

**From:** [REDACTED]  
**To:** [Health and Ambulance Services Committee](#)  
**Cc:** [REDACTED]  
**Subject:** Child Protection (Mandatory Reporting - Mason's Law) Amendment Bill 2016  
**Date:** Friday, 29 April 2016 11:39:28 AM  
**Attachments:** [QLRC Submission 2015 - Mathews and Walsh 091015.pdf](#)

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Dear Leanne,

I received a letter from you dated 22 March 2016 inviting submissions for the Child Protection (Mandatory Reporting – Mason's Law) Amendment Bill 2016.

Unfortunately I was unable to meet the deadline for submissions.

I attach to this email a copy of the submission made by Professor Ben Mathews and I to the Queensland Law Reform Commission in October 2015.

I am willing to appear as an invited witness if required. I will cc Prof Mathews for information.

Sincerely,  
Associate Professor Kerryann Walsh

Kerryann Walsh PhD  
Associate Professor  
Co-leader, Children's Rights and Welfare Program, Children & Youth Research Centre <http://www.cyrc.qut.edu.au/>  
Network Co-Director, Excellence in Research in Early Years Education, Collaborative Research Network (QUT, CSU, MU)  
School of Early Childhood | Faculty of Education | Queensland University of Technology |  
Victoria Park Road, Kelvin Grove QLD 4059 | [REDACTED]  
| Office B411 KG Campus | Staff profile [REDACTED]  
[REDACTED]

CRICOS No. 00213J



Mr David Groth  
Director of the Secretariat  
Queensland Law Reform Commission  
PO Box 13312, George Street Post Shop QLD 4003

9 October 2015

Dear Mr Groth

**Re: Submission to QLRC WP 73 Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector**

I am a Professor of Law in the Australian Centre for Health Law Research, and Senior Research Fellow in the Faculty of Law at Queensland University of Technology. I am also a Professorial Fellow at the Australian Government's *Royal Commission into Institutional Responses to Child Sexual Abuse*. Associate Professor Walsh is leader of the Children's Rights and Welfare Program in the QUT *Children & Youth Research Centre* and Co-Director of the *Excellence in Research in Early Years Education Collaborative Research Network*. We have extensive research experience and a national and international reputation in the field of mandatory reporting research.

We are pleased to provide this submission to the QLRC in relation to the Discussion Questions about the possible application of a mandatory reporting duty to early childhood education and care practitioners.

Our submission is premised on the current, restricted nature of Queensland's mandatory reporting duty in the *Child Protection Act 1999* s 13E, which limits the duty to suspicions of significant harm caused by physical or sexual abuse (therefore not applying to neglect, emotional abuse, or exposure to domestic violence), with the further limit of application to situations where the child may not have a parent willing and able to protect the child.

**Our overall recommendation is that we endorse the extension to selected early childhood education and care practitioners of Queensland's current mandatory reporting duty in the Child Protection Act 1999 s 13E.**

In Appendix 1, we provide more detailed responses to each Discussion Question.

In sum, mandatory reporting of physical abuse and sexual abuse should apply to the ECEC sector because:

1. The social science evidence shows that physical abuse and sexual abuse are widespread, harmful, costly, and affect highly vulnerable children (with physical abuse especially infants and the youngest children);
2. The reporting law is consistent with other legal principles but moves beyond them to support a coherent, systematic approach to enhance child protection;
3. The reporting law promotes theoretical and ethical principles which form the bedrock of a legitimate liberal democracy which has as one of its core functions the protection of the vulnerable from severe harm;
4. The reporting duty is consistent with and promotes major national and international policy initiatives in the reduction and prevention of violence;
5. The empirical evidence indicates that ECEC practitioners can make a very strong and improved contribution to child protection when mandated;
6. A reporting duty embodies an essential aspect of a public health approach to child abuse;
7. The economic benefits from enhanced early intervention are significant and likely far exceed the investment required to implement reporting;
8. Practical and administrative measures can be innovatively designed to facilitate centralised, cost-efficient, workable systems which also add to professionalisation of the ECEC workforce.


We hope you find our submission useful. Please feel free to contact us if we can be of further assistance.

