



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

Report



**Queensland  
Law Reform Commission**

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

Report

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To: The Honourable Yvette D'Ath MP  
Attorney-General and Minister for Justice and Minister for Training and Skills

In accordance with section 15 of the *Law Reform Commission Act 1968*, the Commission is pleased to present its Report, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*.

[original signed]

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## Abbreviations and Glossary

<b>ACECQA</b>	Australian Children's Education and Care Quality Authority
<b>AIHW</b>	Australian Institute of Health and Welfare
<b>Approved provider</b>	<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 sch 2 (definition of 'Queensland approved provider').</p>
<b>Certified supervisor</b>	A person who holds a supervisor certificate: National Law s 5(1) (definitions of 'certified supervisor' and 'supervisor certificate').
<b>Child concern report</b>	A report to Child Safety is recorded as a 'Child Concern Report' if it does not meet the threshold for a notification.
<b>Child Safety</b>	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.
<b>Early childhood teacher</b>	A person with an approved early childhood teaching qualification: National Regulations s 4(1) (definition of 'early childhood teacher').
<b>Education and Care Service</b>	<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, 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 s 8.</p>
<b>Educator</b>	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 under the ECS Act: National Law s 5(1) (definition of 'educator'); ECS Act sch 2 (definition of 'educator').
<b>Educational leader</b>	A suitably qualified and experienced educator, co-ordinator or other individual designated by the approved provider, in writing, as the educational leader to lead the development and implementation of educational programs in the service: National Regulations s 118.
<b>ECEC</b>	Early Childhood Education and Care

<b>ECS Act</b>	<i>Education and Care Services Act 2013 (Qld)</i>
<b>Family day care service</b>	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: National Law s 5 (definitions of 'family day care service' and 'residence').
<b>Family day care co-ordinator</b>	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').
<b>Family day care educator</b>	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').
<b>Harm</b>	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.
<b>In need of protection</b>	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.
<b>Intakes</b>	A term used to refer to all information received by Child Safety about harm or risk of harm to a child.
<b>Kindergarten/Preschool Program</b>	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').
<b>Limited hours care and occasional care</b>	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.
<b>Mobile services</b>	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: ECS Act s 10.
<b>National Law</b>	Education and Care Services National Law.  In Queensland, the <i>Education and Care Services National Law (Queensland) Act 2011</i> (Qld) adopts the Education and Care Services National Law, as in force from time to time, set out in the schedule to the <i>Education and Care Services National Law Act 2010</i> (Vic). The law as it applies in Queensland is referred to as the Education and Care Services National Law (Queensland).
<b>National Regulations</b>	<i>Education and Care Services National Regulations.</i>

<b>National Quality Framework</b>	The National Law and National Regulations.
<b>Nominated supervisor</b>	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').
<b>Notification</b>	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.
<b>Outside school hours care</b>	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.
<b>Personal arrangements</b>	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').
<b>Playgroups</b>	Playgroups offer informal care for children aged from birth to school age, guided and supported by parents, grandparents and carers. Playgroups meet at various venues, such as community and neighbourhood centres, church halls, or people's homes.
<b>Stand-alone care services</b>	Care is provided for up to six children, usually in a person's home: ECS Act s 9.
<b>Supervisor</b>	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: ECS Act sch 2 (definition of 'supervisor').
<b>Substantiated notification</b>	A notification is 'substantiated' if it is assessed that the child is in need of protection.
<b>The Act</b>	<i>Child Protection Act 1999</i> (Qld)

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# Executive Summary

## TERMS OF REFERENCE

[1] The Commission has been requested to undertake a review of child protection mandatory reporting laws for the early childhood education and care sector ('ECEC sector').

[2] The review requires the Commission to consider:

- whether the legislative mandatory reporting requirements under the *Child Protection Act 1999* (Qld) ('the Act')<sup>1</sup> should be expanded to cover the ECEC sector, including long day care and family day care services and kindergartens; and
- if so, which professionals, office holders or workers within the ECEC sector should be included in the legislative mandatory reporting scheme.

## KEY OBSERVATIONS

[3] Queensland and Western Australia are the only two Australian jurisdictions that do not extend mandatory reporting to the ECEC sector.<sup>2</sup>

[4] The overwhelming majority of submissions received by the Commission supported extending the mandatory reporting obligation under the Act to apply to the ECEC sector.

## RECOMMENDATIONS

### Should mandatory reporting apply to the ECEC sector?

[5] The Commission recommends that the mandatory reporting provisions in Chapter 2, Part 1AA, Division 2 of the Act should be expanded to apply to the ECEC sector.<sup>3</sup>

[6] In developing this recommendation, the Commission has been guided by six key considerations. They are:

- the paramount principle of protecting children from harm or risk of harm;
- the critical protective role of the ECEC sector in relation to children aged 0–5 years, who are particularly vulnerable;
- that staff employed in ECEC services are in regular and direct contact with children and their families, and are well-placed to observe and report

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<sup>1</sup> A copy of the Act is available online at:  
<<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/ChildProtectA99.pdf>>.

<sup>2</sup> See generally Table 5-1 in Chapter 5 of this Report. The mandatory reporting provisions in Qld and WA do apply to registered teachers. The Victorian provision has not yet commenced operation.

<sup>3</sup> See Chapter 8 of this Report.

concerns that children are at risk of significant harm, thereby enabling timely intervention and the protection of children from harm;

- that the threshold for a 'reportable suspicion' under the mandatory reporting provision in section 13E of the Act is confined to significant harm 'caused by physical or sexual abuse' where the child 'may not have a parent able and willing to protect the child from harm';
- that mandatory reporting aligns with the existing child protection obligations of the ECEC sector; and
- the increasing regulation of ECEC services and staff qualification requirements for its workforce.

[7] The Commission is of the view that any potential adverse consequences of expanding mandatory reporting to the ECEC sector can be addressed through appropriate training and education.

### **Which services and individuals should the mandatory reporting obligation apply to?**

[8] The Commission recommends that the mandatory reporting obligation should apply to approved education and care services under the Education and Care Services National Law (Queensland) and the *Education and Care Services Act 2013* (Qld).<sup>4</sup>

[9] The Commission recommends that the mandatory reporting obligation should apply to the following persons within an approved ECEC service:

- a person who is an approved provider, nominated supervisor, or family day care co-ordinator; and
- a person who holds at least an approved certificate III level education and care qualification, or higher.<sup>5</sup>

[10] This will ensure that the mandatory reporting obligation applies to staff in roles of responsibility within the ECEC service and staff with relevant professional qualifications.

[11] Neither volunteers nor staff members who do not meet the minimum professional qualification requirement would be subject to the mandatory reporting obligation.

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4 See Chapter 9 of this Report. This includes long day care and family day care services and kindergartens, as well as outside school hours care services operated by approved ECEC services.

5 See Chapter 9 of this Report. Approved professional qualifications include: an 'approved early childhood teaching qualification'; an 'approved diploma level education and care qualification'; or an 'approved certificate III level education and care qualification', as defined under the Education and Care Services National Law (Queensland) or the *Education and Care Services Act 2013* (Qld). This will include, in effect, supervisors, early childhood teachers, and educators with either diploma or certificate III level qualifications.

# List of Recommendations

## CHAPTER 8: Should mandatory reporting apply to the ECEC Sector?

- 8-1** Subject to recommendations 9-1 and 9-2, the mandatory reporting provisions in Chapter 2, Part 1AA, Division 2 of the *Child Protection Act 1999* (Qld) should be expanded to apply to the ECEC sector.

## CHAPTER 9: Which particular services and individuals should the mandatory reporting obligation apply to?

### *Which ECEC services should mandatory reporting apply to?*

- 9-1** The mandatory reporting obligation under section 13E of the *Child Protection Act 1999* (Qld) should apply to approved education and care services under the Education and Care Services National Law (Queensland), and approved Queensland education and care services under the *Education and Care Services Act 2013* (Qld).

### *Which individuals should the mandatory reporting obligation apply to?*

- 9-2** The mandatory reporting obligation under section 13E of the *Child Protection Act 1999* (Qld) should be extended to apply to the following individuals:

- (a) an approved provider, nominated supervisor or family day care co-ordinator of an approved ECEC service as defined under the Education and Care Services National Law (Queensland) or the *Education and Care Services Act 2013* (Qld); and
- (b) a person employed by an approved ECEC service who has:
  - (i) an 'approved early childhood teaching qualification';
  - (ii) an 'approved diploma level education and care qualification'; or
  - (iii) an 'approved certificate III level education and care qualification';

as defined under the Education and Care Services National Law (Queensland) or the *Education and Care Services Act 2013* (Qld).



# 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) ('the Act').<sup>1</sup> These laws require particular professionals (including registered doctors, nurses, school teachers, certain police officers, and statutory office holders) to report suspected cases of the abuse of children to the Department of Communities, Child Safety and Disability Services ('Child Safety').<sup>2</sup>

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.<sup>3</sup> The ECEC sector is also subject to other legislative requirements in relation to child protection.<sup>4</sup>

### THE COMMISSION'S REVIEW

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 Act should be expanded to cover the ECEC sector, including long day care and family day care services and kindergartens.

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<sup>1</sup> 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>.

<sup>2</sup> 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'.

<sup>3</sup> *Child Protection Act 1999* (Qld) s 3A.

<sup>4</sup> See further [2.21]–[2.29] below.

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 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 Act 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').<sup>5</sup>

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.<sup>6</sup>

1.10 These petitions followed the death of an almost 17 month old child, who was murdered by his mother's then partner in 2011. Eight days before the child's death, child care centre staff observed and photographed extensive bruising to the child.<sup>7</sup> 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.

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

- doctors and registered nurses;<sup>9</sup>

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

<sup>6</sup> 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.

<sup>7</sup> See *R v Reed* [2014] QCA 207.

<sup>8</sup> 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.

<sup>9</sup> 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;<sup>10</sup>
- employees of the Department of Communities, Child Safety and Disability Services, and employees of departmental, and licensed, care providers;<sup>11</sup>
- the Commissioner for Children and Young People and Child Guardian;<sup>12</sup> and
- personnel of the Family Court of Australia and the Federal Magistrates Court.<sup>13</sup>

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.<sup>14</sup>

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:<sup>15</sup>

- 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.<sup>16</sup> The study advocated that doctors have a duty to the child to fully examine the problem and prevent the

<sup>10</sup> *Education (General Provisions) Act 2006* (Qld) ss 364–6.

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

<sup>12</sup> 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).

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

<sup>14</sup> 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.

<sup>15</sup> See further [4.7]–[4.10] below.

<sup>16</sup> The study was later republished in CH Kempe et al, ‘The Battered-Child Syndrome’ (1985) 9 *Child Abuse & Neglect* 143.

continuation of abuse. 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 since been expanded to include other professionals and, in some cases, the general public.<sup>17</sup>

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.<sup>18</sup> Australian states and territories moved to government-based child protection approaches and welfare departments were established.<sup>19</sup>

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.<sup>20</sup> Victoria, the Australian Capital Territory and Western Australia introduced mandatory reporting laws in 1993, 1999 and 2008, respectively.<sup>21</sup>

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).<sup>22</sup> Queensland and Western

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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, '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 59 (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 52 below. In relation to the Victorian provisions, see [5.79] below.

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

## METHODOLOGY OF THIS REVIEW

### The Discussion Paper

1.19 In July 2015, the Commission completed a Discussion Paper and sought submissions from the public on whether the mandatory reporting obligation under the Act should apply to the ECEC sector, and related issues.

### Consultation process

1.20 Following the release of the Discussion Paper, the Commission wrote to some 100 key organisations and individuals inviting submissions on the questions asked in the Discussion Paper. They included representative bodies for the ECEC sector, community organisations, child protection advocacy organisations, members of the judiciary, legal profession bodies, community legal centres, legal academics and government departments.

1.21 An advertisement calling for submissions in response to the Discussion Paper was placed in *The Australian* newspaper, *The Courier Mail* newspaper and in nine Queensland regional newspapers on 13 August 2015.<sup>24</sup>

1.22 A media statement to publicise the release of the Discussion Paper and the call for submissions was issued to the print and electronic media and the review was given coverage in several Queensland newspapers and on radio.

1.23 Notices calling for submissions were also placed on the Commission's website, on the Queensland Government 'qld.gov.au' and 'Get Involved' websites, in the 'QLD Update' (an electronic newsletter of the Queensland Law Society), in the 'Queensland Legal Updater' published by the Supreme Court of Queensland Library, and in the e-newsletter and Facebook page of Early Childhood Australia.

1.24 The closing date for submissions was Wednesday 30 September 2015.

1.25 The Commission received responses from 29 organisations and individuals. They included Professor Ben Mathews and Associate Professor Kerryanne Walsh from the Queensland University of Technology, the Australian Childcare Alliance Queensland, Early Childhood Australia, Goodstart Early Learning, Independent Schools Queensland, the Early Childhood Teachers' Association Inc, Churches of Christ Care, the Queensland Catholic Education Commission, the Queensland Children's Activities Network Inc, the Queensland Council of Social Service, The Crèche and Kindergarten Association Limited, United Voice Queensland, Playgroup

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<sup>23</sup> 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* operates: see [5.101]–[5.102] below. In relation to Qld, see [2.75]–[2.76] below.

<sup>24</sup> Namely, the *Gold Coast Bulletin*, *Sunshine Coast Daily*, *Toowoomba Chronicle*, *Bundaberg News Mail*, *Rockhampton Bulletin*, *Mackay Daily Mercury*, *Townsville Bulletin*, *Cairns Post* and *Hervey Bay Observer*.

Queensland, PeakCare Queensland Inc, and various government departments. The full list of respondents to the review is set out in Appendix B.

1.26 In addition, the Commission held consultation meetings with a number of key stakeholders including the Department of Communities, Child Safety and Disability Services, the Department of Education and Training, and representative bodies of the ECEC sector.<sup>25</sup>

1.27 The Commission would like to thank all those organisations and individuals who participated in the review for their contribution to the development of this Report.

## STRUCTURE OF THIS REPORT

1.28 Chapter 2 of this Report provides an overview of the diverse types of services that comprise the ECEC sector in Queensland and how they are regulated, particularly in relation to child protection obligations, staffing arrangements and qualification requirements.

1.29 Chapter 3 provides an overview of Queensland's child protection system and the reforms recommended by the QCPCI. It also outlines relevant child protection reporting data, both in Queensland and at the national level.

1.30 Chapter 4 outlines the current mandatory reporting law in Queensland under the Act. It also provides some historical background in relation to the development of, and recent amendments to, those laws.

1.31 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.

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

1.33 Chapter 7 outlines relevant child protection reporting data, both in Queensland and at the national level.

1.34 Chapter 8 considers whether the existing mandatory reporting provisions under the Act should be expanded to apply to the ECEC sector.

1.35 Chapter 9 considers which particular services and individuals should be subject to the obligation to report.

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<sup>25</sup> Namely, Independent Schools Qld, Playgroup Association of Qld, Queensland Catholic Education Commission, Queensland Independent Education Union, The Crèche and Kindergarten Association Limited, United Voice Queensland, Family Day Care Association, Early Childhood Teachers' Association, and Goodstart Early Learning.

**TERMINOLOGY**

1.36 A list of terms and abbreviations commonly used in this Report is contained in the Glossary at the front of this Report.



# 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 approved services such as long day care and family day care services and kindergartens.

2.2 In 2014, there were 2858 approved ECEC services regulated in Queensland,<sup>1</sup> in which 283 103 children were enrolled.<sup>2</sup>

2.3 The majority of ECEC services in Queensland are long day care services (51%). The remainder include outside school hours care services (25%),

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<sup>1</sup> See Department of Education and Training (Qld), 'Early childhood education and care services', 'ECEC Service Reports', *Early childhood services 2014* (18 August 2015) <<http://deta.qld.gov.au/information/statistics/early-childhood/ecec-services.html>>.

<sup>2</sup> See Department of Education and Training (Qld), 'Early childhood education and care service enrolments', *Services level enrolments — all 2014* (27 August 2015) <<http://deta.qld.gov.au/information/statistics/early-childhood/ecec-enrolments.html>>.

kindergarten services (16.5%), family day care services (4%), and limited hours services (1%).<sup>3</sup>

2.4 ECEC services may be provided by private organisations, community organisations, schools and government. In 2014, 994 services were privately managed for profit, 753 were privately managed not-for-profit, 806 were private not-for-profit community managed, 102 were managed by independent schools, 34 were managed by Catholic schools, 125 were provided by government schools and 32 were state or local government managed.<sup>4</sup>

## REGULATION OF ECEC SERVICES

2.5 Approved ECEC services in Queensland are services that are regulated under either the National Quality Framework or the *Education and Care Services Act 2013* (Qld) ('the ECS Act').<sup>5</sup>

2.6 To be approved, service providers must meet particular legal requirements. In Queensland, the Department of Education and Training is the regulatory authority responsible for granting provider and service 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.

### National Quality Framework

2.7 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').<sup>6</sup>

2.8 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

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<sup>3</sup> See Department of Education and Training (Qld), 'Early childhood education and care services', ECEC Service Reports, *Early childhood services 2014* (18 August 2015) <<http://deta.qld.gov.au/information/statistics/early-childhood/ecec-services.html>>.

<sup>4</sup> Ibid. 12 were unknown.

<sup>5</sup> The *Education and Care Services Act 2013* (Qld) repealed and replaced the *Child Care Act 2002* (Qld).

<sup>6</sup> For Queensland, see the *Education and Care Services National Law (Queensland) Act 2011* (Qld) s 4, 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 law as it applies in Qld is referred to as the Education and Care Services National Law (Queensland).

A copy of the Victorian Act is available online at: <<http://www.legislation.vic.gov.au/>>. The law as it applies in Qld is referred to as the Education and Care Services National Law (Queensland).

The *Education and Care Services 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>>.

The National Regulations include the National Quality Standard in sch 1.

to reduce any unnecessary compliance burden on ECEC services through a jointly governed standardised system of regulation.<sup>7</sup>

2.9 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.<sup>8</sup>

2.10 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.

2.11 Education and care services other than a family day care service are also referred to as ‘centre-based’ services.<sup>9</sup>

2.12 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 outside school hours care and vacation care, and an approved kindergarten program taught by a qualified early childhood teacher.<sup>10</sup>

2.13 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. Most kindergarten services offer approved kindergarten programs (also referred to as ‘preschool programs’ or ‘kinder’), delivered by a qualified early childhood teacher. 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 in the year they start), that are provided for at least 15 hours per week for 40 weeks, or one school year.<sup>11</sup>

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<sup>7</sup> Australian Children’s Education and Care Quality Authority, *Report on National Quality Framework and Regulatory Burden — Wave II* (2014) 5. In a broad sense, a compliance burden can be understood as the cost imposed by regulation on business, government and the community. 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 and Care Quality Authority, *Report on the National Quality Framework and Regulatory Burden* (2013) [3.2].

<sup>8</sup> Education and Care Services National Law (Queensland) s 5 (definition of ‘education and care service’).

<sup>9</sup> See *Education and Care Services National Regulations* reg 4 (definition of ‘centre-based service’).

<sup>10</sup> Queensland Government, ‘Types of Early Childhood Services’, ‘Long Day Care’ (17 September 2015) <<http://www.qld.gov.au/families/babies/childcare/types/pages/long.html>>.

<sup>11</sup> Queensland Government, ‘Types of Early Childhood Services’, ‘Kindergarten’ (20 November 2015) <<http://www.qld.gov.au/families/babies/childcare/types/pages/kindergarten.html>>.

2.14 Family Day Care Services are delivered in the private homes of registered carers.<sup>12</sup> 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.<sup>13</sup>

2.15 The following services are excluded by the National Law and are unlikely to be brought into the National Quality Framework in the future:<sup>14</sup>

- 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.

2.16 The National Regulations also currently exclude a number of services, such as:<sup>15</sup>

- 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;

<sup>12</sup> See Education and Care Services National Law (Queensland) s 5 (definition of 'family day care service').

<sup>13</sup> Queensland Government, 'Types of Early Childhood Services', 'Family Day Care' (18 September 2014) <<http://www.qld.gov.au/families/babies/childcare/types/pages/family.html>>.

<sup>14</sup> Education and Care Services National Law (Queensland) s 5; Australian Children's Education and Care Quality Authority, *Guide to the Education and Care Services National Regulations 2011* (June 2014) 11.

<sup>15</sup> Education and Care Services National Law (Queensland) s 5; Australian Children's Education and Care Quality Authority, above n 14, 12.

- 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.

2.17 It is contemplated that some of these services may be brought into the National Quality Framework in the future by amending the National Regulations.<sup>16</sup>

### ***Education and Care Services Act 2013 (Qld)***

2.18 The ECS Act applies to a 'Queensland education and care service', which is defined to mean 'a service providing regulated education and care of children under 13 years of age', except for those excluded by the Act.<sup>17</sup>

2.19 The ECS Act applies to the following services that are not captured under the National Quality Framework:<sup>18</sup>

- services funded by the Queensland Government to provide limited hours care;
- occasional care services;
- budget-based funded services that do not receive Australian Government Child Care Benefit; and

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<sup>16</sup> Australian Children's Education and Care Quality Authority, above n 14, 11.

<sup>17</sup> *Education and Care Services Act 2013* (Qld) s 8. Services licensed under the former *Child Care Act 2002* (Qld) that were not captured under the National Quality Framework became approved services under the ECS Act on 1 January 2014: see <<http://deta.qld.gov.au/earlychildhood/service/ecs-act/approvals.html>>.

<sup>18</sup> Department of Education and Training (Qld), 'Early Childhood Education and Care', 'Education and Care Services Act' (18 April 2015) <<http://deta.qld.gov.au/earlychildhood/service/ecs-act/index.html>>.

- early childhood education and care services that are also disability services under the *Disability Services Act 2006* (Qld).

### Unregulated services

2.20 Certain types of care remain unregulated by either the National Quality Framework or the ECS Act. They include, but are not limited to:<sup>19</sup>

- personal arrangements (for example, care shared by parents, or provided by friends or relatives);<sup>20</sup>
- 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;<sup>21</sup>
- transition to school programs; and
- vacation care offered for not more than four weeks per year.

### CHILD PROTECTION REQUIREMENTS

2.21 ECEC services and staff have a general duty of care at common law to take reasonable care to avoid foreseeable injury or loss to children in their care by negligent acts or omissions (such as failure to report abuse).<sup>22</sup> Staff may also be subject to other child protection obligations under industry policies and procedures.<sup>23</sup>

2.22 In addition, approved 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.

<sup>19</sup> 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.

<sup>20</sup> '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* (Queensland) s 5 (definition of 'personal arrangement').

<sup>21</sup> 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.

<sup>22</sup> B Mathews and K Walsh, 'Mandatory reporting laws' in A Hayes and D Higgins (eds), *Families, policy and the law: Selected essays on contemporary issues for Australia* (Australian Institute of Family Studies, 2014) 131, 131–2, citing *AB v Victoria* (unreported, Supreme Court of Victoria, Gillard J, 15 June 2000).

<sup>23</sup> Ibid 132.

## National Quality Framework

2.23 Services approved and regulated under the National Quality Framework 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;<sup>24</sup> and
- notifying the regulatory authority of the occurrence of any serious incident (including injury or trauma) to a child that occurs in the course of the provision of education and care.<sup>25</sup>

2.24 Further, under the National Regulations, the approved provider<sup>26</sup> of an ECEC service must have in place policies and procedures to ensure that supervisors<sup>27</sup> and staff members<sup>28</sup> who work with children understand the applicable child protection laws and any obligations they may have under those laws. This is enforceable by monetary penalty (\$1000), and a compliance direction for failure to comply can be issued to the approved provider.<sup>29</sup>

2.25 Educators, co-ordinators and staff members' awareness of their roles and responsibilities to respond to every child at risk of abuse and neglect is also a measure of quality under the National Quality Standard.<sup>30</sup>

## Education and Care Services Act 2013 (Qld)

2.26 Approved providers<sup>31</sup> of a Queensland education and care service regulated under the ECS Act must ensure that 'every reasonable precaution is taken

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<sup>24</sup> Education and Care Services National Law (Queensland) s 167.

<sup>25</sup> Education and Care Services National Law (Queensland) s 174(2); *Education and Care Services National Regulations* reg 12.

