victorian provision is not yet in operation).⁶

8.6 However, the scope of these provisions varies. For example, in the Australian Capital Territory the legislation includes a person caring for a child at a childcare centre (including paid childcare assistants or aides, but not an unpaid volunteer).⁷ In South Australia, it includes an approved family day care provider, and any other person who is an employee of, or volunteer in, a government or non-government organisation that provides child care services, being a person who is engaged in the delivery of those services to children or who holds a management position in the relevant organisation.⁸ The Tasmanian provision includes a person who provides child care, or a child care service, for fee or reward; a person concerned in the management of an approved education and care service or a licensed child care service.⁹ In Victoria, the provision is limited to the proprietor, or the approved provider or nominated supervisor of the service, or an employee with a post-secondary qualification in child care and education.¹⁰

8.7 On the one hand, staff employed in ECEC services are in regular and direct contact with children and their families and are considered to be well placed to observe and report concerns that children are at risk of significant harm.

8.8 On the other hand, care must be taken to prevent the over-reporting of concerns that do not meet the threshold for a notification.¹¹

8.9 Care must also be taken to minimise the impact of any additional compliance burden on the ECEC sector that might potentially influence the viability of services.¹²

⁶ See [5.3]–[5.8] above; and Table 5-1: Who is required to report in each state and territory. The Victorian provision in relation to the ECEC sector is expressed to apply ‘on and from the relevant date’, and no date has yet been fixed: see [5.74] and [5.82] above. Note also that mandatory reporting laws in Western Australian have a limited application to registered teachers in certain child care centres and centre-based services: see further [5.96]–[5.97] above.

⁷ See [5.20]–[5.22] above.

⁸ See [5.58]–[5.60] above.

⁹ See [5.67]–[5.68] above.

¹⁰ See [5.81]–[5.87] above.

¹¹ See [6.10], [6.15]–[6.21] above.

¹² See [2.19] above. For example, the Productivity Commission recently observed that new ratio and qualification requirements under the National Quality Framework result in labour costs for the care of a 0 to 2 year old child being more than double that of a child aged 3 to 5 years. It found that, due to these higher costs and the potential for lower profit margins on long day care services for 0 to 2 year old children, many providers were reluctant to offer these services: Australian Government Productivity Commission, *Inquiry on Childcare and Early Childhood Learning*, Report No 73 (2014) app H, H.2.

8.10 The ECEC sector is comprised of a diverse range of services,¹³ and people who work in the sector have a range of skills and qualifications.¹⁴

8.11 If the Commission recommends that the mandatory reporting requirements under the *Child Protection Act 1999* (Qld) should be extended to apply to the ECEC sector, it will also be necessary to consider:

- whether those requirements should apply to persons in all services, or only in particular types of services, within that sector; and
- which particular persons within those services should be required to report.

QUESTIONS FOR DISCUSSION

8.12 The Commission seeks submissions (including reasons) in relation to the following questions:¹⁵

- 8-1 What considerations should be taken into account in determining whether the mandatory reporting requirements under the *Child Protection Act 1999* (Qld) should be extended to apply to the ECEC sector?**
- 8-2 If the mandatory reporting requirements under the *Child Protection Act 1999* (Qld) are extended to apply to the ECEC sector, what is the likely impact:**
- (a) on the ECEC sector; and**
 - (b) on the ability of Child Safety to detect and respond appropriately to children in need of protection?**
- 8-3 Should mandatory reporting apply to the ECEC sector?**
- 8-4 If yes to Question 8-3, why should mandatory reporting apply to the ECEC sector? If yes to Question 8-3, which particular types of services should mandatory reporting apply to? For example, should it apply to:**
- (a) an approved education and care service under the Education and Care Services National Law, such as:**
 - (i) long day care services;**
 - (ii) family day care services;**

¹³ See [2.1]–[2.12] above.

¹⁴ See [2.38] ff above.

¹⁵ For an explanation of terms and abbreviations used in the questions, please see the Abbreviations and Glossary at the beginning of this paper.

- (iii) kindergarten services;
- (iv) outside school hours care services;
- (b) a Queensland education and care service under the *Education and Care Services Act 2013* (Qld);
- (c) a stand-alone service under the *Education and Care Services Act 2013* (Qld);
- (d) any other services (please specify)?

8-5 If yes to Question 8-3, which particular professionals, office holders and workers within the early childhood education and care sector should be required to report? For example, should it apply to:

- (a) approved providers;
- (b) supervisors;
- (c) educators;
- (d) other staff members;
- (e) volunteers?

8-6 If no to Question 8-3, why should mandatory reporting not apply to the ECEC sector?

Please give reasons.

Appendix A

Terms of Reference

Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector

Background

The Queensland Government acknowledges that parents have the primary responsibility for bringing up their children and protecting them from harm. However, when parents fail to uphold this obligation the Department of Communities, Child Safety and Disability Services (DCCSDS) has a legislative responsibility to investigate and take appropriate action when a child is reasonably believed to be in need of protection.