Yours sincerely




**Professor Ben Mathews**

Faculty of Law, Senior Research Fellow  
Director, Children's Health Program, Australian Centre for Health Law Research  
Professorial Fellow, Australian Royal Commission into Institutional Responses to Child Sexual Abuse  
Queensland University of Technology, GPO Box 2434, Brisbane 4001



**Associate Professor Kerryann Walsh**

School of Early Childhood, Faculty of Education, Queensland University of Technology  
Collaborative Research Network Co-Director, Excellence in Research in Early Years Education (QUT, CSU, MU)  
Co-leader, Children's Rights and Welfare Program, QUT Children & Youth Research Centre  
Queensland University of Technology, Victoria Park Road, Kelvin Grove QLD 4059



## Appendix 1: Responses to Discussion Questions

### Discussion Question 8-1

What considerations should be taken into account in determining whether the mandatory reporting requirements under the Child Protection Act 1999 (Qld) should be extended to apply to the ECEC sector?

### Response

There are multiple dimensions of this context which need to be taken into account. In broad terms, eight of the most relevant dimensions can be described as:

- Social science
- Law
- Theory
- Policy
- Empirical evidence
- Public health (primary, secondary and tertiary prevention)
- Economics
- Practice and administration

Each of these eight dimensions has multiple components. A comprehensive treatment of each dimension could be developed, but for the practical purposes of the QLRC we provide summary notes on each, regarding selected questions.

### *Social science*

The starting point for any considered policy discussion in this field is to acknowledge evidence about the prevalence, etiology and consequences of sexual and physical abuse.

#### *Prevalence*

An Australian meta-analysis of sexual abuse in children aged under 16 found prevalence of 14.1% (6.0–24.7%) for females and 5.5% (2.1–10.2%) for males (Moore et al., 2015). Dunne et al. (2003) found that before age 16, 33.6% of women and 15.9% of men experienced non-penetrative CSA, and 12.2% of women and 4.1% of men experienced penetrative CSA. Rosenman & Rodgers (2004) found 1.1% of people reported CSA by a parent. Stoltenborgh et al. (2011) conducted a global meta-analysis of population studies and found that Australia had the highest recorded rate for girls (21.0%).

Data in relation to child physical abuse in Australia consistently indicates a range of 5-10% for boys and for girls (Mazza et al, 2001; Price-Robertson, Smart, & Bromfield, 2010; Rosenman & Rodgers, 2004).

#### *Etiology – privacy, vulnerability and the ages of victimization*

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 (Kempe et al., 1962).

The most detailed data on age of victimization can be found in the USA, which is comparable to Australia. For physical abuse, detailed data on cases confirmed by child welfare agency investigations (which are a fraction

of the real prevalence) shows that the youngest children are the most frequently victimised, as well as being the most vulnerable to severe effects due to their early developmental stage. Infants under 1 year of age are by far the most vulnerable to physical abuse (US DHSS 2009, 2014), and those aged 1-2 years are also highly vulnerable. In sum, data stratified by age shows that (US DHSS 2014 p. 21):

- children under three years of age account for 24.6% of all physical abuse victims;
- children under nine years of age account for 58.5% of all cases; and
- children under 12 years of age account for 73% of all cases.

This means 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). Even in the early years after school entry, ECEC practitioners retain their importance in relation to child physical abuse.

For sexual abuse, the trend is different, with older children more likely to be victimized. However, Australian studies have shown the mean age of onset to be 10.0 (Fleming, 1997) and 10.8 (Dinwiddie et al., 2000). Children aged under 9 comprise one third of sexual abuse cases confirmed officially by child welfare agencies in the USA (US DHSS 2014, p. 21).

### *Consequences*

A vast body of research has demonstrated the substantial and enduring physical, psychological, behavioural, cognitive, educational and economic harms to victims, for both child physical abuse (see for example Currie & Widom, 2010; Gershoff, 2002; Gilbert et al., 2009; Landsford et al., 2002; Mills et al., 2011; Springer et al., 2007; Veltman et al., 2001), and child sexual abuse (see for example Chen et al., 2010; Gilbert et al., 2009; Mullen et al., 1993; Paolucci et al., 2001; Putnam, 2003; Trickett et al., 2011). Because of its traumatogenic effects, some victims repeat their own victimization on others when they are adults, leading to intergenerational cycles of abuse (Trickett et al., 2011).