<sup>26</sup> '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 (Queensland) s 5(1) (definitions of 'approved provider' and 'provider approval'), pt 2.

<sup>27</sup> 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) (definitions of 'certified supervisor', 'supervisor certificate' and 'nominated supervisor'), s 161. See generally Education and Care Services National Law Act (Queensland) pt 4.

<sup>28</sup> 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 (Queensland) s 5(1) (definitions of 'staff member', 'family day care educator' and 'educator').

<sup>29</sup> *Education and Care Services National Regulations* reg 84. See also Australian Children's Education and Care Quality Authority, above n 14, 59.

<sup>30</sup> *Education and Care Services National Regulations* sch 1, National Quality Standard, Element 2.3.4.

<sup>31</sup> 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 (definitions of 'approved provider' and 'Queensland approved provider').

to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury'.<sup>32</sup>

2.27 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.<sup>33</sup>

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

2.28 ECEC services in Queensland must develop and implement a written risk management strategy in accordance with the *Working with Children (Risk Management and Screening) Act 2000 (Qld)*.<sup>34</sup>

2.29 Among other things, a risk management strategy must include:<sup>35</sup>

- (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 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,

...

<sup>32</sup> *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)* s 4.

<sup>33</sup> *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.

<sup>34</sup> 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)*).

<sup>35</sup> *Working with Children (Risk Management and Screening) Act 2000 (Qld)* ss 171(b) and 172(b); *Working with Children (Risk Management and Screening) Regulation 2011 (Qld)* s 3.

- (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.

## STAFFING ARRANGEMENTS AND QUALIFICATION REQUIREMENTS

2.30 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, depending on their role.

2.31 The National Quality Framework and the ECS Act set out requirements in relation to the number and type of staff employed at approved ECEC services, and the qualifications they are required to have.

2.32 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.<sup>36</sup>

2.33 The prescribed qualifications under the ECS Act — including an approved certificate III level education and care qualification and an approved diploma level education and care qualification — are the same as those approved under the National Regulations.<sup>37</sup>

2.34 There are three levels of nationally recognised approved education and care qualifications in Australia. They are:<sup>38</sup>

- early childhood teacher;
- diploma level educator; and
- certificate III level educator.

2.35 However, these levels may not directly correlate with existing job titles and position descriptions in the sector. In general, group leaders are likely to be diploma

<sup>36</sup> 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/index.html>>.

<sup>37</sup> *Education and Care Services Regulation 2013* (Qld) sch 5, Dictionary (definitions of 'approved certificate III level education and care qualification' and 'approved diploma level education and care qualification').

<sup>38</sup> Australian Children's Education and Care Quality Authority, 'Educators and Providers FAQs', 'What are the roles I need approved qualifications for?' (23 April 2013) <<http://acecqa.gov.au/educators-and-providers1/educators-and-providers-faqs>>.

level educators under the National Law, while assistants are likely to be certificate III level educators. There are no direct equivalents for Directors who may hold any of the three classes of qualification or none, depending on their role within the service. Most are likely to be diploma level educators.<sup>39</sup>

2.36 The staff qualification requirements and educator-to-child ratios set out under the National Law and the ECS Act vary depending on the type of service offered, as well as the size of the service and its operating hours. These requirements are set out below.<sup>40</sup>

## ECEC services under the National Law

### Centre-based services (long day care and kindergarten services)

#### *Responsible persons*

2.37 A centre-based service must have at least one 'responsible person' present at the service at all times the service is educating and caring for children.<sup>41</sup> A 'responsible person' means:<sup>42</sup>

- the approved provider;
- the nominated supervisor; or
- a certified supervisor placed in day-to-day charge of the service.

2.38 The approved provider is a person who holds a provider approval.<sup>43</sup> To be granted a provider approval, the person must satisfy the Regulatory Authority that they are a 'fit and proper person'.<sup>44</sup>

2.39 The 'nominated supervisor' is a person who is a certified supervisor and 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 the nomination.<sup>45</sup>

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39 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>>.

40 First aid qualification requirements (including asthma and anaphylaxis management) also apply to approved services, but are not discussed here. See Education and Care Services National Law (Queensland) s 169; *Education and Care Services National Regulations* reg 136; *Education and Care Services Regulation 2013* (Qld) s 42.

41 Education and Care Services National Law (Queensland) s 162.

42 *Education and Care Services National Regulations* reg 4(1) (definition of 'responsible person').

43 Education and Care Services National Law (Queensland) s 5(1) (definition of 'approved provider').

44 Education and Care Services National Law (Queensland) s 12. If the applicant for a provider approval is not an individual, the applicant must satisfy the Regulatory Authority that the applicant and each person who will be a person with management or control of an ECEC service to be operated by the applicant is a fit and proper person. Section 13 sets out certain matters to be taken into account in assessing whether the applicant is a fit and proper person, including the person's history of compliance with the law relating to ECEC services.

45 Education and Care Services National Law (Queensland) s 5(1) (definition of 'nominated supervisor'). It is an offence to operate an ECEC service without a nominated supervisor: s 161.

2.40 A ‘certified supervisor’ is a person who holds a supervisor certificate.<sup>46</sup> To be placed in day-to-day charge of an ECEC service, a certified supervisor must be nominated by the approved provider or nominated supervisor and must accept that nomination in writing.<sup>47</sup>

2.41 To hold a supervisor certificate, a person must be over 18 years of age, must be a ‘fit and proper person’ to be a supervisor of an ECEC service, and must meet the prescribed minimum requirements for qualifications, experience and management capability. In relation to qualifications, the applicant must have at least one of the following:<sup>48</sup>

- at least 3 years’ experience working as an educator in an education and care service or a children’s service or a school or in a service regulated under a former education and care services law;
- an approved diploma level education and care qualification;
- an approved early childhood teaching qualification.

### ***Early childhood teachers***

2.42 An early childhood teacher is a person with an approved early childhood teaching qualification.<sup>49</sup>

2.43 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.<sup>50</sup> In particular:<sup>51</sup>

- 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

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<sup>46</sup> Education and Care Services National Law (Queensland) s 5(1) (definition of ‘certified supervisor’).

<sup>47</sup> See Australian Children’s Education and Care Quality Authority, above n 14, 86.

<sup>48</sup> *Education and Care Services National Regulations* reg 47.

<sup>49</sup> *Education and Care Services National Regulations* reg 4(1) (definition of ‘early childhood teacher’).

<sup>50</sup> Education and Care Services National Law (Queensland) s 169.

<sup>51</sup> *Education and Care Services National Regulations* ch 4, divs 4.4, 5; ch 7, pt 7.5.

- 60% of the operating hours (for a service that operates for less than 50 hours per week).

### **Educational leaders**

2.44 An 'educational leader' is a suitably qualified and experienced educator, co-ordinator or other individual designated by the approved provider, in writing, as the educational leader to lead the development and implementation of educational programs in the service.<sup>52</sup>

2.45 A 'suitably qualified' person is a person who has a qualification for the education and care of children generally or children of a specified age that is approved by the National Authority, or a qualification approved by the National Authority as a higher qualification for suitably qualified persons, and that is included in the list of approved qualifications for suitably qualified persons published under regulation 137.<sup>53</sup>

2.46 The regulations 'do not specify a minimum qualification or the number of hours the educational leader should work, or whether this person must work directly with children':<sup>54</sup>

The educational leader might be a nominated supervisor (who has suitable experience and qualifications), an early childhood teacher, a manager or a diploma qualified educator within the service... The approved provider should select the person most suited for this role in the service after considering the suitability of qualifications and experience of educators in the service.

### **Educators**

2.47 An 'educator' is an individual who provides education and care for children as part of an ECEC service.<sup>55</sup>

2.48 From 1 January 2014, at least 50% of the educators who are required to meet the educator-to-child ratio requirements<sup>56</sup> will need to have, or be actively working towards, an approved diploma level education and care qualification. The remaining educators must have, or be actively working towards, an approved certificate III level education and care qualification.<sup>57</sup>

2.49 An educator who is under the age of 18 must not work alone and must be adequately supervised by an educator who has attained the age of 18.<sup>58</sup>

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<sup>52</sup> *Education and Care Services National Regulations* reg 118.

<sup>53</sup> *Education and Care Services National Regulations* reg 4(1) (definition of 'suitably qualified person').

<sup>54</sup> See Australian Children's Education and Care Quality Authority, above n 14, 86.

<sup>55</sup> *Education and Care Services National Law (Queensland)* s 5(1) (definition of 'educator').

<sup>56</sup> 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* regs 13, 122.

<sup>57</sup> *Education and Care Services National Regulations* reg 126.

<sup>58</sup> *Education and Care Services National Regulations* reg 120.

2.50 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.<sup>59</sup>

2.51 For the purpose of meeting educator-to-child ratio requirements, staff who are ‘actively working towards’ an approved qualification may be counted as educators. Section 10 of the Education and Care Services National Regulations provides that an educator is ‘actively working towards’ a qualification if the educator is enrolled in the course for the qualification; and provides the approved provider with documentary evidence from the provider of the course that—

- (i) the educator has commenced the course; and
- (ii) is making satisfactory progress towards completion of the course; and
- (iii) is meeting the requirements for maintaining the enrolment; and
- (iv) in the case of an approved diploma level education and care qualification, the educator—
  - (A) holds an approved certificate III level education and care qualification; or
  - (B) has completed the units of study in an approved certificate III level education and care qualification determined by the National Authority; or
  - (C) has completed the percentage of total units of study required for completion of an approved early childhood teaching qualification determined by the National Authority.

2.52 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 of preschool age or under.<sup>60</sup>

2.53 If a volunteer or student on practicum placement either holds or is actively working towards at least an approved certificate III level qualification, then they may be included in educator-to-child ratios.<sup>61</sup>

2.54 Where centre-based services are educating and caring for children who are over preschool age<sup>62</sup> outside of school hours, the educator-to-child ratio is at least one educator for every 15 children.<sup>63</sup>

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<sup>59</sup> See further *Education and Care Services National Regulations* reg 123.

<sup>60</sup> *Education and Care Services National Regulations* reg 126(1A).

<sup>61</sup> *Education and Care Services National Regulations* regs 10, 13, 122–3, 126.

<sup>62</sup> A child over preschool age means a child who is enrolled or registered at a school and attends, or in the current calendar year will attend, school in the year before grade 1 or in grade 1 or a higher grade: *Education and Care Services National Regulations* reg 4 (definition of ‘child over preschool age’).

<sup>63</sup> *Education and Care Services National Regulations* reg 298.

2.55 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:<sup>64</sup>

- 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.

2.56 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 III level or one year qualification or higher, in a relevant area of study.

2.57 Any other educators required to meet the educator-to-child ratio of 1:15 (for children who are over preschool age) do not need to hold a qualification if they are 18 years of age or older.<sup>65</sup>

## **Family day care services**

### ***Family day care co-ordinator***

2.58 A family day care co-ordinator is 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.<sup>66</sup>

2.59 All family day care co-ordinators need to have an approved diploma level education and care qualification or above.<sup>67</sup>

### ***Family day care educator***

2.60 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.<sup>68</sup>

2.61 The educator-to-child ratio for family day care services is at least one educator for every seven children.<sup>69</sup>

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<sup>64</sup> *Education and Care Services National Regulations* reg 299.

<sup>65</sup> *Education and Care Services National Regulations* reg 299.

<sup>66</sup> *Education and Care Services National Law (Queensland)* s 5(1) (definition of 'family day care co-ordinator').

<sup>67</sup> *Education and Care Services National Regulations* regs 128, 307. Under s 243A, a person is taken to hold an approved diploma level education and care qualification in Queensland if the person held a qualification that is published on the list of former approved qualifications for family day care co-ordinators before 1 January 2012.

<sup>68</sup> *Education and Care Services National Law (Queensland)* s 5(1) (definition of 'family day care educator').

<sup>69</sup> *Education and Care Services National Regulations* reg 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: at reg 304.

2.62 All family day educators must be at least 18 years old,<sup>70</sup> and are required to have (or be actively working towards) an approved certificate III level education and care qualification, or equivalent.<sup>71</sup>

### ***Family day care assistant***

2.63 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.<sup>72</sup> 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.<sup>73</sup>

2.64 A family day care assistant must be at least 18 years old.<sup>74</sup>

## **Queensland ECEC services under the *Education and Care Services Act 2013* (Qld)**

2.65 Each approved service under the ECS Act 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 education and care qualification or higher.<sup>75</sup>

2.66 In addition, an approved provider must appoint a nominee for each ECEC service to act as the point of contact with the Department of Education and Training.<sup>76</sup> A nominee must be an adult, and may be a supervisor.<sup>77</sup>

2.67 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 age and hold, or be actively working towards, a nationally recognised early childhood education and care qualification.<sup>78</sup>

2.68 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 education and care qualification or higher. All

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<sup>70</sup> *Education and Care Services National Regulations* reg 119.

<sup>71</sup> *Education and Care Services National Regulations* regs 127, 306.

<sup>72</sup> *Education and Care Services National Regulations* regs 4(1) (definition of ‘family day care educator assistant’).

<sup>73</sup> *Education and Care Services National Regulations* reg 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.

<sup>74</sup> *Education and Care Services National Regulations* reg 119.

<sup>75</sup> *Education and Care Services Act 2013* (Qld) ss 113, sch 1 (definition of ‘supervisor’); *Education and Care Services Regulation 2013* (Qld) s 49.

<sup>76</sup> *Education and Care Services Act 2013* (Qld) ss 114–15, sch 1 (definition of ‘nominee’).

<sup>77</sup> *Education and Care Services Act 2013* (Qld) s 114(3)–(4).

<sup>78</sup> *Education and Care Services Act 2013* (Qld) s 110(1); *Education and Care Services Regulation 2013* (Qld) s 48.

other educators (previously known as ‘assistants’) must hold, or be actively working towards, an approved certificate III level education and care qualification.<sup>79</sup>

2.69 An educator is ‘actively working towards a qualification’ if the educator is enrolled in the course for the qualification and provides the Queensland approved provider with documentary evidence from the provider of the course.<sup>80</sup>

2.70 Educators who are under 18 years of age must be supervised by an educator who is 18 years or more.<sup>81</sup>

2.71 Carers<sup>82</sup> in stand-alone care services must be over 18 years of age and can care for up to six children under the age of 13 at the same time (maximum of four under school age).<sup>83</sup>

## OTHER REQUIREMENTS

### Working with children check

2.72 The *Working with Children (Risk Management and Screening) Act 2000* (Qld)<sup>84</sup> 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.<sup>85</sup>

2.73 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).<sup>86</sup> This requirement applies to paid employees, volunteers and trainee students.<sup>87</sup>

<sup>79</sup> *Education and Care Services Act 2013* (Qld) s 244(2)(f); *Education and Care Services Regulation 2013* (Qld) ss 39–40.

<sup>80</sup> See further *Education and Care Services Regulation 2013* (Qld) s 3, sch 5 (definition of ‘actively working towards a qualification’).

<sup>81</sup> *Education and Care Services Act 2013* (Qld) s 244(2)(f); *Education and Care Services Regulation 2013* (Qld) s 45.

<sup>82</sup> 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’).

<sup>83</sup> *Education and Care Services Act 2013* (Qld) ss 9, 132, 134.

<sup>84</sup> Previously named the *Commission for Children and Young People and Child Guardian Act 2000* (Qld).

<sup>85</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 220, sch 7 (definition of ‘positive notice blue card’).

<sup>86</sup> *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.

<sup>87</sup> 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 is related to their function as a registered health practitioner.

2.74 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, and adjunct care.<sup>88</sup>

### Teacher registration for early childhood teachers

2.75 Teachers employed at a school (including pre-Prep to Year 3 teachers) must be registered with the Queensland College of Teachers.<sup>89</sup> Such teachers are already subject to the mandatory reporting obligation pursuant to section 13E(1)(c) of the *Child Protection Act 1999* (Qld).<sup>90</sup>

2.76 However, registration is not compulsory for early childhood teachers working in early childhood services.<sup>91</sup>

<sup>88</sup> *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.

<sup>89</sup> See, eg, Queensland College of Teachers, *Teacher Registration* (2015) <<http://www.qct.edu.au/registration/>>. However, the requirement for registration does not apply to a teacher's aide, teacher's assistant or a student teacher: *Education (Queensland College of Teachers) Act 2005* (Qld) s 6, sch 3 (definition of 'teacher').

<sup>90</sup> 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 (definitions of 'approved teacher', 'registered teacher' and 'teacher').

<sup>91</sup> Queensland Government, 'Becoming an Early Childhood Teacher' (20 Jan 2015) <<http://www.qld.gov.au/education/jobs/teacher/pages/childhood.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

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.<sup>1</sup>

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.<sup>2</sup> In the eight years following 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%.<sup>3</sup> The Commission of Audit noted that, without policy change, the ability to meet increasing costs was limited.

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

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

<sup>3</sup> Queensland Child Protection Commission of Inquiry, above n 1, 5.

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,<sup>4</sup> and that:<sup>5</sup>

Continuing in this way is not only unsustainable but contrary to both policy intent and reasonable community expectations. ... [W]ithout 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:<sup>6</sup>

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

3.7 In particular, the QCPCI found that a large amount of time and resources was spent responding to reports and investigating cases that did not meet the threshold for statutory intervention. The QCPCI reported that the number of intakes<sup>7</sup> tripled over the course of a decade (from 33 697 in 2001–2 to 114 503 in 2011–12).<sup>8</sup> 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). Of the 20% that did progress to the investigation and assessment phase,<sup>9</sup> it reported that a

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<sup>4</sup> Ibid 11.

<sup>5</sup> Ibid xii.

<sup>6</sup> Ibid 83.

<sup>7</sup> 'Intakes' is the term used to refer to all information received by Child Safety about harm or risk of harm to a child: see [3.36] ff below.

<sup>8</sup> Queensland Child Protection Commission of Inquiry, above n 1, 4.

<sup>9</sup> See [3.42] ff below.

third (6784) were substantiated<sup>10</sup> and, of these, 4359 children were found to be in need of protection.<sup>11</sup> The QCPCI observed that:<sup>12</sup>

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;<sup>13</sup> and
- a risk-averse ‘better safe than sorry’ culture, which promotes a forensic, rather than therapeutic, approach to child protection.<sup>14</sup>

3.9 The QCPCI also considered that the high number of intakes was caused in part by the impact of mandatory reporting requirements.<sup>15</sup>

### Observations in relation to mandatory reporting

3.10 In its 2012 Issues Paper, the QCPCI considered 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.<sup>16</sup> The QCPCI observed that:<sup>17</sup>

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

<sup>10</sup> 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 [3.46], n 59 below.

<sup>11</sup> Queensland Child Protection Commission of Inquiry, above n 1, 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.

<sup>12</sup> Queensland Child Protection Commission of Inquiry, above n 1, 84.

<sup>13</sup> Ibid 65, 83, 91.

<sup>14</sup> Ibid 2, 83.

<sup>15</sup> Ibid 84 ff.

<sup>16</sup> Queensland Child Protection Commission of Inquiry, *Emerging Issues* (September 2012) 3.

<sup>17</sup> Ibid 2.

3.11 However, the QCPCI noted concerns that mandatory reporting leads to over-reporting. It observed that:<sup>18</sup>

[T]here 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 In its final report, the QCPCI 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.<sup>19</sup> It emphasised that reporting should not become a 'semi-automatic' reaction:<sup>20</sup>

The Munro Review of Child Protection<sup>21</sup> 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 Scott<sup>22</sup> 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.<sup>23</sup>

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.

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18 Ibid.

19 Queensland Child Protection Commission of Inquiry, above n 1, 86.

20 Ibid 88.

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

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

23 See [4.7]–[4.10] below.

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.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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).<sup>30</sup>

## 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

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<sup>24</sup> Queensland Child Protection Commission of Inquiry, above n 1, 7, 9.

<sup>25</sup> Ibid 125.

<sup>26</sup> Ibid 117.

<sup>27</sup> Ibid 91 ff, 113.

<sup>28</sup> Ibid 91 ff.

<sup>29</sup> Ibid 97 ff, 117.

<sup>30</sup> 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.

six in principle) and committed to implementing the reform roadmap outlined in the QCPCI report over the next 10 years.<sup>31</sup>

3.21 The main objectives of the reform program are to:<sup>32</sup>

- 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 round of reforms was 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'.<sup>33</sup>

## OVERVIEW OF QUEENSLAND'S CHILD PROTECTION SYSTEM

3.24 The *Child Protection Act 1999* (Qld) ('the Act') is jointly administered by the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services.<sup>34</sup>

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.

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

3.26 Chapter 1 of the Act sets out the purpose of the Act (namely, to provide for the protection of children),<sup>35</sup> 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'.<sup>36</sup> In addition, every child has a right to be protected from harm or risk of harm.<sup>37</sup>

<sup>31</sup> Queensland Government, *Response to the Queensland Child Protection Commission of Inquiry Final Report* (2013); Explanatory Notes, *Child Protection Reform Amendment Bill 2014* (Qld) 1.

<sup>32</sup> Department of Communities, Child Safety and Disability Services (Qld), *Annual Report* (2013–14) 34 ff.

<sup>33</sup> 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](http://www.cabinet.qld.gov.au/ministers/assets/Charter%20Letter_The%20Hon%20Shannon%20Fentiman%20MP.PDF)>.

<sup>34</sup> *Administrative Arrangements Order* (No 3) 2015 (Qld).

<sup>35</sup> *Child Protection Act 1999* (Qld) s 4.

<sup>36</sup> *Child Protection Act 1999* (Qld) ss 5–5A.

<sup>37</sup> *Child Protection Act 1999* (Qld) s 5B(a).

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.<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup>

### 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.<sup>41</sup>

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.

3.32 'Significant harm' is not defined in the Act.<sup>42</sup> However, 'harm' to a child is defined in section 9 to mean '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.<sup>43</sup>

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'.<sup>44</sup> According to the Explanatory Notes, the addition of the word 'significant' was not intended to alter the threshold for intervention. It was included 'in order to reinforce

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

39 *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).

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

41 *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 [5.17], n 30; [5.27], n 51 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').

42 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.

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

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

Child Safety's role as a last resort', and to emphasise 'to reporters that harm must be of a significant nature'.<sup>45</sup>

### Child protection system framework

3.34 The departmental child protection system framework describes the main pathways a child or young person<sup>46</sup> 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.<sup>47</sup>

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 Child Safety determines its response to the reports it has received of suspected harm.<sup>48</sup>

3.37 Once a report is made, Child Safety 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 harm to a child, and a reasonable suspicion that the child is 'in need of protection'.<sup>49</sup> 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.<sup>50</sup>

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 Act to:<sup>51</sup>

- 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

<sup>45</sup> Explanatory Notes, Child Protection Amendment Bill 2014 (Qld) 3, 7.

<sup>46</sup> 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').

<sup>47</sup> 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>>.

<sup>48</sup> These reports are referred to collectively as 'intakes'. 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>>.

<sup>49</sup> 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.

<sup>50</sup> Department of Communities, Child Safety and Disability Services (Qld), above n 50, 53.

<sup>51</sup> *Child Protection Act 1999* (Qld) s 14(1)(a)–(b).

- 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.<sup>52</sup>

3.40 Alternatively, if the information received by Child Safety does not reach the statutory threshold for a notification, a 'child concern report' is recorded.<sup>53</sup> 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.<sup>54</sup>

### ***Investigation and assessment phase***

3.42 As noted above, if a report to Child Safety 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.

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.<sup>55</sup> They may gather information from other agencies and individuals.<sup>56</sup>

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.<sup>57</sup>

<sup>52</sup> *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).

<sup>53</sup> Department of Communities, Child Safety and Disability Services (Qld), above n 50, 52–3.

<sup>54</sup> 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), above n 50, 53.

<sup>55</sup> 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.

<sup>56</sup> See further Department of Communities, Child Safety and Disability Services (Qld), above n 50, ch 2.

<sup>57</sup> See further *Child Protection Act 1999* (Qld) ch 2, pt 3AA, div 3 (ss 51Z, 51ZD–51ZI).

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.<sup>58</sup>

3.46 The framework provides for three main categories of outcomes for a finalised investigation and assessment:<sup>59</sup>

- **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.
- **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 Child Safety is required when it has been determined that a child is in need of protection.<sup>60</sup> Protection may include interim, temporary or ongoing care.

<sup>58</sup> 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.