Under section 10 of the *Child Protection Act 1999* (CPA), a child is in need of protection if the child has suffered harm, is suffering harm, or is at an unacceptable risk of suffering significant harm, and does not have a parent who is able and willing to protect the child from harm.

To enable DCCSDS to perform its statutory obligations, it relies on information about children suspected to be in need of protection being reported by people who see the signs or impacts of abuse and neglect. Under the CPA any person can report concerns about a child to DCCSDS at any time.

In addition, various Queensland Acts and departmental operational policies currently contain mandatory reporting provisions, which require the following professional groups and statutory office holders to report child abuse to DCCSDS: doctors, registered nurses, approved teachers in schools, police officers with child protection responsibilities, authorised officers under the CPA, DCCSDS employees, employees in a DCCSDS care service or licensed care service (residential services for children in the department's care) and persons engaged to perform child advocacy functions under the *Public Guardian Act 2014*.

In Queensland, early childhood education and care sector (ECEC) workers are not currently subject to legislated mandatory reporting to DCCSDS. Under existing national education and care service regulations, the approved provider of an early childhood education and care service must ensure that supervisors and staff members who work with children understand child protection laws and any obligations they may have under that law. This is enforceable by monetary penalty or a compliance notice to the approved provider.

The ECEC sector in Queensland is also required to have risk management strategies in place that include policy and procedures for reporting to Child Safety under child related employment provisions of the *Working with Children (Risk Management and Screening) Act 2000* (formerly the *Commission for Children and Young People and Child Guardian Act 2000*).

ECEC services are provided mostly by corporations and non-government organisations. People who work in these services have a variety of skills and qualifications and may have different types of interactions with children and their families. Long day care, family day care and kindergarten services come into contact with children between the ages of 0 and 5 and their families.

On 1 July 2013, the Queensland Child Protection Commission of Inquiry (the Commission) released its report — *Taking Responsibility: A Roadmap for Queensland Child Protection*. The Commission confirmed that the child protection system (CPS) is under immense stress and made 121 recommendations aimed at addressing the risk of systemic failure and making Queensland the safest place to raise children. The intention of the reforms is to build a sustainable and effective child protection system over the next decade.

A key theme of the Commission's report is the need to alleviate stress on the statutory child protection system, including by revitalising early family support services and reducing over-reporting of child welfare concerns to DCCSDS. To this end, the Commission's recommendations included establishing an additional community-based intake and referral pathway to improve provision of early support for families.

The Queensland Government has accepted 115 of the Commission's recommendations (and the remaining six in-principle) and is implementing the recommendations over a ten year plan under the Stronger Families reform agenda.

The Government response to the Commission's report includes a commitment to thoroughly review the CPA and also make a number of specific legislative amendments to support the reforms. The first tranche of legislative reforms includes the *Child Protection Reform Amendment Act 2014* (CPRA). The CPRA includes provisions to clarify how and when to report concerns about a child to DCCSDS. These provisions will commence on 19 January 2015.

The CPRA will introduce new Part 1AA to the CPA, to guide when a report about a child should be made to the DCCSDS. Part 1AA will, among other things:

- make it clear that any person who reasonably suspects a child may be in need of protection may notify DCCSDS;
- consolidate existing mandatory reporting requirements into the CPA; and
- apply a single common threshold test for mandatory reports — that the mandatory reporter must have formed a reasonable suspicion that the child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm from physical or sexual abuse, and the child does not have a parent willing and able to protect them from harm.

The CPRA will also amend the CPA to make it clear that a person who honestly and reasonably informs DCCSDS will be protected from civil, criminal, administrative and professional liability for doing so.

There is community interest in this issue as evidenced by a recent e-Petition (no. 2251–14) lodged with the Queensland Parliament that requests all Queensland Child Care Services and Centres become mandatory reporters to DCCSDS.

Referral

Under section 10(3)(e) of the *Law Reform Commission Act 1968*, I, Jarrod Bleijie, Attorney-General and Minister for Justice refer to the Queensland Law Reform Commission (QLRC), the review of child protection mandatory reporting laws for the early childhood education and care sector.

Scope of Referral

The QLRC is to consider whether the legislative mandatory reporting requirements under the *Child Protection Act 1999* should be expanded to cover the early childhood education and care sector, including long day care and family day care services and kindergartens.

If the QLRC determines there should be such an expansion, it should also make recommendations as to which professionals, office holders or workers within that sector should be included in the legislative mandatory reporting scheme.

If the QLRC determines there should not be such an expansion, it should give reasons for this position.

In considering this issue, the QLRC is to take into account the current policy environment, particularly the Queensland Government's implementation of the recommendations of the Queensland Child Protection Inquiry under the Stronger Families reform agenda.

Further, in considering this issue, the QLRC is to ensure that any recommendations for reform are practical, workable and cost-effective for both the child care industry and government.

Consultation

The QLRC is to inform itself in the most appropriate manner, having regard to the issues relating to the referral.

Timeframe

The QLRC is to report on the outcomes of the review by 31 December 2015.

Dated the sixth day of November 2014.

Jarrold Bleijie
Attorney-General and Minister for Justice