The economic consequences are also profound, for the individual and the community, particularly in the long-term, meaning that early intervention is critical. The economic cost to individuals and societies is immense (Fang et al., 2015; Fang et al., 2012). The recent meta-analysis by Moore et al (2015) found that in Australia, child maltreatment causes an estimated 23.5% of self-harm, 20.9% of anxiety disorders and 15.7% of depressive disorders burden in males; and 33.0% of self-harm, 30.6% of anxiety disorders and 22.8% of depressive disorders burden in females.

### **Law**

#### *A legislative mandatory reporting duty of the type considered exists in most other Australian jurisdictions*

The QLRC Discussion Paper has outlined the current legislative framework in other Australian States and Territories and it is clear that five other jurisdictions have applied their mandatory reporting duties to at least some of the ECEC groups under consideration, most obviously childcare practitioners. These jurisdictions are New South Wales, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory. Notably, the mandatory reporting duties in these jurisdictions (except the ACT) are wider than Queensland's, as they extend to other types of abuse and neglect.

A note is warranted on the situation in Victoria. Provisions in Victoria's legislation extend the duty to a range of ECEC practitioners, but have not been gazetted and so are not operational. Yet, as the QLRC Discussion Paper observes (p. 71), Victoria's Cummins Inquiry (2012, p. 349) specifically recommended that these provisions be gazetted. If these provisions were to be made operative, it would apply to a wide range of ECEC practitioners, as follows:

Section 184(1)(f) applies to 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 applies or a person who is a nominee within the meaning of that Act for the children's service". The Children's Services Act 1996 (Vic) s 3 defines "children's service" as "a service providing care or education for 4 or more children under the age of 13 years in the absence

of their parents or guardians—(a) for fee or reward; or (b) while the parents or guardians of the children use services or facilities provided by the proprietor of the service”.

Section 184(1)(fa) applies to “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)”

It is not essential in a federated nation that all jurisdictions have similar legislation. However, there are often persuasive reasons for comity. One reason supporting the contemplated change in Queensland is that it would align Queensland’s legislative position with that of most of the rest of the country, which is inherently desirable, and would assist practitioners who move between jurisdictions.

*A legislative mandatory reporting duty would be consistent with, yet usefully different from, other types of legal duty for ECEC practitioners*

The legislative duty is consistent with a duty in tort law (albeit different from that duty). Under the law of negligence, an ECEC practitioner would possess a duty of care in relation to the children in her or his care. In some circumstances, the scope of this duty would extend to a duty to take reasonably practicable steps to prevent further harm to the child. An example of where this duty would operate is if an ECEC practitioner knew, or clearly ought to have known, that a child in her or his care was being sexually abused, or significantly physically abused, and did not take a reasonably practicable step to prevent further harm (for example, by reporting that knowledge or suspicion to the government child protection agency). If the breach caused further damage (demonstrated for example by the abuse continuing and causing further harm after the ECEC practitioner’s knowledge or suspicion was formed or ought to have been formed), then failure to act would constitute a breach of the duty, for which the individual and employer may be liable. Therefore, the legislative duty does not derogate from similar responsibilities in other branches of law.

The legislative duty is usefully different from this duty. It provides a duty of a more certain scope, with clear immunities and protections for reporters. Moreover, it constitutes a legislative policy promulgated by Parliament, which can be underpinned by sector-wide reporter education and child protection/welfare agency responses and service delivery for children. Its entire purpose is not simply to enable a civil remedy for breach; its purpose is to promote early detection of cases of significant harm to enable intervention and rehabilitation on a system-wide basis.

***Political theory and ethics***

The duty is consistent with, and promotes, liberal democratic principles. The duty is clearly consistent with the tenets of a liberal democratic society, and arguably is required in any such society. A genuinely liberal democracy strives to protect its most vulnerable citizens, including from injustice perpetrated in the private sphere, with physical abuse of infants and children being a paradigmatic case of this. These theoretical bases for the reporting laws have been extensively examined and found to be supported by both classical liberal theorists, through to the most eminent modern liberal theorists such as the University of Chicago’s Professor of Philosophy Martha Nussbaum (Mathews & Bross 2008; Mathews, 2015; Nussbaum, 2011). In addition, the duty is clearly consistent with and promotes fundamental ethical principles of beneficence and justice (Beauchamp & Childress, 2013).