<sup>59</sup> 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 (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), above n 50, 106 ff.

<sup>60</sup> 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), above n 50, 152.

3.48 When ongoing intervention is required, a case plan is developed in conjunction with the child and their family.<sup>61</sup> Case plans are initially developed through family group meetings held by the Department.<sup>62</sup>

3.49 Child Safety 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.<sup>63</sup>

### **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.<sup>64</sup>

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.<sup>65</sup> Twenty Family and Child Connect services are planned to be established across Queensland. Seven of these commenced in January 2015,<sup>66</sup> and an additional 13 sites are planned from July 2015,<sup>67</sup> and January 2016.<sup>68</sup>

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.

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<sup>61</sup> See further *Child Protection Act 1999* (Qld) ss 51A–F.

<sup>62</sup> See further *Child Protection Act 1999* (Qld) ss 51G–P.

<sup>63</sup> Department of Communities, Child Safety and Disability Services (Qld), above n 61.

<sup>64</sup> See [3.17] above.

<sup>65</sup> 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](http://www.communities.qld.gov.au/.../family-child-connect.pdf)>.

<sup>66</sup> The first seven sites are Townsville, the Sunshine Coast (including Gympie), Toowoomba, Roma (satellite service), Beenleigh/Bayside, Logan and the Gold Coast.

<sup>67</sup> Sites scheduled for July 2015 are Browns Plains/Beaudesert, Maryborough/Bundaberg, Rockhampton/Gladstone/Emerald, Kingaroy, Moreton Bay and Ipswich.

<sup>68</sup> Sites scheduled for January 2016 are Mackay, Mt Isa/Gulf, Brisbane North, Brisbane South, Brisbane South-West, Cairns, and Cape York/Torres Strait.

## 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 need to reduce the increasing demand on the statutory child protection system and strengthen support and early intervention 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*.<sup>69</sup> 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'.<sup>70</sup> 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 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.<sup>71</sup>

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.

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<sup>69</sup> Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020* (2009).

<sup>70</sup> Ibid 11.

<sup>71</sup> Ibid 17.

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.<sup>72</sup>

3.62 The *Child Protection Act 1999* (Qld) operates 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.<sup>73</sup>

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.

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<sup>72</sup> 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.

<sup>73</sup> Queensland Child Protection Commission of Inquiry, above n 1, 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.<sup>1</sup> 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'.<sup>2</sup> In particular, it recognised that 'notification is the first step in the management of child abuse'.<sup>3</sup>

4.3 This mandatory reporting provision was expanded to include registered nurses in 2004,<sup>4</sup> 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.<sup>5</sup> The CMC recommended that the mandatory reporting requirement under the *Health Act 1937* (Qld) should be expanded to include

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

<sup>2</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 27 March 1980, 3046–7 (Sir W Knox, Minister for Health).

<sup>3</sup> Ibid 3046.

<sup>4</sup> 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 191–6, 158 (definition of 'professional').

<sup>5</sup> 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'.<sup>6</sup> However, the CMC did not believe:<sup>7</sup>

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'.<sup>8</sup> It concluded that nurses should be included because they 'are well placed to make objective and reliable assessments of possible abuse', but that:<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

### ***Child Protection Reform Amendment Act 2014 (Qld)***

4.7 The current mandatory reporting provisions were inserted in chapter 2, part 1AA, division 2 of the *Child Protection Act 1999* (Qld) ('the Act') 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'.<sup>12</sup> The QCPCI found that there was mounting pressure on the statutory child protection system due to a significant increase in the number of reports

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6 Ibid 244, Recs 6.13–6.15.

7 Ibid.

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 364–6.

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

made to Child Safety, a substantial proportion of which did not meet the threshold for statutory intervention.<sup>13</sup> One reason identified by the QCPCI for this was that Queensland's mandatory reporting obligations were 'fragmented, confusing and inconsistent'.<sup>14</sup>

4.9 The new provisions in chapter 2, part 1AA of the Act sought to address this by:<sup>15</sup>

- 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;
- establishing a dual reporting pathway by clarifying that:
  - if a relevant person has a reportable suspicion,<sup>16</sup> 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 provisions commenced on 19 January 2015.<sup>17</sup>

## CURRENT LAW

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

4.11 Chapter 2, part 1AA (ss 13A–J) of the Act provides for both voluntary and mandatory reporting of concerns about a child (an individual under 18 years).<sup>18</sup>

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<sup>13</sup> See [3.5] ff above.

<sup>14</sup> 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.

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

<sup>16</sup> For the definition of 'reportable suspicion' see [4.18] below.

<sup>17</sup> *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.

<sup>18</sup> *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.<sup>19</sup>

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

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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> In addition, 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.<sup>25</sup>

### **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;<sup>26</sup>

<sup>19</sup> For a discussion of the meaning of 'a child in need of protection' see [3.31] above.

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

<sup>21</sup> *Child Protection Act 1999* (Qld) s 13A(2).

<sup>22</sup> '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.

<sup>23</sup> *Child Protection Act 1999* (Qld) s 13D.

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

<sup>25</sup> *Child Protection Act 1999* (Qld) s 197A(3).

<sup>26</sup> 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 (definitions of 'doctor' and 'medical practitioner').

- a registered nurse;<sup>27</sup>
- a teacher;<sup>28</sup>
- a police officer who works in child protection;<sup>29</sup> 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.<sup>30</sup>

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,<sup>31</sup> 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,<sup>32</sup> 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'.<sup>33</sup>

<sup>27</sup> 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').

<sup>28</sup> 'Teacher' means an approved teacher 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'). An approved teacher is a person who is a registered teacher or who has permission to teach by the Queensland College of Teachers. It does not include a teacher's aide, a teacher's assistant or a student teacher: see *Education (Queensland College of Teachers) Act 2005* (Qld) s 6, sch 3 (definitions of 'approved teacher', 'registered teacher', 'permission to teach', 'teach' and 'teacher').

<sup>29</sup> 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).

<sup>30</sup> *Child Protection Act 1999* (Qld) s 13E(2).

<sup>31</sup> 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).

<sup>32</sup> 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 [4.12] above.

<sup>33</sup> See further [5.12] 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): See also Queensland Child Protection Commission of Inquiry, above n 14, 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’.<sup>34</sup>

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.<sup>35</sup> It must also include the following information prescribed by regulation, to the extent of the person’s knowledge:<sup>36</sup>

- the child’s name and sex;
- the child’s age;
- details of how to contact the child;
- 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.<sup>37</sup> 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.<sup>38</sup>

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

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<sup>34</sup> 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.

<sup>35</sup> *Child Protection Act 1999* (Qld) s 13E(2)(a).

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

<sup>37</sup> 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.

<sup>38</sup> 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).<sup>39</sup>

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).<sup>40</sup>

4.29 Generally, the family's consent must be sought before referring or sharing information about a family with family support services.<sup>41</sup> 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.<sup>42</sup>

4.30 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).<sup>43</sup>

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<sup>39</sup> 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.

<sup>40</sup> 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), above n 34, 6.

<sup>41</sup> Department of Communities, Child Safety and Disability Services (Qld), above n 41, 1.

<sup>42</sup> 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.

<sup>43</sup> Department of Communities, Child Safety and Disability Services (Qld), above n 41, 1.

## 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.<sup>44</sup>

4.32 The Child Protection Guide is publicly accessible on the Department's website.<sup>45</sup> It asks a series of 'yes or no' questions 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).<sup>46</sup>

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.<sup>47</sup>

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44 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>>.

45 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>>.

46 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>>.

47 Resource Sheet 4, above n 45.

# 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 Australian state and territory has enacted some form of mandatory reporting law as one part of their child protection legislation to promote the safety and wellbeing of children.<sup>1</sup> However, as explained below, the provisions vary in scope, particularly in relation to who is required to report, and the types of abuse or maltreatment that must be reported.

### Who is required to report

5.3 Like Queensland, the mandatory reporting legislation in the Australian Capital Territory ('ACT'), South Australia ('SA'), Tasmania ('Tas'), Victoria ('Vic') and Western Australia ('WA') includes a list of particular groups of professionals who are mandatory reporters.

5.4 In each of these jurisdictions, doctors, nurses, teachers,<sup>2</sup> and police officers are mandatory reporters.

5.5 Other categories of mandatory reporters include:

- midwives (ACT, Tas, Vic, WA);<sup>3</sup>
- 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);
- ministers of religion, or persons who are employees of, or volunteers in, an organisation formed for religious or spiritual purposes (SA);
- school principals (Tas, Vic); and

<sup>1</sup> 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.

<sup>2</sup> The legislation in SA and Tas expressly applies the mandatory reporting obligation to teachers in a kindergarten: *Children's Protection Act 1993* (SA) s 11(2)(h); *Children, Young Persons and Their Families Act 1997* (Tas) s 14(1)(h). The mandatory reporting provision in Vic applies to a person who is a registered early childhood teacher under the *Education and Training Reform Act 2006* (Vic) or has been granted permission to teach under that Act: *Children, Youth and Families Act 2005* (Vic) s 182(1)(c). 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 kindergarten, a child care centre under the *Child Care Services Act 2007* (WA), or in a place where a centre-based service as defined under the *Education and Care Services National Regulations* operates.

<sup>3</sup> Note that the Queensland legislation includes registered nurses in the midwifery profession: see [4.17], n 27 above.

- certain child care providers or employees in the ECEC sector (ACT, SA, Tas, Vic).<sup>4</sup>

5.6 The New South Wales mandatory reporting provision applies to:<sup>5</sup>

- (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.

5.7 The Northern Territory provision applies to 'any person' who forms a reasonable suspicion of abuse.<sup>6</sup>

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

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<sup>4</sup> 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.

<sup>5</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27.

<sup>6</sup> *Care and Protection of Children Act* (NT) s 26(1).

	ACT	QLD	SA	TAS	VIC*	WA	NT	NSW
<b>Doctors</b>	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.
<b>Nurses</b>	Yes	Yes	Yes	Yes	Yes	Yes		
<b>Police</b>	Yes	Yes	Yes	Yes	Yes	Yes		
<b>Teachers</b>	Yes	Yes	Yes	Yes	Yes	Yes		
<b>Midwives</b>	Yes	No	No	Yes	Yes	Yes		
<b>Dentists</b>	Yes	No	Yes	Yes	No	No		
<b>Pharmacists</b>	No	No	Yes	No	No	No		
<b>Psychologists</b>	Yes	No	Yes	Yes	Yes*	No		
<b>School Counsellors</b>	Yes	No	No	No	No	No		
<b>Certain Childcare Providers/ Employees</b>	Yes	No	Yes	Yes	Yes*	No		
<b>Ministers of Religion</b>	No	No	Yes	No	No	No		
<b>Particular Social Workers</b>	No	No	Yes	No	Yes*	No		
<b>Community Corrections/ Probation/Parole Officers</b>	No	No	Yes	Yes	Yes*	No		
<b>Certain Public Servants</b>	Yes	Yes	No	Yes	Yes*	No		
<b>Others</b>	Yes <sup>7</sup>	Yes <sup>8</sup>	Yes <sup>9</sup>	Yes <sup>10</sup>	Yes <sup>11</sup>	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.

<sup>7</sup> Home education inspectors, the official visitor and the public advocate.

<sup>8</sup> A person engaged to perform a child advocate function under the *Public Guardian Act 2014* (Qld). In relation to children in departmental or licensed care services, a mandatory reporting obligation also applies to particular authorised officers, public service employees employed in Child Safety and a person employed in a departmental care service or licensed care service.

<sup>9</sup> 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.

<sup>10</sup> 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).

<sup>11</sup> School principals.

## Circumstances when a report is required

5.9 In all jurisdictions, a report must be made when the potential reporter forms a belief or suspicion on reasonable grounds that a child has been or is at risk of abuse.<sup>12</sup> It has been noted that:<sup>13</sup>

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);<sup>14</sup>
- has experienced, or is experiencing, sexual abuse or non-accidental physical injury (ACT);<sup>15</sup>
- has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse (Qld);<sup>16</sup>
- has suffered, or is likely to suffer, significant harm as a result of physical injury, or sexual abuse (Vic);<sup>17</sup>
- 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);<sup>18</sup>
- is at risk of significant harm, including physical or sexual abuse, serious psychological harm or neglect (NSW);<sup>19</sup>
- has suffered or is likely to suffer harm (including any significant detrimental effect on the physical, psychological or emotional wellbeing of a child caused, for example, by physical, psychological or emotional abuse or neglect) or

<sup>12</sup> 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 provision in Tas 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, 36.

<sup>13</sup> B Mathews and K Walsh, above n 12, 136.

<sup>14</sup> *Children and Community Services Act 2004* (WA) ss 124A–B.

<sup>15</sup> *Children and Young People Act 2008* (ACT) s 356.

<sup>16</sup> *Child Protection Act 1999* (Qld) s 13E.

<sup>17</sup> *Children, Youth and Families Act 2005* (Vic) ss 162(1)(c)–(d), 184(1).

<sup>18</sup> *Children, Young Persons and Their Families Act 1997* (Tas) ss 3(1) (definition of 'abuse or neglect'), 14(2).

<sup>19</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 23, 27.

exploitation, or is a child aged less than 14 years 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);<sup>20</sup>

- has been or is being abused (including sexual, physical or emotional abuse) or neglected (SA).<sup>21</sup>

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 also encompass harm caused by psychological and emotional abuse. It has been observed that:<sup>22</sup>

Mandatory reporting laws that require suspicions of only physical [or sexual] abuse ... 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.<sup>23</sup> ... 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. (note added)

5.13 A more detailed description of the mandatory reporting laws for each State and Territory is set out below.

## AUSTRALIA CAPITAL TERRITORY

### Historical background

5.14 The Australian Capital Territory first sought to introduce the mandatory reporting of physical and sexual abuse of children in 1986.<sup>24</sup> 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:<sup>25</sup>

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

<sup>20</sup> *Care and Protection of Children Act* (NT) ss 15, 16, 26(1).

<sup>21</sup> *Children's Protection Act 1993* (SA) ss 6 (definition of 'abuse or neglect'), 11.

<sup>22</sup> 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.

<sup>23</sup> However, it was noted that the research does not support this distinction in maltreatment subtypes: *ibid*, citing DJ Higgins, 'Differentiating between child maltreatment experiences' (2004) 69 *Family Matters* 24.

<sup>24</sup> See *Children's Services Act 1986* (ACT) s 103(2).

<sup>25</sup> Australian Law Reform Commission, *Child Welfare*, Report No 18 (1981) [396].

contact with children in the course of practising their profession ... professionals such as school teachers, kindergarten and pre-school teachers and child care 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.

5.15 The ALRC also made the observation that:<sup>26</sup>

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.

5.16 Although enacted, the original provision did not come into operation at that time, due in part to 'the diversity of opinion within the community about mandatory reporting'.<sup>27</sup> It was not until 1999 that mandatory reporting laws in similar terms came into effect,<sup>28</sup> following a comprehensive community education program.<sup>29</sup>

## Current law

5.17 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 person<sup>30</sup> 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).

5.18 Each of the following is a 'mandated reporter':<sup>31</sup>

- a doctor, dentist, nurse, enrolled nurse, or a midwife;<sup>32</sup>
- a teacher at a school (including a teacher's assistant or aide in paid employment at the school);<sup>33</sup>
- 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);

<sup>26</sup> Ibid.

<sup>27</sup> Community Law Reform Committee of the ACT, *Mandatory Reporting of Child Abuse*, Report No 7 (1993) [36].

<sup>28</sup> *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).

<sup>29</sup> ACT, *Parliamentary Debates*, Legislative Assembly, 1 July 1999, 1955 (Mr Smyth, Minister for Urban Services).

<sup>30</sup> 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').

<sup>31</sup> *Children and Young People Act 2008* (ACT) s 356(2).

<sup>32</sup> See further *Legislation Act 2001* (ACT) ss 2, 144, Dictionary pt 1 (definitions of 'doctor', 'dentist', 'nurse', 'enrolled nurse' and 'midwife').

<sup>33</sup> *Children and Young People Act 2008* (ACT) s 356(2) (definition of 'teacher').

- a person employed to counsel children or young people at a school;
- 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 not including anyone caring for a child as an unpaid volunteer);<sup>34</sup>
- 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;<sup>35</sup> 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.

5.19 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.<sup>36</sup>

5.20 A mandated reporter who does not meet the obligation to report to the Director-General as soon as practicable after forming the relevant belief commits an offence. The maximum penalty is 50 penalty units, imprisonment for 6 months or both.<sup>37</sup> It is also an offence to make a false or misleading report.<sup>38</sup>

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<sup>34</sup> *Children and Young People Act 2008* (ACT) s 356(2) (definition of 'person caring for a child at a childcare centre').

<sup>35</sup> 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: *Children and Young People Act 2008* (ACT) s 3, Dictionary (definition of 'official visitor').

<sup>36</sup> *Children and Young People Act 2008* (ACT) s 874.

<sup>37</sup> *Children and Young People Act 2008* (ACT) s 356(1).

<sup>38</sup> *Children and Young People Act 2008* (ACT) ss 355, 358. The maximum penalty is 50 penalty units, imprisonment for 6 months or both.

## Application to the ECEC sector

5.21 As explained above, in the Australian Capital Territory, mandatory reporting applies, among others, to:<sup>39</sup>

- 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.

5.22 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 paid employment at the childcare centre, but does not include anyone caring for a child as an unpaid volunteer.<sup>40</sup>

5.23 The decision to regulate child care centres and family day care schemes, rather than all 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:<sup>41</sup>

Regulating schemes, not individual carers, is a 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

5.24 In New South Wales, mandatory reporting requirements were introduced in 1982 requiring medical practitioners to report the abuse of children.<sup>42</sup> The legislation also provided a mechanism for other 'professions, vocations and callings' to be prescribed by regulations.<sup>43</sup> The *Children (Care and Protection) Regulation 1996* (NSW) required anybody that provided particular services to a child on a formal or regular basis to report abuse.<sup>44</sup> In addition, school staff, including teachers, counsellors, social workers, early childhood teachers, principals and deputy principals, were required to report sexual assault.<sup>45</sup>

<sup>39</sup> *Children and Young People Act 2008* (ACT) s 356(2)(j)–(k).

<sup>40</sup> *Children and Young People Act 2008* (ACT) s 356(2) (definition of 'person caring for a child at a childcare centre').

<sup>41</sup> ACT, *Parliamentary Debates*, Legislative Assembly, 1 July 1999, 1960 (Mr Smyth, Minister for Urban Services).

<sup>42</sup> *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).

<sup>43</sup> *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).

<sup>44</sup> *Children (Care and Protection) Act 1987* (NSW) s 22(2)(b) (repealed); *Children (Care and Protection) Regulation 1996* (NSW) reg 16A (repealed). Services included health care services, children's services (for example, childcare centres), educational services, recreational services, counselling and therapy services, disability support services, accommodation services, information services and youth services.

<sup>45</sup> *Children (Care and Protection) Act 1987* (NSW) s 22(3) (repealed); *Children (Care and Protection) Regulation 1996* (NSW) reg 16 (repealed).

5.25 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.<sup>46</sup> This change implemented the recommendation of the NSW Department of Community Services.<sup>47</sup> In its review of the legislation, the Department 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'.<sup>48</sup>

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'.<sup>49</sup> 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'.<sup>50</sup>

## 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 Secretary of the Department as soon as practicable if the person has reasonable grounds to suspect that a child<sup>51</sup> is at risk of significant harm, and those grounds arise during the course of or from the person's work.<sup>52</sup> There is no penalty for failure to report.<sup>53</sup>

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

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

48 Ibid 22.

49 Ibid 23.

50 Ibid.

51 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 (definitions of 'child' and 'young person').

52 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 about 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.

53 See The Hon J Wood, *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.

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:<sup>54</sup>

### 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 wellbeing 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;
- (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

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

of the report, and the making of the report does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.<sup>55</sup>

### Application to the ECEC sector

5.30 In New South Wales, the mandatory reporting provision applies to:<sup>56</sup>

- (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.

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:<sup>57</sup>

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 wellbeing 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.<sup>58</sup>

<sup>55</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 29.

<sup>56</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27(1).

<sup>57</sup> The Hon J Wood, above n 53, [6.86]–[6.88].

<sup>58</sup> *Ibid* [6.106].

5.33 It did, however, note the benefits of developing centralised reporting systems within organisations.<sup>59</sup> 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’.<sup>60</sup>

## 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.<sup>61</sup>

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.<sup>62</sup>

### Current law

5.36 The *Care and Protection of Children Act* (NT) contains mandatory reporting requirements for children<sup>63</sup> 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,<sup>64</sup> or exposure of the child to physical violence (for example, a child witnessing violence between the child’s parents at home).<sup>65</sup>

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;

<sup>59</sup> 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.

<sup>60</sup> Ibid.

<sup>61</sup> *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.

<sup>62</sup> See Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Little Children are Sacred*, Report (2007). That Inquiry found that many were unaware of their broad reporting obligation.

<sup>63</sup> 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’).

<sup>64</sup> ‘Exploitation’ of a child includes sexual and other forms of exploitation of a child: *Care and Protection of Children Act* (NT) s 16.

<sup>65</sup> *Care and Protection of Children Act* (NT) s 15.

- a child aged less than 14 years has been or is likely to be a victim of a sexual offence;<sup>66</sup> or
- a child has been or is likely to be a victim of an offence against section 128 of the *Criminal Code*;<sup>67</sup>

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.<sup>68</sup>

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.<sup>69</sup>

### 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

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<sup>66</sup> 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 two years: *Care and Protection of Children Act* (NT) s 26(2).

<sup>67</sup> 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).

<sup>68</sup> *Care and Protection of Children Act* (NT) s 26.

<sup>69</sup> *Care and Protection of Children Act* (NT) s 27.

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);
- (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).<sup>70</sup>

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

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.<sup>71</sup>

5.47 Without limiting sections 185(1)–(4), any of the following is a person engaged in child-related employment:<sup>72</sup>

- (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 Australian jurisdiction 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.<sup>73</sup>

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.<sup>74</sup> It considered that one

<sup>71</sup> *Care and Protection of Children Act* (NT) s 185(4).

<sup>72</sup> *Care and Protection of Children Act* (NT) s 185(5).

<sup>73</sup> *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).

<sup>74</sup> Law Reform Committee of South Australia, *The Evidence Act 1929–1968 and the Children's Protection Act 1936–1961*, Report No 1 (1969) 8.

obstacle to law enforcement in these cases was the reluctance of medical and dental practitioners to report for fear that:<sup>75</sup>

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 confidence in a public court or other tribunal.

5.50 To overcome this, the Law Reform Committee 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.<sup>76</sup>

5.51 The duty to report has been expanded over time to include:

- nurses, teachers, police officers, and employees of agencies established to promote child welfare or community welfare (in 1976);<sup>77</sup>
- registered psychologists, pharmaceutical chemists, teachers' aides, social workers, and persons employed in kindergartens (in 1981);<sup>78</sup>
- 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);<sup>79</sup> and
- ministers of religion, employees or volunteers in organisations formed for religious or spiritual purposes, and employees and volunteers in government or non-government organisations that provide sporting or recreational services wholly or partly for children (in 2005).<sup>80</sup>

5.52 The most recent expansion of the mandatory reporting obligation implemented the recommendations of the 2003 review of child protection in South Australia. That review 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'.<sup>81</sup>

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<sup>75</sup> Ibid.

<sup>76</sup> 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).

<sup>77</sup> *Community Welfare Act 1972* (SA) s 82d, inserted by the *Community Welfare Act Amendment Act 1976* (SA).

<sup>78</sup> *Community Welfare Act 1972* (SA) s 91, inserted by the *Community Welfare Act Amendment Act 1981* (SA).

<sup>79</sup> *Community Welfare Act Amendment Act 1988* (SA), which implemented recommendations from the 1986 Report of the Task Force on Child Sexual Abuse.

<sup>80</sup> *Children's Protection (Miscellaneous) Amendment Act 2005* (SA) s 10.

<sup>81</sup> R Layton, 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.

5.53 It was also observed generally that the education and children's services system is an essential part of the child protection system:<sup>82</sup>

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 childcare workers are people who occupy positions of trust and continuous relationships 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, more comprehensive approaches to the integration of child protection in education and children's services need to be developed in other jurisdictions.

