

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 a 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 include 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, amongst 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.

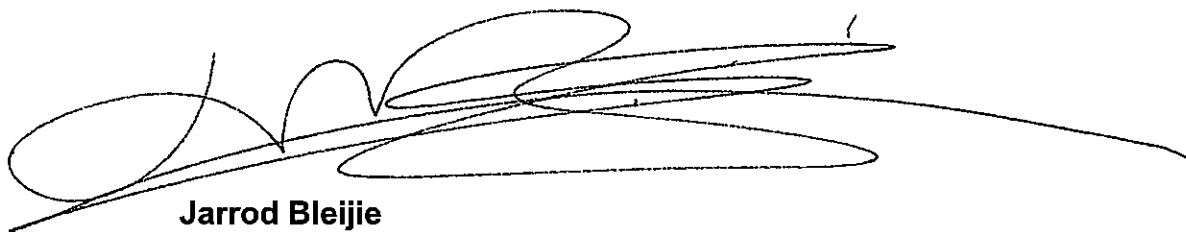
Consultation

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.

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Jarrod Bleijie
Attorney-General and Minister for Justice