***Policy***

The duty is consistent with and promotes major policy initiatives at both national level and international level. Nationally, these policies include the Council of Australian Governments’ *Protecting Children is Everyone’s Business: National Framework for Protecting Australia’s Children 2009–2020* (COAG, 2009). The *National Framework* has six key outcome measures, three of which are explicit policy goals relevant to the mandatory reporting of physical and sexual abuse:

- Supporting outcome 2: Children and families access adequate support to promote safety and intervene early;
- Supporting outcome 4: Children who have been abused or neglected receive the support and care they need for their safety and wellbeing;
- Supporting outcome 6: Child sexual abuse and exploitation is prevented and survivors receive adequate support.

The duty is also consistent with the *National Plan to Reduce Violence Against Women and Their Children 2010-2022* (COAG, 2011).

The duty is also consistent with international policies including the most recent *Sustainable Development Goals* announced by the United Nations (SDG Target 5.2: Eliminate all forms of violence against women and girls; SDG Target 16.2: End abuse, exploitation, trafficking and all forms of violence against children: United Nations 2015).

### ***Empirical evidence***

Policy debates must also be informed by the best available empirical evidence about the phenomenon in question. Sometimes the evidence-base has not been generated, or is sketchy. In this context, a range of empirical questions are relevant to the broader question of whether to mandate ECEC practitioners to report physical and sexual abuse. These include, for example:

- What is the current reporting practice of ECEC practitioners in Queensland for physical abuse?
- What is the current reporting practice of ECEC practitioners in Queensland for sexual abuse?
- Do these trends differ significantly from ECEC practitioners in other jurisdictions which are subject to a mandatory reporting duty, and if so, does the presence of the duty influence this difference?
- Overall, compared with other occupational reporter groups, do ECEC practitioners make many reports of physical abuse and sexual abuse? What are the outcomes of these reports?

Empirical questions can be very complex, and this can be further complicated by multi-layered systems within which the data reside. As well, reliance on outcomes of reports can be complicated because the mere recorded outcome may not reveal the whole picture of what happened to the child after the report, whether it was investigated and or substantiated. It is critical to understand that a “substantiated report” is not the only or even the best measure of a useful report; more likely, an investigated report is the optimal measure although even this measure is probably conservative. Research has demonstrated that unsubstantiated reports do not differ markedly from substantiated reports in relation to the child’s behavioral and developmental outcomes, and service needs (Drake, 1996; Hussey et al., 2005; Kohl, Jonson-Reid, & Drake, 2009).

Some data may nevertheless be instructive and we have referred to some information below in our response to 8-2.

### ***Public health***

The duty would comprise a key element of a public health approach. Public health theory adopts a three tiered approach to health problems facing societies, and child abuse (including even sexual abuse) is widely acknowledged as a public health problem (Gostin, 2014; Mercy, 1999) while also constituting a criminal justice problem, and a social justice problem. In public health discourse, there is sufficient agreement that coherent and robust approaches require attention to all three tiers: prevention measures across the population (primary); prevention measures aimed at high-risk groups (secondary); and measures to respond after the event (tertiary). In this context, mandatory reporting laws constitute one aspect of a systematic approach to child abuse as a public health problem (Kim, Gostin, & Cole, 2012).

### ***Economics***

Early intervention in cases of significant child abuse offers massive economic returns. Better identification of cases in the early years through reports by ECEC practitioners offers the prospect of substantial cost savings to the child and society in the short-term, the medium-term and the long-term.

While it is difficult to obtain complete precision on the cost of child abuse, the best evidence indicates consistently that the cost is vast. Fang et al., (2012) estimated the individual cost of each case at \$US210,000. The Nobel Prize winning economist James Heckman (2006) identified the enormous economic benefit of investing in abused and disadvantaged children in the early years. Foster care comprises the majority of the cost to child protection systems, so it is clear that providing necessary assistance at an early stage is economically beneficial to dampen this demand. A core function of mandatory reporting is to enable early assistance to families to prevent abuse escalating and obviate the need for more dramatic subsequent intervention such as foster care.

### ***Practical and administrative issues***

Practical and administrative issues also need to be considered when deliberating on whether to extend the reporting duty to ECEC practitioners. Several issues in particular are prominent.

*High quality education of reporters* about the nature of the reporting duty is essential (Kenny, 2007; Rheingold et al., 2012). Reporters must be supported in their role. They must receive education about: what must be reported; what must not be reported; how a report should be made; to whom it should be made; when it should be made; what should be done after reporting; what they can (and cannot) expect to happen after reporting (Mathews & Kenny 2008). This education must comprise cognitive and attitudinal components to not only convey to reporters what they should do, but why it is important that they do it. Accordingly, this education must include information about the nature and consequences of child physical and sexual abuse.