5.54 In August 2014, the Child Protection Systems Royal Commission was announced by the South Australian Premier, following concerns about the effectiveness of the State's child protection system to ensure the safety of children at risk of harm. The purpose of the Royal Commission is to investigate the effectiveness of the child protection systems that are currently in place.<sup>83</sup>

## Current law

5.55 In South Australia, mandatory notification requirements are contained in Part 4 of the *Children's Protection Act 1993* (SA). A person to whom section 11 applies must notify the Department as soon as practicable if he or she suspects on reasonable grounds that a child<sup>84</sup> 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.

5.56 '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.<sup>85</sup>

5.57 Section 11 applies to the following persons:

- a medical practitioner, pharmacist, registered or enrolled nurse, dentist, or psychologist;
- a police officer, or 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;

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<sup>82</sup> Ibid [19.2].

<sup>83</sup> See Child Protection Systems Royal Commission, *Terms of Reference* <<http://www.childprotectionroyalcommission.sa.gov.au/aboutus/tor/>>. Some concerns have been raised about the effectiveness of mandatory reporting: see, eg, Georgie Moore, 'SA premier wants changes to abuse reports', *The Australian*, 1 September 2015.

<sup>84</sup> A 'child' means a person under 18 years of age: *Children's Protection Act 1993* (SA) s 6(1) (definition of 'child').

<sup>85</sup> *Children's Protection Act 1993* (SA) ss 6(1) (definition of 'abuse or neglect'), 10.

- a minister of religion,<sup>86</sup> or 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; and
- any other person who is an employee of, or volunteer in, a government or non-government organisation that provides health, welfare, education, 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.

5.58 The maximum penalty for failing to report is \$10 000.<sup>87</sup> It is a defence for the defendant to prove that:<sup>88</sup>

- 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; or
- 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.

5.59 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.<sup>89</sup>

5.60 Section 8C requires an organisation to which the section applies<sup>90</sup> to have in place appropriate policies and procedures for ensuring that appropriate reports of

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<sup>86</sup> 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).

<sup>87</sup> *Children's Protection Act 1993* (SA) s 11(1).

<sup>88</sup> *Children's Protection Act 1993* (SA) s 11(2a)–(2b).

<sup>89</sup> *Children's Protection Act 1993* (SA) s 12.

<sup>90</sup> Section 8C of the *Children's Protection Act 1993* (SA) applies to government organisations, and non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children.

abuse or neglect are made under Part 4, and that child safe environments are established and maintained within the organisation.<sup>91</sup>

### Application to the ECEC sector

5.61 The South Australian provision is expressed to apply to teachers in a kindergarten.<sup>92</sup>

5.62 It also applies, among others, to:<sup>93</sup>

- approved family day care providers; and
- employees and volunteers in an organisation that provides health, welfare, education, sporting, or recreational, child care, or residential services wholly or partly for children (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).

5.63 The inclusion of all volunteers working with children was recommended in the 2003 report of the Review of Child Protection in South Australia.<sup>94</sup> At the time, it was noted that expanding the reporting requirement to volunteers raised the issue of:<sup>95</sup>

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.

5.64 In view of this difficulty, it was considered that it was:<sup>96</sup>

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.

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<sup>91</sup> The maximum penalty for failing to do so is \$10 000.

<sup>92</sup> *Children's Protection Act 1993* (SA) s 11(2)(h).

<sup>93</sup> *Children's Protection Act 1993* (SA) s 11(2)(i)–(j).

<sup>94</sup> R Layton, above n 81, Rec 54.

<sup>95</sup> Ibid [10.11]–[10.12].

<sup>96</sup> Ibid.

## TASMANIA

### Historical background

5.65 Mandatory reporting was first enacted in Tasmania in 1974.<sup>97</sup> 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.<sup>98</sup> 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* (Tas).<sup>99</sup>

### Current law

5.66 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 that:<sup>100</sup>

- a child<sup>101</sup> has been or is being abused or neglected or is an affected child within the meaning of the *Family Violence Act 2004* (Tas);<sup>102</sup>
- 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, 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.

5.67 '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

<sup>97</sup> See *Child Protection Act 1974* (Tas) s 8(2), repealed and replaced by the *Children, Young Persons and Their Families Act 1997* (Tas).

<sup>98</sup> See *Child Protection Order (No 2) 1975* (Tas) (repealed).

<sup>99</sup> *Child Protection Order 1977* (Tas) (repealed).

<sup>100</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 14(2).

<sup>101</sup> 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').

<sup>102</sup> 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').

person's wellbeing, or the injured, abused or neglected person's physical or psychological development is in jeopardy.<sup>103</sup>

5.68 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, the dental profession (as a dentist, dental therapist, dental hygienist or oral health therapist), or in the psychology profession;
- a police officer, or 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;
- 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.

5.69 The penalty for failing to notify as required under this provision is a fine not exceeding 20 penalty units.<sup>104</sup>

5.70 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 by another person of all the reasonable grounds on which their belief, suspicion or knowledge was based, 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 in which or for whom the person works.<sup>105</sup>

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<sup>103</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 3 (definition of 'abuse or neglect').

<sup>104</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 14(2).

<sup>105</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 14(6).

## Application to the ECEC sector

5.71 As explained above, the Tasmanian mandatory reporting provision applies to a teacher in a kindergarten.<sup>106</sup> It also applies, among others, to:<sup>107</sup>

- 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).

5.72 '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.<sup>108</sup>

## VICTORIA

### Historical background

5.73 In 1988, the Law Reform Commission of Victoria recommended the introduction of mandatory reporting of child sexual abuse.<sup>109</sup> 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.<sup>110</sup> However, the recommendation was not implemented.

5.74 A broader review of child protection followed and, in its 1993 report, recommended the introduction of mandatory reporting for the physical and sexual abuse of children.<sup>111</sup> 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.<sup>112</sup> However, the report also noted 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.<sup>113</sup>

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<sup>106</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 14(1)(h).

<sup>107</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 14(1)(i)–(j).

<sup>108</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 3(1) (definitions of 'child care' and 'child care service').

<sup>109</sup> Law Reform Commission of Victoria, *Sexual Offences against Children*, Report No 18 (1988) [176].

<sup>110</sup> *Ibid* [175].

<sup>111</sup> Justice Fogarty, *Protective Services for Children in Victoria*, Report (1993).

<sup>112</sup> *Ibid* 114.

<sup>113</sup> *Ibid* 115.

5.75 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 [are] most likely to come into contact with child abuse'.<sup>114</sup> 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'.<sup>115</sup>

5.76 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 children.<sup>116</sup> Those provisions were replaced by the *Children, Youth and Families Act 2005* (Vic).

## Current law

5.77 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 child<sup>117</sup> 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.

5.78 The following persons are mandatory reporters for the purposes of the Act:<sup>118</sup>

- a registered medical practitioner, a nurse, or a midwife;

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<sup>114</sup> Ibid 116.

<sup>115</sup> Ibid 118.

<sup>116</sup> See *Children and Young Persons (Further Amendment) Act 1993* (Vic), amending the *Children and Young Persons Act 1989* (Vic) (repealed).

<sup>117</sup> 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 sch 1 or an interim order within the meaning of that sch 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').

<sup>118</sup> *Children, Youth and Families Act 2005* (Vic) s 182.

- a person who is registered as a teacher or an early childhood teacher under the *Education and Training Reform Act 2006* (Vic) or has been granted permission to teach under that Act;
- 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;
  - 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; and
  - a member of a prescribed class of persons.

5.79 The 'relevant date', in relation to a person or class of persons referred to above, means the date fixed for the purposes of that section by an Order made by the Governor in Council and published in the Government Gazette.<sup>119</sup> However, no Order has yet been made fixing the relevant date and therefore these categories of professionals remain non-mandated.

5.80 A penalty of 10 penalty units applies if a mandatory reporter fails to make a report as required.<sup>120</sup> 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

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<sup>119</sup> *Children, Youth and Families Act 2005* (Vic) s 182(2).

<sup>120</sup> *Children, Youth and Families Act 2005* (Vic) s 184(1).

or her belief had been the subject of a report to the Secretary made by another person.<sup>121</sup>

5.81 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.<sup>122</sup>

5.82 Section 162(1) of that Act provides that a child is 'in need of protection' if any of the following grounds exist:<sup>123</sup>

- (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;
- (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.

5.83 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 a person who reports under this provision is protected from liability provided that the report is made in good faith.<sup>124</sup>

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<sup>121</sup> *Children, Youth and Families Act 2005* (Vic) s 184(2).

<sup>122</sup> *Children, Youth and Families Act 2005* (Vic) s 184(4).

<sup>123</sup> *Children, Youth and Families Act 2005* (Vic) s 162(1).

<sup>124</sup> *Children, Youth and Families Act 2005* (Vic) s 189.

5.84 Victoria has also recently introduced a new offence for failure to disclose child sexual abuse, which is distinct from the mandatory reporting scheme.<sup>125</sup> The offence provides that any adult (aged 18 years 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 years) must disclose that information to police (unless they have a reasonable excuse).<sup>126</sup>

### Application to the ECEC sector

5.85 In Victoria, the mandatory reporting provision applies to a person who is a registered early childhood teacher under the *Education and Training Reform Act 2006* (Vic), or who has been granted permission to teach under that Act.<sup>127</sup>

5.86 It also applies to the following persons, among others, on and from the relevant date:<sup>128</sup>

- 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 employed or engaged by an education and care service within the meaning of the *Education and Care Services National Law* (Vic).<sup>129</sup>

5.87 In its 2012 report, the Inquiry into Protecting Victoria's Vulnerable Children considered that the provision should be limited to maintain its original policy focus:<sup>130</sup>

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

<sup>125</sup> 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 in Parliament of Victoria, Family and Community Development Committee, *Inquiry into the Handling of Child Abuse by Religious and Other Organisations: Betrayal of Trust*, Report (2013).

<sup>126</sup> 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).

<sup>127</sup> *Children, Youth and Families Act 2005* (Vic) s 182(c).

<sup>128</sup> *Children, Youth and Families Act 2005* (Vic) s 182(1)(f), (fa). The 'relevant date' means the date fixed for the purposes of that section by an Order made by the Governor in Council and published in the Government Gazette: at s 182(2). As no Order has yet been made to fix the relevant date, these categories effectively remain non-mandated. See [5.79] above.

<sup>129</sup> This excludes volunteers.

<sup>130</sup> The Hon P Cummins, D Scott and B Scales, *Protecting Victoria's Vulnerable Children Inquiry*, Report (2012) vol 2, 349.

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.

5.88 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'.<sup>131</sup>

5.89 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'.<sup>132</sup> It concluded that the remaining categories of reporters should be progressively gazetted to strengthen the protection of children, while preventing unmanageable spikes in reports.

5.90 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 child care workers might lack the expertise to recognise indicators of physical and sexual abuse.<sup>133</sup>

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

5.91 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'.<sup>134</sup>

5.92 The Inquiry also noted that there has been increasing regulation over, and professionalisation of, the provision of children's services.<sup>135</sup>

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

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131 Ibid 348.

132 Ibid.

133 Ibid.

134 Ibid.

135 Ibid 349.

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

5.93 Western Australia was the last Australian jurisdiction to introduce mandatory reporting,<sup>136</sup> having favoured the voluntary reporting system and the facilitation of reporting through protocols and procedures.<sup>137</sup> In 2008, a mandatory reporting law was introduced requiring teachers, doctors, nurses and police to report the sexual abuse of children.<sup>138</sup> The State Government considered that:<sup>139</sup>

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.

### Current law

5.94 The *Children and Community Services Act 2004* (WA) places a duty on certain people to report the sexual abuse of children.<sup>140</sup>

5.95 'Sexual abuse', in relation to a child, includes sexual behaviour in circumstances where:<sup>141</sup>

- (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.

5.96 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

<sup>136</sup> *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* (WA), amending the *Children and Community Services Act 2004* (WA).

<sup>137</sup> 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.

<sup>138</sup> *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* (WA), amending the *Children and Community Services Act 2004* (WA).

<sup>139</sup> Western Australia, *Parliamentary Debates*, Legislative Council, 8 April 2008, 1904c–1905a (Hon Sue Ellery, Minister for Child Protection).

<sup>140</sup> A 'child' means a person who is under 18 years of age: *Children and Community Services Act 2004* (WA) s 3 (definition of 'child').

<sup>141</sup> *Children and Community Services Act 2004* (WA) s 124A (definition of 'sexual abuse').

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.<sup>142</sup>

5.97 The report must be made to the CEO,<sup>143</sup> a person approved by the CEO, or a person who is a member of a class of persons approved by the CEO.<sup>144</sup>

5.98 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.<sup>145</sup>

5.99 Failing to make a report is an offence, and the penalty is a fine of \$6000.<sup>146</sup>

5.100 It is a defence for the person charged to prove that he or she honestly and reasonably believed that:<sup>147</sup>

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

### Application to the ECEC sector

5.101 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 programme<sup>148</sup> at an educational venue.<sup>149</sup> An 'educational venue' includes:

- a kindergarten;<sup>150</sup>

<sup>142</sup> See further *Children and Community Services Act 2004* (WA) s 124B(1). See also s 124A (definitions of 'doctor', 'nurse', 'midwife' and 'teacher').

<sup>143</sup> The 'CEO' means the Chief Executive Officer of the Department: *Children and Community Services Act 2004* (WA) s 3 (definition of 'CEO').

<sup>144</sup> *Children and Community Services Act 2004* (WA) s 124B(2). As to the form and content of the report, see s 124C.

<sup>145</sup> *Children and Community Services Act 2004* (WA) s 124B(4).

<sup>146</sup> *Children and Community Services Act 2004* (WA) s 124B(1).

<sup>147</sup> *Children and Community Services Act 2004* (WA) s 124B(3).

<sup>148</sup> 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').

<sup>149</sup> *Children and Community Services Act 2004* (WA) s 124A (definition of 'teacher'); *Teacher Registration Act 2012* (WA) s 3 (definitions of 'teach' and 'educational venue'), pt 3.

<sup>150</sup> 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.

- 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;<sup>151</sup> or
- a place where a centre-based service as defined under the *Education and Care Services National Regulations 2012* operates.<sup>152</sup>

5.102 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). Neither does it apply to teacher's aides, teacher's assistants or student teachers or unpaid volunteers,<sup>153</sup> except to the extent prescribed by regulation.<sup>154</sup>

## COMMONWEALTH

5.103 Child Protection is the responsibility of the 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.<sup>155</sup>

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

- 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.

5.105 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

<sup>151</sup> *Teacher Registration Act 2012* (WA) s 3 (definition of 'educational venue'); *Child Care Services Act 2007* (WA) s 4.

<sup>152</sup> *Teacher Registration Act 2012* (WA) s 3 (definition of 'educational venue'); *Teacher Registration (General) Regulations 2012* (WA) reg 5.

<sup>153</sup> *Teacher Registration Act 2012* (WA) s 3 (definition of 'teach').

<sup>154</sup> 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.

<sup>155</sup> In relation to the Family Court of Western Australia, see *Family Court Act 1997* (WA) s 160.

must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

5.106 'Abuse', in relation to a child, means:<sup>156</sup>

- (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.

5.107 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.

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<sup>156</sup> *Family Law Act 1975* (Cth) s 4 (definition of 'abuse').

# Chapter 6

## Aspects of Mandatory Reporting Laws

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### INTRODUCTION

6.1       The general principles behind mandatory reporting laws are that:<sup>1</sup>

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 has been some debate about the benefits and disadvantages of mandatory reporting laws.

### 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.

<sup>1</sup>

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.

#### 6.4 Mandatory reporting laws are founded on three main assumptions:<sup>2</sup>

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 and the provision of assistance**

6.5 It is considered that the main advantage of mandatory reporting laws is that cases that might otherwise remain undetected are brought to the attention of appropriate helping agencies.<sup>3</sup> Cases of severe child maltreatment are often hidden, as they are perpetrated by the child's parents or caregivers and occur in private. Some form of mandatory reporting obligation is therefore seen as necessary to require persons other than the child or the child's family to report, so that the child can receive help and be protected from harm. This is seen as 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).<sup>4</sup>

#### **Requires certain professionals to detect child abuse**

6.6 As noted above, 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.<sup>5</sup> These laws also seek to overcome any legal or ethical obstacles to reporting, or other reluctance professionals may have to report, and protect professionals from liability for reports that are made in good faith.<sup>6</sup>

#### **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.<sup>7</sup> However, it has also been observed that

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

<sup>3</sup> 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, above n 2, 131.

<sup>4</sup> 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, above n 2, 131.

<sup>5</sup> A Takis, above n 2, 133.

<sup>6</sup> R Gilbert, A Kemp et al, 'Recognising and responding to child maltreatment' (2009) 373 *The Lancet* 167; J Yelas, 'Mandatory Reporting of Child Abuse and the Public/Private Distinction' (1994) 7(3) *Auckland University Law Review* 781, 788.

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

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’.<sup>8</sup>

### **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,<sup>9</sup> and meeting obligations under the United Nations Convention on the Rights of the Child.<sup>10</sup> In particular, Article 19 provides that:<sup>11</sup>

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 over-reporting**

6.9 The main criticism of mandatory reporting is that it causes the over-reporting of cases that do not reach the statutory threshold for intervention, which puts a strain on resources and detracts from the ability of government agencies to respond to legitimate serious cases of child abuse.<sup>12</sup>

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

6.10 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.<sup>13</sup>

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<sup>8</sup> Ibid [173].

<sup>9</sup> See, eg, A Takis, above n 2, 133; B Mathews and D Bross, above n 3, 513–14.

<sup>10</sup> 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.

<sup>11</sup> Convention on the Rights of the Child [1991] ATS 4.

<sup>12</sup> A Takis, above n 2, 126; DJ Besharov, ‘Child Protection: Past progress, present problems, and future directions’ (1983) 17(2) *Family Law Quarterly* 151, 162.

<sup>13</sup> GB Melton, ‘Mandated reporting: a policy without reason’ (2005) 29 *Child Abuse and Neglect* 9; DJ Besharov, above n 12, 162.

## Negatively impacts on relationships with clients

6.11 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.<sup>14</sup> 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.<sup>15</sup>

## Scope of laws may be expanded too far

6.12 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.<sup>16</sup> 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.<sup>17</sup>

## Does not address underlying socio-economic problems

6.13 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'.<sup>18</sup> In such cases, it is accepted that there may be 'a multiplicity of serious personal, social and economic problems', which must be addressed.<sup>19</sup> Mandatory reporting schemes have been criticised as poorly adapted to address these underlying socio-economic causes and to provide families with the help and support they need.<sup>20</sup>

## DATA ON THE IMPACT OF MANDATORY REPORTING

6.14 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 'over-reporting' in terms of unsubstantiated reports that

<sup>14</sup> A Takis, above n 2, 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.

<sup>15</sup> 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, above n 6, 790.

<sup>16</sup> GB Melton, above n 13, 11.

<sup>17</sup> For example, for a discussion of mandatory reporting laws in the context of children affected by domestic violence, see C Humphreys, Australian Domestic & Family Violence Clearinghouse, *Domestic Violence and Child Protection: Challenging directions for practice*, Issues Paper 13 (2007); C Humphreys, 'Problems in the system of mandatory reporting of children living with domestic violence' (2008) 14 *Journal of Family Studies* 228.

<sup>18</sup> GB Melton, above n 13, 11.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid 14.

burden the system and detract from the ability to respond to legitimate cases. This raises for consideration whether data supports either assertion.

6.15 One commentator has noted that issues of over-reporting and under-reporting/case-finding are linked:<sup>21</sup>

Child protective agencies are plagued simultaneously by the twin problems of under- and over-reporting 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 assist in uncovering cases of child abuse?**

6.16 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.

6.17 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'.<sup>22</sup>

6.18 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 directed to the public at large and which usually accompany the introduction of such laws.<sup>23</sup>

6.19 An academic who conducts research in this field has concluded that the statistics from several countries suggest mandatory reporting does work to identify

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<sup>21</sup> DJ Besharov, 'Over-reporting and Under-reporting are Twin Problems', in DR Loseke, RJ Gelles and MM Cavanaugh (eds), *Current Controversies on Family Violence* (SAGE publications, 2nd ed, 2005) ch 18.

<sup>22</sup> 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'.

<sup>23</sup> Law Reform Commission of Victoria, above n 7, 53 ff.

the majority of cases of severe child maltreatment that are detected.<sup>24</sup> That academic also concluded that several sources of data in the USA indicate that mandatory reporting may contribute to long-term declines, particularly in relation to physical and sexual abuse and fatalities.<sup>25</sup>

6.20 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.<sup>26</sup> In relation to the impact of mandatory reporting, it was found that:<sup>27</sup>

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.

6.21 In a 2002 report for the Western Australian Child Protection Council that examined the evidential basis for arguments for and against mandatory reporting, it was observed that:<sup>28</sup>

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.

### Does mandatory reporting cause over-reporting?

6.22 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.<sup>29</sup>

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).

<sup>24</sup> B Mathews, 'Does the protection of vulnerable children require a system of mandatory reporting of abuse and neglect?', *Issues paper for the New Zealand Government Green Paper for vulnerable children* (2012) 7 ff.

<sup>25</sup> Ibid.

<sup>26</sup> 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.

<sup>27</sup> Ibid 118.

<sup>28</sup> M Harries and M Clare, *Mandatory Reporting of Child abuse: Evidence and Options*, Report for the Western Australian Child Protection Council (University of Western Australia, 2002) 49.

<sup>29</sup> B Mathews, above n 4, 304.

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

6.24 However, commentators have cautioned against interpreting existing data in an overly simplistic way.<sup>30</sup>

6.25 Some argue that simply counting the number of notifications that are substantiated out of the total of all the notifications received does not of itself provide an accurate measure of the success or failure of such laws.<sup>31</sup> They assert that it is inaccurate to deem all unsubstantiated reports as indicative of 'over-reporting'. 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.<sup>32</sup> 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.<sup>33</sup>

6.26 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'.<sup>34</sup>

6.27 An academic who recently conducted a detailed study of the 'over-reporting claim' in the USA and Australia concluded that it is not sustained by the evidence.<sup>35</sup>

## CONCLUSIONS

6.28 Mandatory reporting laws have been enacted in each Australia jurisdiction, and are accepted as one important component of the broader child protection system.

6.29 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.<sup>36</sup>

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<sup>30</sup> See, eg, B Mathews, above n 4, 466 ff; B Mathews, above n 24, 10 ff.

<sup>31</sup> 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; B Drake, 'Unraveling "Unsubstantiated"' (1996) 1(3) *Child Maltreatment* 261.

<sup>32</sup> B Mathews, above n 4, 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.

<sup>33</sup> B Mathews, above n 4, 333.

<sup>34</sup> The Hon J Wood, *Special Commission of Inquiry into Child Protection Services in New South Wales*, Report (2008) vol 1, 181.

<sup>35</sup> B Mathews, above n 4, 334–5; B Mathews, above n 24, 10 ff.

<sup>36</sup> R Layton, 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 J Wood, above n 34, 178; The Hon P Cummins, D Scott and B Scales, *Protecting Victoria's Vulnerable Children Inquiry*, Report (2012) vol 1, 347.

6.30 The Special Commission of Inquiry into Child Protection Services in South Australia concluded in its 2003 Report that:<sup>37</sup>

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.

6.31 In its 2008 Report, the Special Commission of Inquiry into Child Protection Services in New South Wales expressed the view that:<sup>38</sup>

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.

6.32 The Inquiry into Protecting Victoria's Vulnerable Children considered in its 2012 report that:<sup>39</sup>

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.

6.33 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.

6.34 In 1993, it was observed in a report on protective services for children in Victoria that:<sup>40</sup>

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

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<sup>37</sup> R Layton, above n 36, [10.2]–[10.6], Rec 50.

<sup>38</sup> The Hon J Wood, above n 34, 178.

<sup>39</sup> The Hon P Cummins, D Scott and B Scales, above n 36, 347.

<sup>40</sup> Mr Justice Fogarty, *Protective Services for Children in Victoria*, Report (1993), 119.

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.