In addition, among other matters, clear definitions of key operational concepts must be developed so that in training of reporters, common and correct understandings can be developed. The key operational concepts are: “reasonable suspicion”, “physical abuse”, “sexual abuse”, “significant harm”, “unacceptable risk”, and “parent able and willing to protect the child”. Implementation of complex social policy measures, of which mandatory reporting laws are one, must be supported by educational measures. Monitoring of reporters should occur to ensure that this knowledge is maintained and ideally, even further developed. Further observations in this regard are made in our response to 8-2.

#### **Discussion Question 8-2**

If the mandatory reporting requirements under the Child Protection Act 1999 (Qld) are extended to apply to the ECEC sector, what is the likely impact:

- (a) on the ECEC sector; and
- (b) on the ability of Child Safety to detect and respond appropriately to children in need of protection?

#### **Response**

##### ***Likely impacts on the ECEC sector***

The most significant impact on the ECEC sector will be the need to educate their employees about the duty. There is a paucity of research conducted in ECEC contexts. However, it is known that ECEC practitioners require high quality and repeated training to assimilate knowledge of the legal reporting duty (Dinehart & Kenny, 2015), indicating the need for assessment of knowledge gains and regular refresher training. It is also



known that staff in daycare centres may hold disparate views about what constitutes “reasonable suspicion” of child maltreatment (Levi, Crowell, Walsh, & Dellasega, 2015), indicating that attention needs to be paid to key operational concepts. Further, especially for some more difficult cases, it may be that ECEC practitioners can be uncertain about the decision to report (Feng, et al., 2009; Svensson & Janson, 2008). Finally, a practitioner’s own views about child discipline and punishment (Feng, Huang, & Wang, 2010; Kenny, 2004; Nightingale & Walker, 1986). This suggests that an additional dimension of sensitivity and attention may need to be required for education and support in relation to practitioners who may possess views that harsh physical discipline is acceptable.

There are few guidelines regarding precisely how much training is sufficient to ensure staff in ECEC can identify and report child maltreatment. However, the work of Maureen Kenny (2015, 2007, 2004) and others (Carter et al., 2006; Christian, 2008; Hawkins & McCallum, 2001; Mathews, 2011), provide much direction and insight into the nature, content and delivery methods which are required and can be used to optimize mandatory reporting training for ECEC professionals while complying with requirements of workability and cost efficiency. In the USA, Florida Child Care Standards specify 30 hours of generic training for centre-based staff taken over five sessions with one of these sessions specific to identifying and reporting child maltreatment (Florida Department of Children and Families, 2010). Many state laws in the USA specify that orientation for ECEC staff must include minimum training in identifying symptoms of child abuse and neglect the responsibility for reporting these, however what constitutes “minimum” is unspecified.

Australian laws do not typically address training specifications. The National Quality Framework (NQF) sets out minimum qualification requirements for educators working in ECEC and to this end provides an online “qualifications checker” (see <http://www.acecqa.gov.au/qualifications-checker>). However, it is not possible to say with any accuracy, what component of qualifications relates to identifying and reporting child maltreatment.

#### ***Likely impacts at a practical level***

Likely impacts of the introduction of mandatory reporting laws for the ECEC sector should be determined via consultation with peak bodies in the child care industry including for profit and not-for-profit providers as impacts will be envisaged differently. Regulated education and care services in Queensland are predominantly privately managed (Department of Education, Training and Employment, 2014):

- 48% private, community managed, not-for-profit services (such as C&K, Gowrie);
- 37% private, for-profit services;
- 11% private, not-for-profit services;
- 2% government services (includes pre-Prep for children in Aboriginal and Torres Strait Islander communities, and eKindy for children in remote areas);
- 3% nongovernment school services.

The following identifies some potential impacts that may be further explored with providers themselves.

***Administrative burden.*** Introduction 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. Updating centre policies in accordance with the NQF requirement to maintain current policies, however, will take time and expertise and to this end, model policies should be developed centrally for different service types.