6.35 It was 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.<sup>41</sup> 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'.<sup>42</sup>

6.36 Overall, criticisms of mandatory reporting laws relate primarily to issues regarding their implementation, rather than the underlying principles.<sup>43</sup> As one commentator has noted, 'problems that stem from inadequate resourcing do not inform a principled argument against mandatory reporting'.<sup>44</sup>

6.37 Concerns of over-reporting, 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.

6.38 Mandatory reporting laws must be adequately resourced, supported by appropriately skilled staff and services, and accompanied by relevant training and education.<sup>45</sup>

6.39 Ultimately, these laws must strike the proper balance between promoting reports that enable cases of child abuse to be detected and responded to, and not overwhelming the system with over-reporting of unsubstantiated reports.

6.40 In addition, mandatory reporting laws are only one component of the child protection system, designed to assist in the detection of serious cases of abuse that might otherwise remain hidden. These laws must be integrated within a properly resourced child protection and family welfare system, including primary prevention and family support services.<sup>46</sup>

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41 Ibid 114–15.

42 Ibid 133.

43 Law Reform Commission of Victoria, above n 7, [155].

44 B Mathews, above n 32, 225.

45 See, eg, Law Reform Commission of Victoria, above n 7, [178]; The Hon J Wood, above n 34, 181.

46 See, eg, B Mathews, above n 24; Justice Fogarty, above n 40, 115.



# 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

7.2 The Department of Communities, Child Safety and Disability Services (Qld) collects data on the number of intakes received by Child Safety, among other things.<sup>1</sup>

7.3 The table on the following page shows the number of intakes received by the department by intake type and primary source for the period from 2012–13 to 2014–15.<sup>2</sup> The reporting data uses the following terminology:

- An ‘intake’ is recorded when the department receives information about harm or risk of harm to a child.
- A ‘child concern report’ is recorded when information received does not meet the legislative threshold for a notification.
- A ‘notification’ is recorded when information received indicates harm or a risk of harm to a child, and a reasonable suspicion that the child is in need of protection.

<sup>1</sup> For an explanation of the Queensland child protection system framework, see [3.24] ff above.

<sup>2</sup> Source: Queensland Government, Table I:2: Intake, by intake type and primary source, Queensland, available at Department of Communities, Child Safety and Disability Services (Qld), ‘Our performance’, ‘Intake phase’ (13 October 2015) <<https://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase>>.

Primary source	2010-11			2011-12			2012-13			2013-14			2014-15		
	Child concern reports	Notifications	Total	Child concern reports	Notifications	Total	Child concern reports	Notifications	Total	Child concern reports	Notifications	Total	Child concern reports	Notifications	Total
Subject child	214	132	346	231	158	389	249	199	448	234	153	387	197	148	345
Parent/guardian	12 854	1 531	14 385	11 810	1 614	13 424	13 091	1 631	14 722	13 679	1 332	15 011	13 731	1 509	15 240
Sibling	311	124	435	260	128	388	290	120	410	318	118	436	467	150	617
Other relative	5 719	1 291	7 010	4 983	1 522	6 505	5 845	1 560	7 405	5 930	1 563	7 493	6 291	1 702	7 993
Friend/neighbour	5 082	1 307	6 389	4 685	1 402	6 087	5 024	1 411	6 435	4 801	1 326	6 127	5 079	1 193	6 272
Health sources	9 889	3 710	13 599	10 370	4 159	14 529	11 013	3 993	15 006	10 663	3 791	14 454	9 688	3 758	13 446
School personnel	11 241	3 045	14 286	10 196	3 355	13 551	12 948	3 692	16 640	15 209	3 812	19 021	13 849	3 713	17 562
Childcare personnel	391	169	560	423	180	603	651	260	911	732	271	1 003	912	255	1 167
Police	33 265	6 456	39 721	34 353	7 950	42 303	41 081	7 809	48 890	41 742	7 048	48 790	19 837	5 401	25 238
Departmental officer	2 466	1 377	3 843	2 267	1 283	3 550	1 733	1 078	2 811	1 695	928	2 623	1 078	810	1 888
Non-government organisation	2 680	842	3 522	3 339	1 284	4 623	4 227	1 202	5 429	4 260	1 228	5 488	4 074	1 660	5 734
Anonymous	2 625	540	3 165	2 697	681	3 378	2 750	545	3 295	2 440	565	3 005	4 063	638	4 701
Other	3 742	1 073	4 815	3 766	1 059	4 825	4 575	1 222	5 797	4 475	1 080	5 555	5 761	1 391	7 152
Not stated	384	58	442	300	48	348	294	41	335	181	41	222	202	28	230
<b>Total</b>	<b>90 863</b>	<b>21 655</b>	<b>112 518</b>	<b>89 680</b>	<b>24 823</b>	<b>114 503</b>	<b>103 771</b>	<b>24 763</b>	<b>128 534</b>	<b>106 359</b>	<b>23 256</b>	<b>129 615</b>	<b>85 229</b>	<b>22 356</b>	<b>107 585</b>

Table 7-1: Intake, by intake type and primary source, Queensland

Source: Department of Communities, Child Safety and Disability Services.

Notes:

Intakes include notifications and child concern reports.

If an intake 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.

### **Intake trends**

7.4 Based on the recorded data, the department found that there was an increase in the total intakes for the period from 2010–11 to 2013–14:<sup>3</sup>

From 2010–11 to 2013–14 total intakes increased by 15.2 per cent, from 112 518 to 129 615. The number of child concern reports increased by 17.1 per cent over this period while the number of notifications increased by 7.4 per cent.

7.5 The department stated that the growth in intakes for this period was 'due in part to increased reporting obligations for professionals working with children and to raised community awareness'.<sup>4</sup>

7.6 However, for the period from 2013–14 to 2014–15, the recorded data shows a decrease in the number of intakes. The department observed that:<sup>5</sup>

With the introduction of reforms in January 2015 including the initial six Family and Child Connect and Intensive Family Support services and streamlined reporting arrangements, over the past year the number of intakes has decreased by 17.0 per cent from 129 615 in 2013–14 to 107 585 in 2014–15. The number of intakes received from police decreased by 23 552, from 48 790 in 2013–14 to 25 238 (48.3 per cent). There was also a decrease in intakes from school personnel of 7.7 per cent and from health sources of 7.0 per cent. The number of intakes from child care centres increased by 16.0 per cent from 1003 in 2013–14 to 1167 in 2014–15.

### **Sources of notifications**

7.7 The main sources of intakes in 2014–15 were police (23.5 per cent) followed by school personnel (16.3 per cent), parents/guardians (14.2 per cent) and health services (12.5 per cent).

7.8 Of the 107 585 intakes received for the period 2014–15, 1167 (1%) were sourced from child care personnel.

7.9 A recent research study explored trends in numbers and outcomes of notifications of different kinds of child abuse and neglect, by different coded reporter groups, in every State and Territory including Queensland, for the 10 year period 2003–2012.<sup>6</sup> One of the authors of that study, Dr Ben Mathews, informed the Commission that the data shows that 'child care personnel are infrequent reporters of both physical and sexual abuse, with very low numbers of reports per annum'.<sup>7</sup>

<sup>3</sup> Department of Communities, Child Safety and Disability Services (Qld), 'Our performance', 'Intake phase' (13 October 2015) <<https://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase>>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> B Mathews, L Bromfield, K Walsh and G Vimpani, *Child Abuse and Neglect: a socio-legal study of mandatory reporting in Australia* (2015).

<sup>7</sup> Email from Dr Ben Mathews to the Director of the Queensland Law Reform Commission, 20 November 2015. The figures describe the data as coded. It is possible that child care personnel made some other notifications which were coded as being made anonymously, or where the coded data on reporter type was missing.

7.10 For example, over the decade 2003–2012, there were 72 428 notifications of physical abuse from all report sources. Child care personnel made 1033 notifications of child physical abuse, averaging 103 per annum, or approximately 2 per week. This is approximately 1.4% of all notifications of child physical abuse.<sup>8</sup>

7.11 Child Safety informed the Commission that the verified corporate data spanning the past five years to 30 June 2015 shows that, over this period:<sup>9</sup>

- From all report sources, there were 25 230 notifications of physical abuse and 12 069 notifications of sexual abuse.
- Child care personnel made 403 notifications of child physical abuse, averaging 81 per annum, or approximately 1.5 per week. This is approximately 1.6% of all notifications of child physical abuse.
- Child care personnel made 150 notifications of child sexual abuse, averaging 30 per annum, or less than one per week. This is approximately 1.2% of all notifications of child sexual abuse.

## 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.<sup>10</sup>

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.<sup>11</sup> 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 total number of notifications,

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<sup>8</sup> Ibid.

<sup>9</sup> Letter from A/Senior Executive Director, Policy and Legislation, Department of Communities, Child Safety and Disability Services to the Director of Queensland Law Reform Commission, 18 November 2015.

<sup>10</sup> Australian Institute of Health and Welfare, 'Child Protection Australia 2013-14', *Child Welfare Series No 61* (Australian Government, Canberra, 2015).

<sup>11</sup> Ibid 19.

137 585 (45%) were investigated,<sup>12</sup> with 54 438 substantiations (after investigation) relating to 40 844 children.<sup>13</sup>

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 to June 2014, has narrowed the gap between the number of investigations and substantiations.<sup>14</sup>

### **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.<sup>15</sup>

### **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.<sup>16</sup> The AIHW said:<sup>17</sup>

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).<sup>18</sup> 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

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<sup>12</sup> The remaining 55% (166 512) were dealt with by other means, including referral to a support service.

<sup>13</sup> 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.

<sup>14</sup> Ibid 27.

<sup>15</sup> Ibid 28, fig 3.8.

<sup>16</sup> Ibid 28.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid 22.

the 'less than 1' category and the Australian Capital Territory had the lowest rates for all other categories.<sup>19</sup>

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.<sup>20</sup>

### **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. The number of reports made by child care personnel in Queensland is low compared to other categories of reporters; however, 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.<sup>21</sup>

<sup>19</sup> 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).

<sup>20</sup> Ibid 29, Table A18.

<sup>21</sup> 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.

Source of notification	NSW <sup>22</sup>	Vic	Qld	WA	SA <sup>23</sup>	Tas <sup>24</sup>	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 <sup>25</sup>	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
<b>Total</b>	<b>65 837</b>	<b>21 243</b>	<b>23 256</b>	<b>12 987</b>	<b>6540</b>	<b>1469</b>	<b>1344</b>	<b>4909</b>	<b>137 585</b>

**Table 7-2: Number of investigations, by source of notification, 2013–14 (notes in original)**

Source: AIHW Child Protection Collection 2014.

*Notes*

1. Investigations include 'investigations finalised', 'investigations in process' and 'investigations closed — no outcome possible'.

<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> 'Other' category may include the person responsible.



# Chapter 8

## Should Mandatory Reporting Apply to the ECEC Sector?

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### INTRODUCTION

8.1 The terms of reference require the Commission to consider whether the legislative mandatory reporting requirements under the *Child Protection Act 1999* (Qld) ('the Act') should be expanded to apply to the ECEC sector, including long day care and family day care services and kindergartens.

8.2 Chapter 2, Part 1AA of the Act provides for both voluntary and mandatory reporting.

8.3 Pursuant to section 13A of the Act, any person may voluntarily 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. This reflects the principle for administering the Act that the safety, wellbeing and best interests of a child are paramount.<sup>1</sup> It also recognises that the protection of children from harm is everyone's responsibility.<sup>2</sup>

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<sup>1</sup> *Child Protection Act 1999* (Qld) s 5A.

<sup>2</sup> This is one of the principles embedded in the Child Protection Reform Roadmap recommended by the QCPCI: see Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Child Protection in Queensland*, Final Report (June 2013) xi, xiii.

8.4 Section 13E provides that a person in any of five designated classes must make a written report to Child Safety if they form a reportable suspicion about a child. A 'reportable suspicion' is 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. This reflects the high threshold required for statutory intervention by Child Safety, and reinforces Child Safety's as a role of last resort.<sup>3</sup>

8.5 At present, the designated classes of mandatory reporters are:

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

8.6 Chapter 2, Part 1AA was inserted into the Act by the *Child Protection Reform Amendment Act 2014* (Qld). The amendments implemented a number of recommendations made by the Queensland Child Protection Commission of Inquiry ('QCPCI') to 'reduce the current levels of unsustainable demand on the child protection system'.<sup>4</sup> This included the consolidation of all mandatory reporting requirements into the Act.<sup>5</sup> The new reporting provisions commenced operation on 19 January 2015.<sup>6</sup>

8.7 Prior to this, mandatory reporting obligations were spread across different pieces of legislation and varied in scope and content.<sup>7</sup> This was a consequence of the historical development of mandatory reporting laws, as different obligations were introduced at different times in relation to particular designated classes.

8.8 Mandatory reporting laws aim to protect children by facilitating the timely detection of harm to enable an appropriate response. The reporting obligation is usually placed on those in occupations who come into direct and frequent contact with children, who may encounter cases of significant harm, and who have appropriate skills, experience, training and knowledge to recognise and report it.

<sup>3</sup> Explanatory Notes, Child Protection Reform Amendment Bill 2014 (Qld) 3.

<sup>4</sup> Ibid 2 ff. See also Queensland Child Protection Commission of Inquiry, above n 2, 84 ff.

<sup>5</sup> Ibid.

<sup>6</sup> *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.

<sup>7</sup> See, eg, *Public Health Act 2005* (Qld) ss 158, 191 (omitted by the *Child Protection Reform Amendment Act 2013* (Qld) s 103); *Education (General Provisions) Act 2006* (Qld) ss 364–6; *Child Protection Act 1999* (Qld) s 148 (Current as at 1 January 2014); *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 25 (Current as at 1 January 2014).

8.9 Mandatory reporting laws aim to remove any legal or ethical barriers, or other reluctance to report significant harm.<sup>8</sup> For example, the first mandatory reporting provision in Queensland required medical practitioners to report cases of suspected maltreatment.<sup>9</sup> This legislative obligation overcame the barrier to reporting caused by the duty of confidentiality between doctors and their patients. In addition, mandatory reporting laws provide for protection from liability for a report made in good faith.<sup>10</sup>

8.10 Staff employed in ECEC services are not subject to a mandatory reporting obligation under the Act. However, like any other person, they may report a reasonable suspicion that a child may be in need of protection to Child Safety voluntarily at any time pursuant to section 13A. ECEC services are also subject to various responsibilities and legislative requirements in relation to the protection of children.<sup>11</sup>

## DISCUSSION PAPER

8.11 In the Discussion Paper, the Commission sought submissions on whether the mandatory reporting obligation under the Act should be extended to apply to the ECEC sector.

8.12 The Commission asked what considerations should be taken into account in determining whether the mandatory reporting obligation should, or should not, apply to the ECEC sector. It also asked respondents to reflect on what the likely impact will be, if mandatory reporting is extended to the ECEC sector.<sup>12</sup>

## SUBMISSIONS

8.13 The overwhelming majority of respondents submitted that the mandatory reporting obligation under the Act should apply to the ECEC sector.<sup>13</sup> This included a large number of stakeholders from the ECEC sector — such as Early Childhood Australia, Goodstart Early Learning, The Crèche and Kindergarten Association Limited, the Early Childhood Teachers' Association Inc, the Queensland Catholic Education Commission, and the Independent Education Union — as well as the Queensland Family and Child Commission, the Queensland Council of Social Service, The Benevolent Society and Save the Children Australia, among others.

8.14 These respondents submitted that the extension of mandatory reporting to this sector would facilitate timely intervention and the protection of children from

<sup>8</sup> See, eg, J Yelas, 'Mandatory Reporting of Child Abuse and the Public/Private Distinction' (1994) 7(3) *Auckland University Law Review* 781, 788.

<sup>9</sup> See *Health Act 1937* (Qld) s 76k, inserted by the *Health Act Amendment Act 1980* (Qld) s 4.

<sup>10</sup> See, eg, *Child Protection Act 1999* (Qld) s 13D.

<sup>11</sup> See [2.21] ff above.

<sup>12</sup> Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Discussion Paper 73 (2015) [8.12], Questions 8–1 to 8–3, 8–6.

<sup>13</sup> Submissions 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 23, 24, 25, 26, 27, 29.

significant harm, as the ECEC sector is uniquely positioned to observe and report physical and sexual abuse to young children (aged 0–5 years).<sup>14</sup>

8.15 Numerous reasons were given, including:

- the number of children in approved ECEC services;<sup>15</sup>
- the quality and frequency of care;<sup>16</sup>
- the close relationship that can develop between ECEC workers and the children and families in their care;<sup>17</sup>
- the increasing professionalisation of the ECEC workforce;<sup>18</sup> and
- the particular vulnerability of children aged 0–5 years to abuse.<sup>19</sup>

8.16 Respondents also acknowledged the existing duties of the ECEC sector to provide for the safety and wellbeing of children in their care and protect children from harm.<sup>20</sup>

8.17 A majority of respondents considered that the expansion of mandatory reporting to the ECEC sector would not only align with these existing duties, but would provide more guidance and support to ECEC workers in their child protection obligations, particularly if accompanied by appropriate training and education. Moreover, respondents considered that mandatory reporting could potentially overcome any reluctance or barriers to reporting faced by ECEC workers, by providing a clear legislative basis for reporting and protection from liability for doing so.<sup>21</sup>

8.18 A number of respondents also noted the potential for adverse consequences if mandatory reporting is extended to the ECEC sector.

8.19 In particular, respondents considered the need to ensure that the implementation of mandatory reporting does not adversely impact on the relationship of trust between ECEC workers and the children and families in their care, or affect participation rates, particularly for children in disadvantaged communities.<sup>22</sup>

8.20 Concerns were also raised that the extension of mandatory reporting to the ECEC sector may lead to over-reporting of cases that do not meet the statutory threshold for a notification, thereby placing an unsustainable demand on the child

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<sup>14</sup> See [8.42]–[8.61] below.

<sup>15</sup> Submissions 1B, 3, 5, 8, 9.

<sup>16</sup> Submissions 9, 12, 15, 17.

<sup>17</sup> Submissions 1B, 9, 11, 12, 13, 15, 17, 19, 20, 23, 24, 27.

<sup>18</sup> Submissions 10, 11, 12, 13, 17, 22.

<sup>19</sup> Submissions 1B, 5, 8, 11, 12, 23, 24, 27, 29.

<sup>20</sup> See [8.62]–[8.68] below.

<sup>21</sup> See [8.69]–[8.78] below.

<sup>22</sup> See [8.87]–[8.108] below.

protection system and affecting its capacity to respond to cases of significant harm.<sup>23</sup> Many respondents noted the reforms recommended by the QCPCI to reduce unsustainable demand that over-reporting can create for the statutory child protection system. They considered that any expansion of mandatory reporting should not compromise this or take resources away from important family support services.<sup>24</sup>

8.21 However, the majority of respondents considered that any potential adverse consequences can be addressed and minimised by appropriate support, training, education and resourcing.<sup>25</sup>

8.22 Two respondents submitted that the mandatory reporting provisions should not be extended to apply to the ECEC sector.<sup>26</sup>

8.23 These respondents recognised the importance of child protection but considered that it is unnecessary to extend mandatory reporting laws to the ECEC sector given the existing duties of the sector and the voluntary reporting provision in the Act. They considered that the potential consequences of extending mandatory reporting to the ECEC sector could outweigh the benefits.

8.24 Some respondents expressed concerns in relation to over-reporting (including the possible creation of a risk-averse, semi-automatic reporting culture), and the potential to alienate children and their families from the ECEC sector (particularly in already disadvantaged communities).<sup>27</sup>

8.25 PeakCare Queensland Inc also expressed reservations about extending mandatory reporting to ECEC workers for those reasons. It suggested that, to protect children from harm, the real issue is not the need to extend mandatory reporting to the ECEC sector, but to provide appropriate support, resourcing, training and education, and to foster collaborative relationships between the ECEC sector, Child Safety and other family support services and helping agencies.

8.26 PeakCare Queensland Inc submitted that it may be premature to widen the group of mandatory reporters at this time, until the impacts of the reforms recommended by the QCPCI have been evaluated.

8.27 A few respondents addressed the issues raised in the discussion paper without expressing a view on whether the mandatory reporting provisions under the Act should be applied to the ECEC sector.<sup>28</sup>

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23 See [8.109] ff below.

24 See [8.104]–[8.125] below.

25 Submissions 5, 6, 8, 9, 11, 12, 13, 15, 17, 19, 20, 22, 23, 26, 29.

26 Submissions 14, 21.

27 See [8.109] ff.

28 Submissions 4, 20, 22, 28.

8.28 One respondent, the Australia Childcare Association Queensland, sought 'further research and documented evidence to show that the current system is failing children at risk'.

8.29 The key considerations raised in submissions, and the reasons given by respondents both for and against the expansion of mandatory reporting laws to the ECEC sector, are discussed in further detail below.

## KEY CONSIDERATIONS RAISED IN SUBMISSIONS

### The protection of children from harm

8.30 All respondents acknowledged the importance of protecting children from harm, with the majority stating that this should be the paramount consideration in determining whether mandatory reporting should apply to the ECEC sector.<sup>29</sup>

8.31 As one respondent, the Queensland Council of Social Service, said:

the overriding consideration should be whether the proposal will serve to better safeguard the physical, psychological and emotional wellbeing of children.

8.32 A number of respondents noted that mandatory reporting aligns with the commitment to protect children's rights,<sup>30</sup> and helps raise community awareness about child protection issues.<sup>31</sup>

8.33 For example, Goodstart Early Learning observed that:

[M]andatory reporting is a valuable policy instrument to embed the rights of children to be safe and protected. It also acts as a lever to meet our obligations as a signatory to the *United Nations Convention on the Rights of the Child* — Article 19.

8.34 This respondent also commented that mandatory reporting 'helps to create a service system and a community expectation that recognises and protects children's rights'.

8.35 The Benevolent Society considered that mandatory reporting raises 'awareness of the risks of child abuse and highlights for those charged with a mandated obligation, and for others within the community, what to look for in order to keep children safe from harm'.

8.36 United Voice Queensland supported the extension of mandatory reporting to the ECEC sector because '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'.

8.37 Churches of Christ Care similarly observed that mandatory reporting 'send[s] the message that children's safety and wellbeing is taken seriously'.

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<sup>29</sup> Submissions 1B, 3, 5, 7, 9, 11, 12, 13, 15, 18, 19, 20, 22, 22, 23, 24, 27, 29.

<sup>30</sup> Submissions 1B, 3, 5, 12, 29.

<sup>31</sup> Submissions 9, 12, 18, 23, 27.

8.38 Several respondents emphasised the importance of timely detection and early intervention in cases of child abuse, and considered mandatory reporting an important tool to achieve this.<sup>32</sup>

8.39 For example, Independent Schools Queensland stated that ‘mandatory reporting in the ECEC sector will achieve the goal of increasing the timely protection of children from harm’.

8.40 United Voice Queensland observed that early intervention ‘produces substantial positive effects for children and communities’.

8.41 The Department of Justice and Attorney-General also considered that mandatory reporting by the ECEC sector would facilitate the earliest possible detection of, and intervention in, cases of significant harm. This respondent commented on the importance of early intervention given the strong link between child maltreatment and youth offending.

### **Protective capacity of the ECEC sector**

8.42 The majority of respondents submitted that the ECEC sector is uniquely placed to detect and report suspected child abuse, due to:

- the number of children in care;<sup>33</sup>
- the nature of the relationship between ECEC workers and the children and families in their care;<sup>34</sup> and
- the particular vulnerability of young children to abuse and the consequent need for strong protective measures.<sup>35</sup>

8.43 As one respondent submitted, the Queensland ECEC sector is:<sup>36</sup>

[I]n a unique position being perhaps the largest group of people and profession that care for our youngest, most vulnerable citizens outside the child’s immediate family. The ECEC sector are therefore in a privileged position of having a close relationship with a young child and who are trained to observe, interact with and engage in both verbal and non-verbal communication. Early, timely intervention will make a difference to a child’s life if all Qld ECEC sector are mandated to report suspected child abuse.

### ***The number of children in care***

8.44 According to the Department of Education and Training, there are approximately 2850 approved ECEC services in Queensland (with approximately

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<sup>32</sup> Submissions 9, 15, 24, 27, 29.

<sup>33</sup> Submissions 1B, 3, 5, 8, 9.

<sup>34</sup> Submissions 1B, 9, 11, 12, 13, 15, 17, 19, 20, 23, 24, 27.

<sup>35</sup> Submissions 1B, 5, 8, 11, 12, 23, 24, 27, 29.

<sup>36</sup> Submission 1B.

2790 approved services regulated under the National Quality Framework and 60 under the *Education and Care Services Act 2013* (Qld)).

8.45 The Queensland Catholic Education Commission commented that 'considering the number of ECEC services providing care to over 280 000 children in Queensland, these services must be regarded as a key agency in child protection'. This respondent further noted that, 'by virtue of the age and vulnerability of children in the ECEC sector, staff working in all ECEC services have a critical role in the care and wellbeing of every child'.

8.46 Another respondent, an employee in the ECEC sector with over 12 years of experience, also considered that mandatory reporting laws should be applied to the ECEC sector because of 'the sheer number of children in approved care'.<sup>37</sup>

### ***The nature of the relationship***

8.47 The Australian Childcare Alliance Queensland stated that 'staff in child care centres are well placed to observe and report concerns that children are at risk of significant harm'.

8.48 The Early Childhood Teachers' Association Inc similarly noted that ECEC workers play a major role in the education and care of young children and educators are 'involved on a day to day basis with children, families and extended support networks'.

8.49 Goodstart Early Learning considered that 'ECEC services can often be the first service to identify that a child is at risk', given their 'regular contact with young children and families'.

8.50 The Queensland Council of Social Service observed that:

Teachers and educators are in a unique position to observe child abuse and neglect close up. They spend more time with children than anyone else outside the family. ECEC workers are in a position to arrest any occurrences of child abuse early, ideally before it becomes an entrenched part of a child's life.

8.51 The Crèche and Kindergarten Association Limited observed that, 'similar to primary school teachers, early childhood educators are in a unique position, where they see continual and contextual changes in behaviour, physical presentations and distress levels that other people could miss'.

8.52 United Voice Queensland submitted that 'staff in the ECEC sector do have direct responsibility for and do supervise children on a regular and consistent basis', and 'get to know the children and their families ... on a personal level'. This respondent also considered that 'relationships between children and educators in the ECEC sector are often closer than those in the school system' due to the long hours over which some children are in care and the relationships that are formed with the whole family. It noted that 'educators see and speak to parents/guardians on a daily basis', which is unlikely to occur in school situations (where mandatory reporting already exists) past Prep year.

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Submission 3.

8.53 The Queensland Family and Child Commission acknowledged the ‘quality and frequency of contact with children aged 0 to 5 years by ECEC providers and the unique opportunity, from a protective perspective, this situation offers’. It observed that:

When care is provided outside the family by the ECEC services sector, child care workers become an important part of the broader environmental influences on the family and regular observers of child development and wellbeing, family functioning and protective parenting behaviours. This observer role is even more important following the dilution of the traditional model of families and their broader social networks (extended family, neighbourhood and community connections) in recent history. This places the ECEC sector in a unique position to be able to identify circumstances, through frequent, regular and intimate contact, where children may be at risk of significant harm or to identify vulnerable families who may benefit from specialised intervention or support.

8.54 Two other respondents similarly noted that the role of the ECEC sector is particularly significant given changes to traditional family structures and supports.<sup>38</sup> For example, United Voice Queensland asserted that:

services and educators within the ECEC sector have become ‘the village’ that supports families within the community and as such establish relationships with families where disclosures are made and are privy to witnessing situations in which evidence of harm would most likely occur.

### ***The vulnerability of young children (aged 0–5 years)***

8.55 A number of respondents submitted that a key consideration is the vulnerability of young children to abuse.<sup>39</sup>

8.56 Early Childhood Australia identified that the ECEC sector ‘is one of the largest universal service systems working with families with young children’, and that ‘young children are particularly vulnerable to child abuse and neglect as their capacity to communicate and understand their world is still developing’.

8.57 Independent Schools Queensland submitted that ‘mandatory reporting benefits very young children, [who] may be unable to seek help for themselves’, and that ‘qualified professionals in the ECEC sector [are] well placed to detect abuse or neglect being suffered by children at ECEC services’.

8.58 Save the Children Australia observed that:

Children attending programs in the ECEC sector are less able to advocate for themselves due to their limited verbal skills and developmental stages. This places them at higher risk of significant harm.

In addition, very young children at risk are less likely to have other sources of support, such as school or recreational clubs and are more likely to ‘fly under the radar’. The ECEC program they attend may be the only opportunity for someone outside the family to observe the family dynamics and identify any potential needs. Many families send their children to ECEC programs for extended periods

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<sup>38</sup> Submissions 1B, 9.

<sup>39</sup> Submissions 1B, 5, 8, 11, 12, 23, 24, 27, 29.

of time and the staff within those programs are well placed to build up a picture of family functioning over time.

8.59 The Benevolent Society considered that ‘staff in the ECEC sector have an important role to play in the child protection framework, especially for infants’. This respondent referred to data that children aged 0–5 years are particularly vulnerable to abuse, and concluded that:

Mandatory reporting is therefore particularly important for the ECEC sector the staff of which, in many cases, may have the most ongoing contact with infants. As infants are pre-verbal and unable to communicate for themselves, they are highly vulnerable and those subject to harm are most in need of protection by responsible adults with whom they have contact.

8.60 Two academics who have undertaken extensive research in the field of mandatory reporting submitted that ‘the social science evidence shows that physical abuse and sexual abuse are widespread, harmful, costly, and affect highly vulnerable children’.<sup>40</sup> They noted that:

Acts of child sexual and physical abuse occur in private contexts and are therefore outside the usual scope of witnessing and direct interventional capacity by other social agents. Related to this, child victims of sexual and physical violence are extremely vulnerable members of society who cannot protect themselves, and require strong protective measures. These facts, together with the tendency for the most severe and dangerous physical abuse to be inflicted on children under 3 years of age, contributed to the development of the first mandatory reporting laws for physical abuse in the United States.

8.61 These respondents considered that ‘large components of the ECEC sector have unique exposure to these children in the first year of life and in the pre-school years, and in those periods are in a superior position to all other professional groups (teachers, police and medical professionals)’ to detect and report significant harm and enable early intervention.

### **Existing obligations of the ECEC sector**

8.62 Many respondents noted that the ECEC sector is already responsible for the safety and wellbeing of children in their care. These respondents supported the expansion of mandatory reporting laws to the ECEC sector on the basis that it aligns with the sector’s existing duties towards the protection of children.<sup>41</sup>

8.63 The Early Childhood Teachers’ Association Inc submitted that mandatory reporting connects directly with the ECEC industry, given that the role of the industry is to care for children.

8.64 The Australian Childcare Alliance Queensland noted that ‘the protection of children is the priority of the sector’.

8.65 One respondent considered that, given the existing obligations and procedures under the National Quality Framework, the application of mandatory

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<sup>40</sup> Submission 29.

<sup>41</sup> Submissions 3, 9, 12, 13, 15, 17, 18, 20, 22, 23, 29.

reporting to services regulated under the National Law would arguably have minimal impact on existing processes and reporting mechanisms.<sup>42</sup>

8.66 Similarly, two academics submitted that the:

[i]ntroduction of mandatory reporting is unlikely to result in an incremental administrative burden as reporting procedures already exist and are used on a voluntary basis. ECEC services are likely to have existing knowledge of the time taken to complete requisite reporting procedures (e.g. forms, audits etc). In some ways, the legislation may merely codify what centres are already doing in practice.

8.67 Both Goodstart Early Learning and The Crèche and Kindergarten Association Limited submitted that their internal policies and procedures already require staff to act as if they are mandatory reporters.<sup>43</sup>

8.68 Goodstart Early Learning considered that, because it already requires staff to report concerns to Child Safety, the impact of a legislative mandatory reporting obligation 'is likely to be low'. However, it observed that the ECEC 'service system is dominated by small stand-alone service providers', and that the likely impact of mandatory reporting would be different for those smaller services. For example, this respondent noted that, as a large provider, it is 'able to resource an internal Critical Incident Team which provides support to front line staff in ensuring they are meeting their obligations under the policy'. However, it considered that 'smaller providers would be unlikely to have access to such a resource and may require access to other supports provided by Government'.

### **Providing guidance and support and overcoming barriers to reporting**

8.69 A number of respondents supported the extension of mandatory reporting laws under the Act to the ECEC sector on the basis that it not only aligns with existing duties on the sector, but would provide more guidance to ECEC workers (for example, about what must be reported, when a report should be made and how it should be done).<sup>44</sup>

8.70 The application of mandatory reporting laws, with clear guidelines and obligations beyond the voluntary reporting provision, could potentially provide some comfort and support to ECEC workers in making reports and overcome any barriers to reporting.

8.71 Some of the potential barriers to reporting noted by respondents included: a reluctance to cause conflict in the relationship between ECEC workers and the parents of a child in their care; concern that reporting may cause further problems for a child; concern that a child may be withdrawn from care; or fear that a reporter may lose their job.<sup>45</sup>

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42 Submission 18.

43 Submissions 12, 13.

44 Submissions 3, 10, 12, 13, 20, 29.

45 Submissions 20, 21, 22. In relation to concerns for potential adverse consequences, see further [8.87] ff below.

8.72 A legislative mandatory reporting obligation could help to overcome any discomfort or reluctance to report due to the often close nature of the relationship between ECEC workers and the children and families in their care, and provide workers with a clear basis for reporting and protection from liability for doing so.

8.73 As the Australian Childcare Alliance Queensland noted, 'the impact on the educators of assessing the abuse [and] neglect of children causes stress', and 'educators anguish over their judgment as to whether the incident is reportable or not'.

8.74 Goodstart Early Learning submitted that mandatory reporting 'supports... professionals in their capacity and responsibility to detect child abuse'.

8.75 One respondent, an employee with 12 years' experience in the sector who recently moved from interstate, said that she was shocked to learn that ECEC employees are not mandatory reporters in Queensland.<sup>46</sup> That respondent submitted that:

An absence of Mandatory Reporting laws directly relates to an absence of understanding as to how to protect the children in our care. How is one able to guide and mentor educators and employees to understand the significance of Child Protection Laws if there is no supporting framework in place for... reporting their suspicions? How do I tell an educator that it is vital that we do everything in our power to keep these children safe from harm yet in the same breath tell them there is really no legal obligation for them to do anything at all?

8.76 The Independent Education Union observed that 'at a point where high-profile domestic violence incidents are fuelling renewed interest in the plight of victims, the responsibilities of teachers and childcare workers (and other professional groups) are likely to come under increased scrutiny'. This respondent submitted that 'it is vital that legislation incorporates clear and unambiguous expectations as to what forms of abuse/neglect should be reported, in what format/s, and to which authority/authorities'.

8.77 Two academics submitted that, while the mandatory reporting duty under the Act is consistent with existing duties applicable to the ECEC sector, it is also 'usefully different' in that it 'provides a duty of a more certain scope, with clear immunities and protections for reporters'.

8.78 The Crèche and Kindergarten Association Limited also considered that, if the extension of mandatory reporting laws to the ECEC sector is 'accompanied by investment in professional development, and in early intervention services that better support families' and is supported by 'sufficient on-going training for staff', it could have a positive impact on the ECEC sector and lead to improvements in the protection of children.

8.79 In contrast, PeakCare Queensland Inc considered that any barriers to reporting can be identified and overcome through training and education, without the need to legislate a mandatory reporting obligation. This respondent asserted that the real issue is not the need for mandatory reporting, but for 'more awareness-raising

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Submission 3.

or training of staff so they fully appreciate the need to raise concerns and how to do this', as well as 'better communication and multidisciplinary co-operation between statutory services and professional groups ... to build better collaborative partnerships'.

### **Increasing professionalisation of the ECEC sector workforce**

8.80 A number of respondents noted the increasing professionalisation of the ECEC sector in recent years, particularly in relation to ECEC services regulated under the National Quality Framework.<sup>47</sup> For example, the Queensland Council of Social Service observed that:

Reforms to the ECEC sector over recent years, including the introduction of the National Quality Framework, means childcare workers are now better qualified and more professional in their roles. There is now no reason that this sector should be subject to different expectations than the schools sector.

8.81 The Queensland Family and Child Commission observed that:

In recent history, ECEC regulations have supported the improved education and qualification levels of child care workers and supervisors employed within the sector. This further learning, including tertiary level qualifications, broadens ECEC employees' understanding of key concepts relating to the environmental factors which can impact ideal family functioning, childhood development, wellbeing and health indicators and promotes the acknowledgement of cultural perspectives to child rearing and family life.

8.82 The Department of Education and Training also noted the increasing professionalisation of the ECEC workforce in recent years. For example, this respondent referred to the *ECEC Workforce Action Plan*,<sup>48</sup> noting that one of its aims is 'to raise the status of the [ECEC] profession' by promoting state and national ECEC workforce reforms, among other things.

8.83 The Department of Education and Training noted the requirement for all educators working in a regulated ECEC service to hold, or be actively working towards, an approved professional qualification. It also observed that an employer's commitment to promoting the continuous improvement of educators is a measure of quality under element 7.2.2 of the National Quality Standard, and that it is a minimum requirement under the National Regulations that providers of ECEC services ensure staff are aware of child protection obligations.

8.84 This respondent also observed that one of the key aims of the National Quality Framework is to ensure that all services have 'effective leadership that promotes a positive organisational culture and builds a professional learning community, [including] minimum qualification requirements that apply to all educators in regulated ECEC services'. However, it noted that 'unlike existing mandatory reporters such as doctors, registered nurses or teachers in schools, ECEC educators

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<sup>47</sup> Submissions 10, 11, 12, 13, 17, 22.

<sup>48</sup> See Department of Education and Training (Qld), *ECEC Workforce Action Plan 2011–14*; and Department of Education and Training (Qld), *ECEC Workforce Action Plan 2016–19*.

do not have ongoing registration or continuing professional development responsibilities’.

### National consistency

8.85 A number of respondents supported the extension of mandatory reporting to the ECEC sector as a step towards national consistency.<sup>49</sup>

8.86 As one respondent noted, ‘national consistency in law is generally desirable both to reduce the compliance burden on organisations working across jurisdictions as well as to reduce confusion for families and workers who move interstate’.<sup>50</sup>

### Potential to adversely impact relationships and participation rates

8.87 Regulated ECEC services serve a dual role in that they not only provide quality care and education for children, but also provide support to the children’s parents and families. ECEC services can be an important link in connecting families with support services.

8.88 A number of respondents stated that, if mandatory reporting laws are extended to apply to the ECEC sector, consideration should be given to the potential adverse impact on the relationship of trust between ECEC workers and the children and families in their care.<sup>51</sup>

8.89 In particular, several respondents considered that the extension of mandatory reporting laws to the ECEC sector could potentially adversely impact participation rates, particularly for disadvantaged groups.<sup>52</sup> This would be counter to the government’s ongoing commitment to increase the proportion of children enrolled in early childhood education, particularly in relation to Indigenous children and children living in disadvantaged communities.<sup>53</sup>

8.90 The Department of Education and Training noted its ongoing commitment ‘to ensuring that children have access to quality ECEC services where children’s health, safety and wellbeing are paramount’.

8.91 Goodstart Early Learning similarly noted that it is ‘committed to the inclusion of vulnerable children and families, in particular children from at risk groups such as children with disability, Aboriginal and Torres Strait Islander children and children in contact with the statutory child protection system’.

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49 Submissions 3, 5, 6, 9, 11, 12, 13, 18, 23, 29.

50 Submission 11.

51 Submissions 12, 13, 14, 16, 21, 22, 23, 27.

52 Submissions 11, 12, 13, 14, 16, 20, 23, 27.

53 Submission 22. See Department of Education and Training (Qld), *Annual Report 2014–2015*, 27–8, in which it was noted that:

Queensland exceeded the overall Kindergarten participation target for 2014. However, achieving the targets set for vulnerable and disadvantaged children, including Aboriginal Torres Strait Islander children remains challenging.

In 2014, 65.3 per cent of Indigenous children and 91.8 per cent of children living in disadvantaged communities were enrolled in approved Kindergarten programs.

8.92 The Queensland Council of Social Service submitted that, ‘unless policy and funding initiatives are established to support the proper implementation of the new laws, there is a risk of negative outcomes for disadvantaged families’, such as:

families on low incomes, young parent families, sole parent families, Aboriginal and Torres Strait Islander families, families from Culturally and Linguistically Diverse Communities ..., families with a parent who has a disability, and families experiencing issues with housing, domestic violence, substance abuse or mental illness.

8.93 In particular, this respondent expressed concern that the expansion of mandatory reporting laws to the ECEC sector might lead to ‘withdrawal from ECEC services and other support services’, noting that ‘unlike the school system, there is no requirement for families to stay engaged with the ECEC sector’.

8.94 The Crèche and Kindergarten Association Limited submitted that:

Should the ECEC sector be required to become mandatory reporters, there is a possibility that we risk alienating some groups that are currently under-represented in early education and over represented in child protection reporting and out of home care, because they are known to be fearful and/or distrustful of government and/or the child protection system.

We know that vulnerable children benefit most from early childhood education and care. Early childhood education participation provides the building blocks that lead to good learning outcomes that can help break the cycle of poverty and disadvantage.

8.95 The Australian Childcare Alliance Queensland noted that:

It is well identified that once a service makes a report, it is very unlikely that they will see the child again as parents quickly move services and sometimes locations. This also causes educators to feel guilt and anguish for the wellbeing of the child and the impact on the child into the future as a result of their disclosure.

8.96 Save the Children Australia acknowledged that ‘there is the risk that families, if they know that ECEC staff have a mandatory reporting function, may choose not to enrol children and/or fail to seek support from relevant services, further isolating children who may be most at risk’. This respondent also noted that ‘some demographic groups experience greater focus than others, leading to disproportionate levels of reporting’. It expressed concern that, in this way, ‘mandatory reporting contributes to reduced help seeking behaviours from vulnerable families as parents fear they will be assessed as requiring statutory intervention’.

8.97 Save the Children Australia emphasised the vital role of education and training in child protection. It considered that ‘increased community education of children’s right[s] to safety and protection will lead to better understanding of situations that require statutory intervention, reducing the reliance upon mandatory reporting as a mechanism to protect children from harm’. In particular, it asserted that:

Increasing public awareness of child protection and how to respond/intervene whilst minimising stigma associated with seeking help protects vulnerable children more than introducing mandatory reporting requirements. Providing

education for ECEC services to accurately assess the level of harm/risk to a child is a vital component of providing a protective response.

8.98 The Benevolent Society similarly considered that:

It is important that a balance is struck between maintaining services for children in families who are hardest to reach and who are often most in need of assistance and ensuring that mandatory reporting does not provide a disincentive for families to attend ECEC services if they fear they could become subject to the child protection system. As this sector provides the closest system we have to a universally accessed point of contact with young children, we need to proceed with caution so as not to further alienate those children and families who are most at risk and who benefit most from attending ECEC.

8.99 The majority of respondents who raised these concerns believed that the potential for adverse consequences could be minimised by appropriate resourcing, training and education.<sup>54</sup>

8.100 For example, Goodstart Early Learning asserted that potential negative impacts on relationships with parents and children 'can be mitigated through regular high quality professional development and training of the ECEC workforce and by adequately resourcing child protection agencies to respond to notifications'.

8.101 The Queensland Council of Social Service also emphasised the need for training and, in particular, training to ensure that cultural practices are not stigmatised.<sup>55</sup>

8.102 The Queensland Catholic Education Commission considered the need for community education:

A further consideration is that the attendance of children at ECEC services, particularly children at risk, is a protective factor in terms of supporting families. It will be important that families and the wider community are fully engaged and informed around any changes to the scope and implementation of mandatory reporting laws to ensure an environment of support, rather than one of fear, is created as there is a risk that children could be withdrawn from ECEC services and a valuable protective factor would be lost.

8.103 In contrast, one respondent did not consider that mandatory reporting should be extended to the ECEC sector, owing in part to 'significant concerns regarding potential harm to families and the potential for vulnerable families to avoid ECEC services as a result of mandatory reporting'.<sup>56</sup>

8.104 PeakCare Queensland Inc also considered that the expansion of mandatory reporting to the ECEC sector 'may unintentionally create additional barriers to families seeking access to important supportive networks'.

8.105 This respondent noted that, instead of protecting vulnerable children, extending mandatory reporting to the ECEC sector may have the unintended consequence of further 'abusing' families by unnecessarily intruding into their lives

<sup>54</sup> Submissions 5, 6, 8, 9, 11, 12, 13, 15, 17, 19, 20, 22, 23, 26, 29.

<sup>55</sup> Submission 11.

<sup>56</sup> Submission 14.

in circumstances where this is unwarranted. In this way, it could potentially undermine trust and confidence in both the child care and child protection systems. Further, it considered that a mandatory reporting obligation may have the unintended consequence of 'preventing or undermining help-seeking or limiting candid discussion about personal circumstances for fear of unintentionally crossing the reporting threshold'.

8.106 PeakCare Queensland Inc emphasised the need to 'connect families with the services they need, when they need them':

Building informal support networks and enhancing the capacity of families to access and connect with diversified supportive networks is a recognised goal for family support intervention. The extent to which mandatory reporting might compromise existing support networks accessed through child care services needs to be carefully considered.

8.107 Moreover, this respondent considered that mandatory reporting will not necessarily overcome barriers to reporting faced by ECEC workers, or address any incidence of failure to report. It observed that 'mandatory reporting is no panacea and compliance with mandatory reporting is an existing issue across occupational groups already mandated to report'.

8.108 PeakCare Queensland Inc asserted that what is really needed is not mandatory reporting, but 'more awareness-raising or training of staff so they fully appreciate the need to raise concerns and how to do this', as well as 'better communication and multidisciplinary cooperation between statutory services and professional groups ... to build better collaborative partnerships'. It argued that barriers to reporting can be identified and overcome through training and education, without the need to legislate a mandatory reporting obligation.

## Over-reporting

8.109 In 2013, the QCPCI found that there was unsustainable demand 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 statutory intervention.<sup>57</sup> The QCPCI made a number of recommendations to reform the child protection system, including the consolidation of mandatory reporting laws in the *Child Protection Act 1999* (Qld) and the introduction of alternative referral pathways.<sup>58</sup>

8.110 A number of respondents submitted that a key consideration is the need to ensure that the extension of mandatory reporting to the ECEC sector will not lead to over-reporting and place an unsustainable burden on the statutory child protection

<sup>57</sup> See further Queensland Law Reform Commission, above n 8, [3.3]–[3.23]. See also Queensland Child Protection Commission of Inquiry, above n 1, 84 ff.

<sup>58</sup> Ibid.

system.<sup>59</sup> However, the majority of these respondents suggested that this risk could be addressed through adequate training, education, support and resourcing.<sup>60</sup>

8.111 Goodstart Early Learning submitted that ‘in order to maximise the intended policy outcomes and minimise risks around “over-reporting”, high quality professional development, training and guidelines will need to be affordable and accessible for all impacted ECEC educators and services’. It also noted that ‘initial training will need to be embedded and regularly refreshed’.

8.112 This respondent also submitted that:

In order to mitigate the potential risks..., the initial roll-out will need to be well resourced, particularly by Child Safety agencies, including non-government agencies. The impacts will need to be closely monitored with follow up support, advice and information provided to children, families and ECEC services. The success of new mandatory reporting provisions will be very closely linked to the capacity of the child protection system to respond appropriately to notifications.

8.113 The Crèche and Kindergarten Association Limited referred to the QCPCI’s findings that notification practices had led to an ‘overburdened and overwhelmed’ system, and ‘may have redirected the system away from *helping people* as the first response, to instead making investigation of risk or harm the primary intervention’. This respondent noted that ‘an increase in the number of reports to Child Safety is unlikely to solve the underlying issues that emerge as a result of a lack of family support services’. It therefore stated that any extension of mandatory reporting laws must not ‘come at the cost of earlier intervention family support services (which are known to be the most effective way to protect children)’.

8.114 The Benevolent Society also noted the QCPCI’s findings and recommendations for reform, and submitted that any expansion of mandatory reporting should not come at the expense of the investment in family support services and alternative referral pathways. It considered that the resourcing of early intervention and protective services to families:

is essential to ensure that there are no perverse outcomes, whereby mandatory reporting does not lead to better, but actually worse outcomes for children in need of [protection] because the system cannot cope with additional reports or have the right type of support for families when they need them.

8.115 The Queensland Children’s Activities Network considered that:<sup>61</sup>

Any decision to extend mandatory reporting requirements should be accompanied by adequate support and resourcing to minimise the impact on an overburdened system unable to cope with increasing demand and therefore becoming less effective in providing these vital services.

8.116 The Australian Childcare Alliance Queensland submitted that ‘care must be taken to ensure that mandatory reporting does not bring with it over-reporting of concerns that do not meet the threshold for a notification’, noting that this could

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<sup>59</sup> Submissions 12, 13, 16, 17, 19, 20, 21, 22, 23, 27.

<sup>60</sup> Submissions 5, 6, 8, 9, 11, 12, 13, 15, 17, 19, 20, 22, 23, 26, 29.

<sup>61</sup> Submission 19.

hinder Child Safety's ability to identify and respond to children at immediate risk. To address these concerns, it suggested that, if mandatory reporting is expanded to the ECEC sector, it should be accompanied with 'intensive training on the identification and reporting process'. It also noted the usefulness of reporting guidelines that are easily accessible, and departmental contact, to support ECEC workers in confidently making reports.

8.117 Further, the Australian Childcare Alliance Queensland submitted that it is 'extremely concerned about the preparedness of the sector should this legislation be introduced in 2016'. It observed that an 'immediate phase in without the ECEC sector being fully prepared would be detrimental and stressful for educators', and requested 'a gentle phase in as intensive training is rolled out'.

8.118 One respondent, a child care provider, opposed the expansion of mandatory reporting to the ECEC sector in part because of the risk that it may 'cause an increase in unsubstantiated notifications, placing a strain on resources and undermining the ability to respond to legitimate serious cases of child abuse'. This respondent also considered that resources were better directed to family support services, noting that mandatory reporting will not address 'the socio-economic problems that are related to the cause of the abuse'.<sup>62</sup>

8.119 PeakCare Queensland Inc also noted that the capacity of the system to respond is important, as 'increasing the numbers of substantiated cases where no action is taken arguably does more to undermine confidence in the child protection system and draw resources away from child abuse prevention activities as opposed to building trust and co-operation'.<sup>63</sup>

8.120 Some respondents expressed concern that the expansion of mandatory reporting to the ECEC sector could potentially lead to a risk-averse, semi-automatic reporting culture, or a 'pass the buck' mentality.<sup>64</sup>

8.121 In Safe Hands Educators in Safety Pty Ltd expressed concern that expanding the mandatory reporting obligation to the ECEC sector could lead to 'a misconception that once the mandated reporting has been completed [the] duty of care has been met', and that no ongoing support or follow up is required. It considered that this would undermine the premise of the *National Framework for Protecting Australia's Children 2009–2020* that protecting children is everyone's business and encourage the mentality that the government is solely responsible for child protection once a report is made.

8.122 The Queensland Family and Child Commission noted that one of the issues identified by the QCPCI as contributing to the unsustainable demand on the statutory child protection system was 'the seemingly risk-averse decision-making approach

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62 Submission 21.

63 Submission 16.

64 Submissions 16, 23, 26.

taken by mandatory reporters when notifying Child Safety of their concerns'. It observed that:

This culture of semi-automatic decision-making based on fear and lack of understanding of the legislated responsibilities of a mandatory reporter can result in unwarranted reports being directed to the tertiary system, families who feel they have been victimized without due cause and importantly in the case of ECEC, impact the child's inclusion in the service and continued access to [the] developmental and learning environment.

8.123 This respondent made the point that, while it is too early in the change process to determine the success of the reforms recommended by the QCPCI, any potential extension of the mandatory reporting functions should 'be undertaken in a manner that is consistent with' those recommendations.

8.124 Save the Children Australia similarly expressed concerns that mandatory reporting may lead to over-reporting, and the adoption of a risk-averse attitude that encourages referral to Child Safety rather than supporting the specific needs of the child and family. This respondent suggested training to overcome this risk. In particular, it considered that key staff within each service/organisation could be trained as focal points for receiving concerns from other staff/parents.

8.125 PeakCare Queensland Inc observed that, although 'one advantage of broad mandatory reporting laws is that the decision as to whether to report is taken out of the hands of individuals and their professional bodies', there is also an argument that mandatory reporting removes 'any perceived need to weigh up whether the concerns are serious enough or who to believe before having to decide what to do'. This respondent submitted that this highlights the importance of adequate training to understand the reporting threshold, and access to advice as needed.

8.126 PeakCare Queensland Inc also noted that it is too soon to tell whether the QCPCI's recommendations will have the intended result of reducing the burden on the child protection system, as the reforms are still in the process of being rolled out.

8.127 However, another respondent noted that, although the new family support services recommended by the QCPCI are still in the process of being implemented, 'data released by the Queensland Department of Communities, Child Safety and Disability Services indicates the growing capacity being created'. This respondent observed that:<sup>65</sup>

In the first quarter Family and Child Connect services have been operating, intakes to Child Safety have decreased from 124 923 to 115 136. This is a significant decrease from previous quarters over the last twelve months. This indicates that having an alternative entry point for advice and referral is reducing the number of notifications not reaching the threshold for intervention.

The current expansion of the service system indicates that it should be able to cope with a broadening of mandatory reporting requirements to the early education and care sector.

<sup>65</sup> Submission 18. See also Department of Communities, Child Safety and Disability Services (Qld), *Our Performance: Intake phase* (2014) at <<https://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase>>.

8.128 The most recent data available from the Department of Communities, Child Safety and Disability Services shows that, between 31 March 2014 and 31 March 2015, the number of intakes received decreased by 11.6 per cent (from 130 199 to 115 136). The data also shows that, during this time, the number of intakes received from child care personnel increased by 9.7 per cent (from 1025 to 1124). However, the proportion of notifications that are investigated and subsequently substantiated has remained relatively steady at 29.2 per cent overall (and 28.1 per cent for childcare personnel).<sup>66</sup>

8.129 This reporting data captures the first few months following the introduction of reforms in January 2015, including the consolidation of the mandatory reporting provisions in the Act.

8.130 The Commission also received a submission from two academics who have conducted a research study on trends in the numbers and outcomes of reports of different kinds of abuse and neglect, by reporter groups (both mandated and non-mandated), in every Australian state and territory for the ten year period from 2003–2012.<sup>67</sup> These respondents observed that:

In Queensland, child care personnel and centre workers combined are infrequent reporters of both physical and sexual abuse, with very low numbers of reports per annum. This indicates that if mandatory reporting was introduced for the ECEC sector, while an increase in reports can be expected (with an increase in investigated cases and substantiated cases), the numerical increase in reports is likely to be well within the capacity of the Department.

### **Adequacy of existing position**

8.131 Some respondents considered that it is unnecessary to extend mandatory reporting laws to the ECEC sector, given the existing duties of the sector and the voluntary reporting provision under the Act.<sup>68</sup>

8.132 One respondent, a child care provider, submitted that the ECEC sector already has various legislative responsibilities in relation to child protection, has policies and procedures in place and is already complying with the Act in voluntarily reporting significant harm to children, as evidenced by the data as to the number of reports made by child care personnel.<sup>69</sup>

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<sup>66</sup> Information provided in a letter from Director-General, Department of Communities, Child Safety and Disability Services to Chair of the Queensland Law Reform Commission, 24 September 2015.

<sup>67</sup> Submission 29.

<sup>68</sup> Submissions 14, 16, 21.

<sup>69</sup> Submission 21.

8.133 Another respondent, a kindergarten and preschool provider, also referred to the available data as to the number of reports made by child care personnel to Child Safety and noted that:<sup>70</sup>

- the numbers of notifications from child care personnel that are substantiated tend to be at similar rates to those of the mandatory reporting groups; and
- the number of reports received from child care centres has increased by 10.1 per cent from 911 in 2012–13 to 1003 in 2013–14.

8.134 This respondent submitted that this data shows that voluntary reporting is occurring effectively, and that ‘the ECEC sector is currently playing a role in protecting children from harm’.

8.135 PeakCare Queensland Inc also submitted that regulated ECEC services already have an important and acknowledged role in child protection under the National Quality Standard and National Law, and that:<sup>71</sup>

There is arguably currently sufficient existing state and national legislation addressing risk to children in early childhood settings and desirable co-operation through the National Quality Framework.

8.136 This respondent considered that ‘these existing legislative requirements, some of which are audited as part of the licensing of ECEC services, provide a comprehensive foundation for the protection of children in ECEC services’.

8.137 The Australian Childcare Alliance Queensland submitted that its members ‘expressed their intense support’ for mandatory reporting’, but also noted that its members ‘believe that they are diligent in their monitoring and reporting of incidents of suspected child abuse and neglect’. This respondent sought ‘further research and documented evidence to show that the current system is failing children at risk’.

## **Financial and administrative burden**

8.138 A number of respondents considered the potential impact of expanding mandatory reporting to the ECEC sector in terms of the likely financial and administrative burden on the sector.<sup>72</sup>

8.139 Some respondents noted the potential cost implications for services, particularly in relation to staff training costs.<sup>73</sup> These respondents noted that there may be a need for additional funding to meet these costs, particularly for small-scale providers that do not have access to the same resources as larger providers.<sup>74</sup>

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<sup>70</sup> Submission 14.

<sup>71</sup> Submission 16.

<sup>72</sup> Submissions 12, 13, 20, 21, 22, 23, 27, 29.

<sup>73</sup> Submissions 21, 22, 23, 27, 29.

<sup>74</sup> Submissions 12, 13, 27.

8.140 The Benelovent Society submitted that:

The cost of compliance with mandatory reporting requirements in terms of staff training costs and additional reporting may be onerous on small scale providers, including small not-for-profit organisations and family day care providers if the Queensland government does not contribute to compliance costs. In a sector which is already chronically under-funded with demand for day care services outstripping supply, any amendments which undermine the profitability of a service (in the case of for-profit operations) or the sustainability of the service (in the case of not-for-profit operations) and threaten the closure of ECEC services, will have a detrimental impact on the sector.

8.141 The Crèche and Kindergarten Association Limited submitted that 'mandatory reporting is likely to necessitate increased financial support for ECEC providers'. This respondent considered that the expansion of mandatory reporting requirements to the ECEC sector would 'trigger the need for a level of additional support funding in order to maintain the viability of some services, and ensure they do not unnecessarily pass increased [human resources], legal and insurance costs onto families in the form of fee increases'.

8.142 One respondent, a Kindergarten and Preschool provider who opposed the expansion of mandatory reporting to the ECEC sector, expressed concern about the likely financial impact on the ECEC sector, and asserted that 'until such time as relevant modelling and costings are provided to the affected sectors', mandatory reporting should not be expanded to the ECEC sector. This respondent further considered that 'to introduce such reforms without this information would potentially jeopardise the viability of both the child protection system and the ECEC sector'.<sup>75</sup>

8.143 The Australian Childcare Alliance Queensland also considered the need to examine the additional time burden of increased documentation that may be placed on educators, noting that:

At the current time the sector is under an acknowledged paperwork burden in the application of the many government requirements and whilst this is currently being addressed, it does place additional work on the services and on educators.

8.144 This respondent suggested that educators 'should be removed from any paperwork burden' of making the report, and that the report itself should 'be made in a straightforward manner'.

## Staff recruitment and retention

8.145 Some respondents expressed concern that the expansion of mandatory reporting laws to the ECEC sector should not deter people from working (or volunteering) in the ECEC sector, particularly at a time when the sector is seeking to attract more qualified staff, due to the introduction of new educator-to-child ratios.<sup>76</sup>

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<sup>75</sup> Submission 14.

<sup>76</sup> Submissions 9, 21, 27, 28.

8.146 One respondent, an ECEC centre that did not support the introduction of mandatory reporting, noted that it is 'already difficult to retain personnel in this industry'.<sup>77</sup>

8.147 United Voice Queensland noted a problem with a lack of qualified workers in the sector and high attrition rates:

A persistent management shortage has ensured that many qualified contact staff are being recruited 'off the floor' into managerial positions, including those of directors and assistant directors. This is increasingly occurring as the sector struggles to find appropriate staff to work within management roles. The shortage in turn leads to a higher burnout rate and, therefore, the loss of both management positions and educators, causing a twofold effect and further blurring the distinction between the two categories of the workforce.

8.148 The Benevolent Society also noted that the 'ECEC sector is already underfunded', with 'relatively low remuneration' of staff, and that there is a need to attract and retain staff. This respondent submitted that consideration should be given to ensuring that mandatory reporting requirements do not provide a disincentive for workers in the ECEC sector.

## THE COMMISSION'S VIEW

8.149 The main principle for administering the Act, to which all others are subject, is that 'the safety, wellbeing and best interests of a child are paramount'.<sup>78</sup> In addition, every child 'has a right to be protected from harm or risk of harm'.<sup>79</sup>

8.150 The preferred way of ensuring a child's safety and wellbeing is through supporting the child's family, as the family has the primary responsibility for the child's upbringing, protection and development.<sup>80</sup> However, if a child is in need of protection and does not have a parent who is able and willing to protect the child, Child Safety has a responsibility to do so.<sup>81</sup>

8.151 Child Safety relies on receiving timely and quality information about harm or risk of harm to a child, so that it can determine whether a child is in need of protection.<sup>82</sup> Chapter 2, Part 1AA of the Act provides for both the voluntary and mandatory reporting of a suspicion of harm, or risk of harm, to a child. However, there

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<sup>77</sup> Submission 21.

<sup>78</sup> *Child Protection Act 1999* (Qld) ss 5–5A.

<sup>79</sup> *Child Protection Act 1999* (Qld) s 5B(a).

<sup>80</sup> *Child Protection Act 1999* (Qld) s 5B(b)–(c).

<sup>81</sup> *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).

<sup>82</sup> 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: *Child Protection Act 1999* (Qld) s 14. 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 harm: at s 10. It is only when a child meets the criteria of a 'child in need of protection' that Child Safety is able to undertake further investigation and assessment and intervene under the Act.

is a difference in the threshold suspicions for voluntary reporting, on the one hand, and mandatory reporting, on the other.

8.152 The Commission recognises the protective role of the ECEC sector in relation to children aged 0–5 years, who are particularly vulnerable. Staff employed in ECEC services are in regular and direct contact with children and their families, and are well-placed to observe and report concerns that children are at risk of significant harm, thereby enabling timely intervention and the protection of children from harm.

8.153 ECEC services are already subject to child protection obligations, have internal policies and procedures in place and can, and do, voluntarily report concerns to Child Safety. The Commission considers that the expansion of the mandatory reporting obligation to the ECEC sector aligns with these existing obligations. It also aligns with the increasing regulation of ECEC services and professionalisation of the workforce that has taken place in recent years. In addition, it is a further step toward national consistency.

8.154 At present, a person in the ECEC sector may make a voluntary report to Child Safety if they reasonably suspect that a child may be ‘in need of protection’.

8.155 If the mandatory obligation were extended to the ECEC sector, the threshold for a reportable suspicion as defined in section 13E of the Act confines the mandatory reporting obligation to significant harm ‘caused by physical or sexual abuse’ where the child ‘may not have a parent able and willing to protect the child from harm’. That is intended to capture only serious cases of physical or sexual abuse. It does not extend to all ‘harm’ to a child or every ‘child in need or protection’ from, for example, psychological or emotional abuse or neglect.

8.156 The Commission considers that extending the mandatory reporting obligation to the ECEC sector is warranted, particularly having regard to the higher threshold for a ‘reportable suspicion’ when compared to the basis for making a voluntary report.

8.157 The Commission acknowledges the concerns raised in the submissions that the expansion of the mandatory reporting obligation to the ECEC sector could potentially have adverse consequences.

8.158 In relation to concerns that it could potentially lead to an increase in the number of reports that do not meet the statutory threshold for a notification, the Commission notes the reforms recommended by the QCPCI to reduce the burden on the statutory child protection system by, among other things, consolidating mandatory reporting provisions in the Act, and introducing family support services and alternative referral pathways.

8.159 It is only when a person forms a ‘reportable suspicion’ that the mandatory reporting obligation to provide a written report to Child Safety applies. Concerns that do not reach that threshold may appropriately be referred to support agencies, such as family support services.

8.160 For these reasons, the Commission is of the view that the legislative mandatory reporting provisions in Chapter 2, Part 1AA Division 2 of the Act should apply to the ECEC sector.

8.161 The Commission considers that concerns about any potential adverse consequences of extending the mandatory reporting obligation to the ECEC sector can be adequately addressed through appropriate training and education about the scope and content of the reporting obligation, and the provision of adequate support and resourcing to the ECEC sector to fulfil the obligation.

8.162 In the Commission's view, if mandatory reporting is extended to apply to the ECEC sector, it should be accompanied by appropriate and ongoing training and education about the scope of the reporting obligation.

## **RECOMMENDATION**

8.163 The Commission makes the following recommendation:

**8-1 Subject to recommendations 9-1 and 9-2, the mandatory reporting provisions in Chapter 2, Part 1AA, Division 2 of the *Child Protection Act 1999* (Qld) should be expanded to apply to the ECEC sector.**

## Chapter 9

# Which Services and Individuals Should the Mandatory Reporting Obligation Apply to?

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## INTRODUCTION

9.1 The Commission has recommended that the mandatory reporting requirements under the *Child Protection Act 1999* (Qld) ('the Act') should be extended to apply to the ECEC sector.

9.2 The terms of reference require the Commission to also make recommendations as to which professionals, office holders or workers within that sector should be included in the mandatory reporting scheme.

## APPLICATION OF MANDATORY REPORTING TO THE ECEC SECTOR IN OTHER AUSTRALIAN STATES AND TERRITORIES

9.3 Mandatory reporting provisions in the Australian Capital Territory, South Australia, Tasmania, Victoria, and New South Wales specifically include certain child care providers or employees as mandatory reporters (although the Victorian provision is not yet in operation).<sup>1</sup> However, the scope of these provisions varies.

9.4 In the Australian Capital Territory, the mandatory reporting provision applies to 'a person caring for a child at a childcare centre' (including paid childcare assistants or aides, but not an unpaid volunteer), as well as 'a person co-ordinating or monitoring home based care for a family day scheme proprietor'.<sup>2</sup>

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<sup>1</sup> See [5.3] ff above.

<sup>2</sup> *Children and Young People Act 2008* (ACT) s 356(2)(j)–(k).

9.5 In New South Wales, the mandatory reporting provision applies to:<sup>3</sup>

- (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.

9.6 The mandatory reporting requirement in South Australia applies to an approved family day care provider. 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.<sup>4</sup>

9.7 The Tasmanian mandatory reporting provision applies to:<sup>5</sup>

- 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).

9.8 '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.<sup>6</sup>

9.9 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. The mandatory reporting provision applies to the following persons, among others, on and from the relevant date:<sup>7</sup>

- 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

<sup>3</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27(1).

<sup>4</sup> *Children's Protection Act 1993* (SA) s 11(2a)–(2b).

<sup>5</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 14(1)(i)–(j).

<sup>6</sup> *Children, Young Persons and Their Families Act 1997* (Tas) s 3(1) (definitions of 'child care' and 'child care service').

<sup>7</sup> *Children, Youth and Families Act 2005* (Vic) ss 182(1)(f)–(fa), (2). The 'relevant date' has not been fixed, and these categories therefore effectively remain non-mandated: see [5.79] above.

- 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).<sup>8</sup>

## WHICH ECEC SERVICES SHOULD MANDATORY REPORTING APPLY TO?

### Introduction

9.10 Approved ECEC services in Queensland are regulated under either the National Quality Framework or the *Education and Care Services Act 2013* (Qld) ('ECS Act').<sup>9</sup>

9.11 There are approximately 2850 approved ECEC services in Queensland.<sup>10</sup>

9.12 The majority of these services (approximately 2790) are regulated under the National Quality Framework. This includes long day care and family day care services and kindergartens. Most of these are privately or community managed.<sup>11</sup>

9.13 The remaining approved education and care services in Queensland (approximately 60) are regulated by the ECS Act. These include government-funded limited hours care services, occasional care services, budget-based funded services that do not receive the Australian Government Child Care Benefit and ECEC services that are also disability services funded under the *Disability Services Act 2006* (Qld).<sup>12</sup>

9.14 Outside school hours care services offer care before and after school hours and during school holidays to all children eligible to attend a school (including those enrolled in the Prep Year), and are organised and operated by Parents and Citizens' Associations, non-profit community groups and commercial providers.<sup>13</sup> Most outside school hours care services are regulated under the National Quality Framework, although a small number are regulated under the ECS Act.<sup>14</sup>

9.15 A number of services remain unregulated. They include, for example, private personal arrangements (such as care shared by parents or provided by friends or relatives), playgroups, activity specific classes, coaching or tuition, hotel or resort care, conference, sport facility or shopping centre care, and mobile services.<sup>15</sup> The number of unregulated services in Queensland is unknown.

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<sup>8</sup> This excludes volunteers.

<sup>9</sup> See [2.5] ff above.

<sup>10</sup> See Department of Education and Training (Qld), 'Early childhood education and care services', ECEC Service Reports, *Early childhood services 2014* (18 August 2015) <<http://deta.qld.gov.au/information/statistics/early-childhood/ecec-services.html>>.

<sup>11</sup> Ibid. See further [2.4] above.

<sup>12</sup> See [2.19] above.

<sup>13</sup> Department of Education and Training (Qld), 'Outside School Hours Care' (28 July 2014) <<http://education.qld.gov.au/parents/school-life/outside-hours.html>>.

<sup>14</sup> Department of Education and Training (Qld), 'Before and after school care' (18 September 2014) <<https://www.qld.gov.au/families/education/pages/care.html>>.

<sup>15</sup> See [2.20] above.

## Discussion Paper

9.16 In the Discussion Paper, the Commission sought submissions on which particular types of services mandatory reporting should apply to including, for example:<sup>16</sup>

- approved education and care services under the National Law, such as;
  - long day care services;
  - family day care services;
  - kindergarten services;
  - outside school hours care services;
- a Queensland education and care service approved under the ECS Act;
- a stand-alone service under the ECS Act;
- any other services.

## Submissions

9.17 A number of respondents — including the Queensland Family and Child Commission, Churches of Christ Care, Independent Schools Queensland and The Benevolent Society — submitted that the mandatory reporting obligation should apply to approved education and care services under the National Quality Framework.<sup>17</sup> These respondents noted that this would cover the majority of ECEC services that have frequent and ongoing contact with children aged 0–5 years, including long day care and family day care services, outside school hours care services provided at a centre and kindergartens.

9.18 Independent Schools Queensland considered that applying mandatory reporting to approved education and care services under the National Quality Framework would provide ‘an effective and efficient way of introducing mandatory reporting to capture the majority of the sector and children in Queensland ECEC services’. It noted that this would cover ‘the vast majority of services offering a form of education and care service’.

9.19 However, the majority of respondents who addressed this question submitted that the mandatory reporting obligation should apply to all approved education and care services, including those regulated under both the National Quality Framework and the ECS Act.<sup>18</sup>

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<sup>16</sup> Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Discussion Paper 73 (2015) [8.12], Question 8–4.

<sup>17</sup> Submissions 17, 18, 24, 27.

<sup>18</sup> Submissions 1B, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 20, 22, 23, 28.

9.20 The Crèche and Kindergarten Association Limited observed that:

The Queensland ECEC sector is a complex arrangement of government, private and not-for-profit providers; operating a range of service types; some of which fall outside the National Quality Framework.

9.21 This respondent also noted that 'significant work is being undertaken at both state and national levels to reform and streamline many aspects of the sector and as a result some service types will change'. For this reason, it considered that mandatory reporting should 'be attributed to the sector in the broadest possible way'.

9.22 United Voice Queensland considered that mandatory reporting should apply to all approved ECEC services. It noted that:

- these services are already 'legislatively accountable and responsible for monitoring the child's emotional, psychological, social and physical wellbeing';
- staff in these services work directly with children; and
- these services have a pedagogical role in addition to providing care, which requires staff employed in contact roles to have a high understanding of child development.

9.23 Extending the mandatory reporting obligation to approved ECEC services under the National Law and the ECS Act would include outside school hours care services offered at those approved services. Some respondents — including the Queensland Children's Activities Network — expressly supported this.<sup>19</sup> However, the Department of Education and Training and The Benevolent Society queried whether it is necessary to include outside school hours care services, given that these services offer care to children eligible to attend a school and school teachers already have mandatory reporting obligations.

9.24 The majority of respondents did not expressly consider the expansion of mandatory reporting to stand-alone services. However, The Benevolent Society submitted that stand-alone services should not be included in any mandatory reporting obligation as they are not approved under the National Quality Framework.

9.25 Some respondents did consider the application of the mandatory reporting provision more broadly to services that are not currently approved or regulated by either the National Quality Framework or the ECS Act.<sup>20</sup>

9.26 For example, although the Early Childhood Teachers' Association Inc submitted that mandatory reporting should apply to all approved education and care services, it also noted feedback it received from an online survey it conducted of its

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<sup>19</sup> Submissions 12, 13, 19.

<sup>20</sup> Submissions 6, 15, 26.

members to the effect that the mandatory reporting requirement should apply more broadly to cover:

all services and agencies under the umbrella of care and education of children that are involved with children. These included: carers, nannies, playgroups, crèches, coaches and instructors, occasional care centres, mobile services, grandparents, special education units, and any services relating to in home care.

9.27 The Bar Association of Queensland considered that mandatory reporting requirements should apply to the broadest spectrum of services, including regulated ECEC services and 'occasional and casual care services (including occasional care, limited hours care, short-term care and kids clubs, vacation care, children's activity services, resort care, stand-alone care and au pair care) and nanny and babysitting services'. However, it considered that babysitters who have not attained the age of majority should be exempted from the mandatory reporting obligation.

9.28 In Safe Hands Educators in Safety Pty Ltd also submitted that mandatory reporting should apply broadly to 'any service working with children'. However, this respondent considered that the responsibility for reporting should be limited to the service manager.

9.29 In contrast, Playgroup Queensland submitted that mandatory reporting should not apply to unregulated and unlicensed services, such as playgroups:

It is the opinion of Playgroup Queensland that as an unregulated service where parents and carers are present and accountable for their child's care, staff and volunteers supporting such activities should be exempt from mandatory reporting.

9.30 This respondent noted that such services do not provide the same level of education and care as approved services, but are community and activity based with the involvement of parents and volunteers. It also noted that such services do not have the same level of frequency of contact with children as approved education and care services.

9.31 Further, Playgroup Queensland noted that these services are reliant on volunteers, and expressed concerns 'about the likely impact on [their] volunteer base if mandatory reporting is introduced to the extent that peripheral family and children support activities are included'.

9.32 This respondent also considered that:

Implementing training in mandatory reporting requirements across the spectrum of activities delivered by Playgroup Queensland staff and volunteers would be costly and time consuming. This is likely to be unworkable and may force the playgroup movement out of existence due to unmanageable and unimplementable policies.

### **The Commission's view**

9.33 The primary consideration in extending mandatory reporting to the ECEC sector is the protective benefit for children. Balanced against this are practical considerations as to the administrative workability of any extension to the ECEC sector and the regulatory burden on services, including the cost of compliance and

the potential impact on the viability of services. Another consideration is any potential social cost of extending mandatory reporting to ECEC services.

9.34 The Commission is of the view that the mandatory reporting obligation should apply to approved education and care services regulated under the Education and Care Services National Law (Queensland) and the ECS Act. This includes long day care and family day care services and kindergartens. It will also include outside school hours care services operated by approved ECEC services.

9.35 Approved ECEC services are the largest services in terms of the numbers of children enrolled in them, and are the main services offering frequent and ongoing education and care.

9.36 These services must comply with particular operational and other requirements in order to be granted a provider and service approval and are subject to quality assessment and monitoring by the Department of Education and Training, which can enforce compliance with the legislation.<sup>21</sup>

9.37 They also have existing legislative responsibilities in relation to child protection,<sup>22</sup> as well as in relation to staffing arrangements.<sup>23</sup>

9.38 The Commission notes that some larger approved service providers have indicated that the impact of extending the mandatory reporting obligation to them is likely to be minimal in terms of any regulatory compliance burden. However, it appreciates that smaller service providers may require additional support.

9.39 The Commission gave consideration to whether the mandatory reporting obligation should be applied more broadly to any service that provides care for children. However, for the reasons given above, the Commission is of the view that it is practical and appropriate to extend the mandatory reporting obligation to approved ECEC services regulated under the Education and Care Services National Law (Queensland) and the ECS Act.

## Recommendation

9.40 The Commission makes the following recommendation:

**9-1 The mandatory reporting obligation under section 13E of the *Child Protection Act 1999* (Qld) should apply to approved education and care services under the Education and Care Services National Law (Queensland), and approved Queensland education and care services under the *Education and Care Services Act 2013* (Qld).**

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<sup>21</sup> See [2.5]–[2.6] above.

<sup>22</sup> See [2.21] ff above.

<sup>23</sup> See [2.30] ff above.

## WHICH INDIVIDUALS SHOULD THE MANDATORY REPORTING OBLIGATION APPLY TO?

### Introduction

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

9.42 The National Law and the ECS Act provide minimum qualification requirements for certain staff members, and also set out educator-to-child ratios in relation to the number of educators that must be present at an approved education and care service.

9.43 There are three levels of approved education and care qualifications in Australia. They are:<sup>24</sup>

- approved early childhood teaching qualification;
- approved diploma level education and care qualification; and
- approved certificate III level qualification.

9.44 The National Authority must publish lists of approved qualifications on its website.<sup>25</sup>

9.45 An approved early childhood teaching qualification includes a university level qualification (such as a bachelor degree).<sup>26</sup>

9.46 A diploma of early childhood education and care has an average duration of 18 months, and requires the completion of a total number of 28 units. This qualification reflects the role of early childhood educators who are responsible for designing and implementing curriculum in early childhood education and care services. They may have responsibility for supervision of volunteers and other staff.<sup>27</sup>

9.47 A certificate III in early childhood education and care has an average duration of nine months, and requires the completion of 18 units. This qualification reflects the role of workers in a range of early childhood education settings who work within the requirements of the National Quality Framework. They support the implementation of an approved learning framework, and support children's wellbeing,

<sup>24</sup> See further *Education and Care Services National Regulations* reg 4(1) (definitions of 'approved certificate III level education and care qualification', 'approved diploma level education and care qualification', and 'approved early childhood teaching qualification'); *Education and Care Services Regulation 2013* (Qld) sch 5, Dictionary (definitions of 'approved certificate III level education and care qualification' and 'approved diploma level education and care qualification'). The prescribed qualifications under the ECS Act — including an approved certificate III level education and care qualification and an approved diploma level education and care qualification — are the same as those approved under the National Regulations

<sup>25</sup> *Education and Care Services National Regulations* reg 137.

<sup>26</sup> See Australian Children's Education and Care Quality Authority, 'Qualifications' <<http://www.acecqa.gov.au/Qualifications.aspx>>.

<sup>27</sup> See Australian Government, Department of Education and Training, 'My Skills', 'Diploma of Early Childhood Education and Care' <<http://www.myskills.gov.au/courses/details?Code=CHC50113>>.

learning and development. Depending on the setting, educators may work under direct supervision or autonomously.<sup>28</sup>

9.48 Both the diploma and certificate III level qualification require the completion of a unit in identifying and responding to children at risk.

9.49 The following table sets out the main types of staff positions in approved ECEC services and the minimum qualification requirements that apply:<sup>29</sup>

Centre-based services under National Quality Framework		
Position	Definition	Qualification requirements
Approved provider	A person who holds a provider approval under the National Law.	Must be a 'fit and proper person'.
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.	Must have at least one of the following: At least 3 years' experience working as an educator in an education and care service, a children's service, a school, or in a service regulated under a former education and care services law; An approved diploma level education and care qualification; An approved early childhood teaching qualification.
Certified supervisor	A person who holds a supervisor certificate.	Same as above for 'nominated supervisor'.
Early childhood teacher	A person with an approved early childhood teaching qualification.	An early childhood teaching qualification approved by the National Authority and included in the published list of approved early childhood teaching qualifications.
Educational leader	A suitably qualified and experienced educator, co-ordinator or other individual designated by the approved provider, in writing, as the educational leader to lead the development and implementation of educational programs in the service.	A qualification for the education and care of children generally or children of a specified age that is approved by ACECQA and included in the list of approved qualifications for suitably qualified persons.
Educator	An individual who provides education and care for children as part of an education and care service under the National Law.	At least 50% of educators must have (or be actively working towards) an approved diploma level education and care qualification. Other educators must have (or be actively working towards) an approved certificate level III education and care qualification.

<sup>28</sup> See Australian Government, Department of Education and Training, 'My Skills', 'Certificate III in Early Childhood Education and Care' <<http://www.myskills.gov.au/courses/details?Code=CHC30113>>.

<sup>29</sup> This table is based on the information set out at [2.30] ff above.

Family day care services under National Quality Framework		
Position	Description	Qualification Requirements
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.	Must have an approved diploma level education and care qualification or higher.
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.	Must have (or be actively working towards) an approved certificate level III education and care qualification (or equivalent).
Queensland education and care service under ECS Act		
Position	Description	Qualification Requirements
Queensland Approved provider	Under the ECS Act, a person who holds a Queensland provider approval and, in relation to a service approval, means the approved provider holding the service approval.	Must be a 'suitable person' to operate a Queensland education and care service.
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.	Must hold a qualification that is, or is equivalent to, an approved diploma level education and care qualification.
Educator	An individual who provides education and care for children as part of a Queensland education and care service.	At least 50% of educators must have (or be actively working towards) an approved diploma level education and care qualification. Other educators must have (or be actively working towards) an approved certificate level III education and care qualification.

**Table: Main staff positions in approved ECEC services and the minimum qualification requirements**

9.50 In 2014, a departmental survey revealed that there were 28 420 people employed in approved ECEC services in Queensland.<sup>30</sup>

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See Department of Education, Training and Employment (Qld), 'Early Childhood Education and Care Services Staff', *Staff by Qualification Completed 2014*, (18 August 2015) <<http://deta.qld.gov.au/information/statistics/early-childhood/ecec-staff.html>>. This information is based on the Early Childhood Education and Care Service Census collected by the department, and is not based on the Australian Bureau of Statistics' Preschool Education, Australia publication.

9.51 Of these, 22 237 (78%) held some type of qualification related to early childhood. In particular:<sup>31</sup>

- 4465 (16%) held a bachelor degree or higher;
- 6632 (23%) held a diploma, and 1658 (6%) held an advanced diploma;
- 9279 (33%) held a certificate level III or IV, and 197 (1%) held a certificate level I or II or other certificate.

9.52 Of the remaining staff, 6183 (21%) did not have any ECEC related qualifications.<sup>32</sup>

9.53 The departmental survey also recorded the number of staff studying for a qualification. The survey showed that:<sup>33</sup>

- 2170 (7.6%) were studying for a certificate level III or IV qualification, and 80 (0.2%) were studying for another certificate;
- 4073 (14.3%) were studying for a diploma and 127 (0.4%) were studying for an advanced diploma; and
- 2576 (9%) were studying for a bachelor degree.

## Discussion Paper

9.54 In the Discussion Paper, the Commission sought submissions on which particular professionals, office holders and workers within the ECEC sector should be required to report (including, for example, approved providers, supervisors, educators, other staff members or volunteers).<sup>34</sup>

## Submissions

9.55 The majority of respondents who considered this question submitted that the mandatory reporting obligation should be applied to people employed in particular roles with relevant professional qualifications.<sup>35</sup>

9.56 For example, the Early Childhood Teachers' Association Inc gave feedback that the majority of its members (88%) supported the extension of mandatory reporting to professionals.

9.57 The Department of Aboriginal and Torres Strait Islander Partnerships noted that limiting the mandatory reporting obligation to those with professional

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> See Department of Education, Training and Employment (Qld), 'Early Childhood Education and Care Services Staff', *Staff by Qualification Studying 2014*, (18 August 2015) <<http://deta.qld.gov.au/information/statistics/early-childhood/ecec-staff.html>>.

<sup>34</sup> Queensland Law Reform Commission, above n 16, [8.12], Question 8–5.

<sup>35</sup> Submissions 8, 9, 10, 11, 15, 22, 24, 25.

qualifications or roles would be consistent with the approach taken in the education sector.

9.58 Some respondents considered that the mandatory reporting obligation should be limited to approved providers and supervisors.<sup>36</sup>

9.59 Churches of Christ Care noted that approved providers undergo an application process, have existing responsibilities for managing services and ensuring quality compliance and are responsible for creating workplaces where staff are supported to identify and report suspected harm. This respondent considered that:

Holding mandatory reporting responsibility at this level helps ensure that reporters have the high level of skill and training required to determine if observations made by child care assistants, students and volunteers are likely to indicate if a child is being exposed to significant harm. This higher level of skill and training would support notifications to be closer to the threshold levels that would warrant an intervention.

9.60 Early Childhood Australia similarly submitted that mandatory reporting should be limited to approved providers and supervisors, because:

This will help improve the quality and reliability of reporting while also limiting the risk of over-reporting from inexperienced educators.

9.61 The Benevolent Society submitted that mandatory reporting should apply to the nominated supervisors of approved providers.

9.62 This respondent considered that:

In consenting to take on the role, a Nominated Supervisor will be consenting to be subject to the mandatory reporting requirements under the *Child Protection Act*. In most cases, it is expected that nominated supervisors will consult with staff, or be acting on the information and insights of educators and staff at the ECEC service. Identifying a single person (or group of people) within each ECEC service responsible for reporting under the Act will hopefully lead to considered and consistent reporting and will safeguard against frivolous reporting.

It is not practical to require approved providers to be mandatory reporters as, in many instances, the approved provider may not have day-to-day contact with the centre or the children enrolled and may have delegated management of the service to a Nominated Supervisor.

9.63 In Safe Hands Educators in Safety Pty Ltd also submitted that the mandatory reporting obligation should be limited to the nominated supervisor. It considered that:

This will create an environment of communication between junior and senior staff. In essence the simplest message we can provide professionals is when they have a concern about a child they need to discuss this with their supervisors ... This will allow developed training packages for senior staff to undertake which not only increase their knowledge around reportable suspicion but also provide

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Submissions 5, 7, 13, 18, 19.

early intervention strategies that can be implemented if the concern does not meet the threshold of reporting.

9.64 The Queensland Family and Child Commission considered that the mandatory reporting obligation should be limited to qualified early childhood teachers, centre directors or family day care co-ordinators.

9.65 In contrast, a number of other respondents submitted that the mandatory reporting obligation should apply to all qualified staff, including educators.<sup>37</sup>

9.66 The Independent Education Union considered that mandatory reporting should apply to all early childhood teachers and educators. In relation to educators, this respondent noted that:

the current Industry Skills Council specifications for Certificate III in Early Childhood Education and Care include mandatory units focused on child health and wellbeing ... and legal and regulatory frameworks of the industry.

9.67 Independent Schools Queensland submitted that:

approved providers, as the operators of ECEC services, should be required to report under any mandatory reporting requirements in the sector. After consultation with its members, ISQ also holds the view that all employees of an ECEC service who hold or are working towards at least an approved Certificate III level education and care qualification should also be required to mandatorily report. A Certificate III level of qualification would ensure that supervisors would also be required to mandatorily report. This is in recognition of the training and expertise of these employees as qualified education and care professionals.

9.68 The Queensland Catholic Education Commission considered that mandatory reporting should apply to all qualified staff in the ECEC sector, including approved providers, early childhood teachers and educators with diploma or certificate III level qualifications.

9.69 This respondent also submitted that, for consistency with the education sector, mandatory reporting should not apply to volunteers or other staff members. It noted that:

Training and reporting processes for other staff members and volunteers would be effectively captured under the requirements of the Child and Youth Risk Management Strategy. Child protection policies would need to identify the processes for other staff members and volunteers to follow if they want to make a report. It must be noted in all child protection policies that any person can report concerns about a child to Child Safety Services at any time. Volunteers should not be providing sole supervision or care of a child and therefore the ECEC centre policies and procedures should make it clear that, should concerns arise, the attending staff member should be advised and should be the person to report if there is a reportable suspicion.

9.70 The members of United Voice Queensland submitted that mandatory reporting should apply to approved providers and supervisors. This respondent observed that centre directors carry legal responsibilities within the centre and can

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<sup>37</sup>

Submissions 8, 9, 10, 11, 15, 22, 23, 24, 29.

be held legally responsible for children's wellbeing under the National Quality Framework.

9.71 Many of its members also thought that the mandatory reporting obligation should apply to educators. United Voice Queensland also observed that:

Many ECEC staff employed in contact roles are not just providing care or 'assisting' degree-qualified teachers; they are in fact exercising considerable pedagogical skills which require a high degree of comprehension and understanding of child development. Within the existing workforce there is a cohort of experienced educators, some of whom possess few formal qualifications, who exercise pedagogical and leadership skills which can be of at least equal value to those of degree qualified teachers who are commencing their careers in the sector. Indeed, the term 'educator' has been adopted within the National Quality Standard in reference to the entire workforce who perform contact roles and are counted within staff to child ratios.

9.72 However, the members of United Voice Queensland generally did not believe that mandatory reporting should apply to volunteers and other staff members. Instead, they considered that these staff members would be appropriately captured under the internal policies and procedures of the ECEC service, and the voluntary reporting provision under the Act.

9.73 The Independent Education Union similarly considered that volunteers are 'adequately and appropriately addressed through sector-specific induction programs'. This respondent submitted that volunteers should not be obliged to report, but noted that they are still able to report voluntarily under the Act.

9.74 The Queensland Council of Social Service submitted that the mandatory reporting law should apply to approved providers, supervisors and educators, but not volunteers. This respondent considered that:

It would not be viable to extend this training to other staff members and volunteers, nor would it be a fair expectation on these individuals to develop the specialised skills required to identify and report child abuse.

9.75 The Department of Education and Training commented that, if mandatory reporting requirements are extended to the ECEC sector, consideration should be given to not extending reporting requirements to volunteers and practicum students. It noted that 'volunteers and practicum students in ECEC services are less likely to be familiar with children and their families, and have less knowledge about the ECEC service'. The department considered that, instead of imposing a mandatory reporting obligation on them, services should be encouraged 'to review the policies and procedures in place to ensure that volunteers and practicum students are supported to understand child protection and working with children laws'.

9.76 The Crèche and Kindergarten Association Limited submitted that mandatory reporting would also need to apply to Parent Management Committees who operate kindergartens across the state.

9.77 This respondent noted that:

Although these parents are volunteers, they are legally accountable for all the operations of the kindergarten and would therefore be required to become

mandatory reporters, should there be a change. Parent Management Committees often have not had experience in running an early childhood education and care organisation and typically turn over each year as children move through the kindergarten program and on to primary school. This lack of experience and the consistent turnover creates complexity in the operations of kindergartens and the introduction of mandatory reporting would add to this complexity. Clear support and ongoing training would be required to ensure that all Parent Management Committees understand their obligations, should mandatory reporting be introduced.

9.78 Two academics submitted that the mandatory reporting obligation should not be extended to volunteers. These respondents submitted that:<sup>38</sup>

There is a strong argument that the duty should apply to approved providers, supervisors and educators and staff members who work with children in the course of their daily work, and or whose training has equipped them with knowledge about child development, and where the occupation itself contains an ethical duty to take care of children. This is usually the basis for applying mandatory reporting duties on members of designated occupational groups ...

If volunteers are excluded from the duty, this clearly does not preclude them from making a report, and such a report would attract protections under the legislation provided it was made in good faith.

9.79 A small number of respondents considered that mandatory reporting should apply to all individuals within ECEC services, including volunteers.<sup>39</sup>

9.80 Save the Children Australia submitted that:

All people employed within the ECEC service/sector should have a responsibility to report concerns through an internal process which includes review by a suitably trained professional who will provide advice, direction and where the concern meets [the] threshold, has the responsibility to report concerns to either Child Safety, or to the Family and Child Connect Services for that region.

## The Commission's view

9.81 As previously noted, the primary consideration in extending mandatory reporting to the ECEC sector is the protection of children through the timely detection of harm or risk of harm. To best achieve this, the mandatory reporting obligation should capture staff in the ECEC sector who have direct and frequent contact with children and their families, who may therefore encounter cases of significant harm or risk of harm, and who have the relevant skills, experience, training and knowledge to recognise and report significant harm.

9.82 Practical considerations must also be taken into account, including administrative workability and the regulatory burden on services and persons who are obliged to report, and the need to limit the potential for an increase in reports that do not meet the statutory threshold.

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<sup>38</sup> Submission 29.

<sup>39</sup> Submissions 1B, 3, 6, 20.

9.83 On balance, the Commission is of the view that the mandatory reporting obligation should apply to staff in roles of responsibility within the ECEC service and staff with relevant professional qualifications.

9.84 In particular, the Commission is of the view that the mandatory reporting obligation should apply to an approved provider of an ECEC service and staff employed by the service who have obtained at least an approved certificate III level education and care qualification (as defined under the National Law and ECS Act). This will mean, in effect, the mandatory reporting obligation will apply to: approved providers, supervisors,<sup>40</sup> family day care co-ordinators, early childhood teachers, and educators with diploma or certificate III level education and care qualifications (or higher).

9.85 The Commission considers that this will extend the mandatory reporting obligation to the broadest number of individuals employed in the ECEC sector who are in direct and frequent contact with children and who have the requisite skills, training and knowledge to recognise significant harm.

9.86 In addition, extending the mandatory reporting obligation to employees who have particular approved professional qualifications should mean that staff who are subject to the obligation are easily identifiable, and avoid any potential for confusion as to who the obligation applies to.

9.87 Other employees who do not meet the minimum professional qualification requirement of at least an approved certificate III level education and care qualification will not be subject to the mandatory reporting obligation.

9.88 The Commission also considers that volunteers should not be subject to the mandatory reporting obligation.

9.89 The Commission notes that volunteers, and other employees who do not meet the minimum professional qualification requirement, must be supervised, will still be covered under the internal policies and procedures of the ECEC service in relation to child protection, and are able to report voluntarily pursuant to section 13A of the Act. However, the Commission does not consider that these persons should have a mandatory obligation to report.

9.90 This is consistent with the approach taken in schools, which limits the mandatory reporting obligation to teachers employed at the school (and does not include, for example, a teacher's aide or assistant). It is also consistent with the policy of section 13E of the Act, which applies the mandatory reporting obligation to particular designated classes of persons.

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This will include the nominated supervisor and certified supervisors under the National Law, and supervisors under the ECS Act.

## Recommendation

9.91 The Commission makes the following recommendation:

**9-2 The mandatory reporting obligation under section 13E of the *Child Protection Act 1999* (Qld) should be extended to apply to the following individuals:**

- (a) an approved provider, nominated supervisor or family day care co-ordinator of an approved ECEC service as defined under the *Education and Care Services National Law* (Queensland) or the *Education and Care Services National Act 2013* (Qld); and**
- (b) a person employed by an approved ECEC service who has:**
  - (i) an ‘approved early childhood teaching qualification’;**
  - (ii) an ‘approved diploma level education and care qualification’; or**
  - (iii) an approved certificate III level education and care qualification’;**

**as defined under the *Education and Care Services National Law* (Queensland) or the *Education and Care Services Act 2013* (Qld).**



# 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.

**Jarrod Bleijie**  
**Attorney-General and Minister for Justice**

# Appendix B

## List of Respondents

Aspley East Kindergarten and Preschool Association Inc	Independent Schools Queensland
Australian Childcare Alliance Queensland	Mathews, Professor Ben, and Walsh, Associate Professor Kerryann, Queensland University of Technology
Bar Association of Queensland	McKenzie, Meredith, Director, Little Gekos Early Learning Centre
Chief Magistrate, Magistrates Court of Queensland	McDonald, Rosa, Approved Provider, Children's Choice Early Education Centre
Churches of Christ Care, Churches of Christ in Queensland (‘Churches of Christ Care’)	PeakCare Queensland Inc
Department of Aboriginal and Torres Strait Islander Partnerships	Playgroup Queensland
Department of Education and Training	Queensland Catholic Education Commission
Department of Justice and Attorney-General	Queensland Children's Activities Network
Dixon, Kelly	Queensland Council of Social Service
Early Childhood Australia	Queensland Family and Child Commission
Early Childhood Teachers' Association Inc	Sandeman, John and Susan
Goodstart Early Learning	Save the Children Australia
In Safe Hands Educators in Safety Pty Ltd	The Benevolent Society
Independent Education Union, Queensland and Northern Territory Branch (‘Independent Education Union’)	The Crèche and Kindergarten Association Limited
	United Voice Queensland