***Training.*** This will be the largest cost to be borne by services and individuals. Training should be compulsory, delivered by experts, and multidisciplinary. It should be centralized to enable quality of design and delivery, and to secure economic advantages and avoid diffusion of approaches and dilution of quality. It should focus on increasing warranted reports, and reducing unnecessary reports.

*Enhanced professionalisation of the workforce.* Higher levels of training offers major advantages above and beyond the immediate mandatory reporting duties; overall, it will advance professionalization of the ECEC workforce, reduce the risk of liability in negligence, and enhance early detection, intervention and prevention. Access to effective professional development in ECEC services is a critical enabler to developing a professional workforce, growing a qualified and skilled workforce; attracting and retaining qualified staff; building career opportunities and pathways (Lunn et al., 2015). Investment in professional development may be a shared responsibility between educators themselves, service providers, and government. A coordinated approach, applying the best available evidence on the type, nature, and frequency of training will be required.

*Centre management.* New legislation will require centre management attention. Initially, senior management and administration in services will need to spend time becoming familiar with the legislation and regulations (eg forms and submission requirements) and consider how these translate to practice. Smaller services may be disproportionately affected as their smaller pool of employees and limited funds mean a substantial burden will be carried by only a few individuals.

*Service costs.* ECEC services may experience costs in re-designing, updating, and implementing child maltreatment reporting practices.

***Likely impacts on the ability of Child Safety to detect and respond appropriately to children in need of protection***

Data on reports of suspected child abuse and neglect is held by the Queensland Department of Communities, Child Safety and Disability Services. Close analysis of extracted data can enable identification of information about how many reports were made by a specific reporter group, concerning a specific type of abuse, and the outcomes of the reports (for example, how many reports were investigated, and how many of these investigated reports were substantiated). Some of the data is published by the Department but detailed granular analyses require research permission and further work.

A recent research study by Mathews et al. (2015) explored trends in numbers and outcomes of reports 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. Reporting practices of different groups in respective jurisdictions could be mapped against the legislative mandatory reporting framework in each jurisdiction (Mathews et al., 2015). This research produced analytical reports and key findings for each State and Territory government department for internal use, although the reports are soon to be published.

Because this work is not yet in the public domain it is not appropriate to publish detailed data. However, a general observation can be made for the purpose of the QLRC Review. 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. Further detail can be provided on request, pending approval by the Department.

**Discussion Question 8-3**

Should mandatory reporting apply to the ECEC sector?

**Response**

Yes.

This recommendation is premised on consideration only of an application of the current legislative mandatory reporting duty in the *Child Protection Act 1999* s 13E, which limits the duty in two main ways:

- to suspicions of significant harm caused by physical or sexual abuse (therefore not applying to neglect, emotional abuse, or exposure to domestic violence);
- with the further limit of application only to situations where the child may not have a parent willing and able to protect the child.

We do not comment in this submission on whether the provision itself should be expanded (for example, to apply to significant harm caused by neglect, as required by the former mandatory reporting provisions for doctors and nurses in the *Public Health Act 2005*).

Further details are provided in 8-4.

**Discussion Question 8-4**

If yes to Question 8-3, why should mandatory reporting apply to the ECEC sector?

If yes to Question 8-3, which particular types of services should mandatory reporting apply to? For example, should it apply to:

- (a) an approved education and care service under the Education and Care Services National Law, such as:
- (i) long day care services;
  - (ii) family day care services;
  - (iii) kindergarten services;
  - (iv) outside school hours care services;
- (b) a Queensland education and care service under the Education and Care Services Act 2013 (Qld);
- (c) a stand-alone service under the Education and Care Services Act 2013 (Qld);
- (d) any other services?

**Response**

*Why should mandatory reporting apply to the ECEC sector?*

The answer to this question is informed by the discussion in responses to 8-1 and 8-2, and the other material discussed in this submission.

To provide some context about the contribution which may be made by ECEC practitioners, it is important to acknowledge the high exposure they have to children, especially in the early years, which marks this group of practitioners as a high value resource in detecting significant physical and sexual abuse to enable early intervention. Some summary statistics indicate:

- at August 2013, there were 2690 regulated education and care services in Queensland (Department of Education, Training and Employment, 2014), attended by 258,641 Queensland children, equating to approximately 25% of all Queensland children aged 0-12 (ABS, 2015; DETE, 2014).
- These services comprised:
  - 51% long day care (centre-based services operating  $\geq$  10 hours per day Monday to Friday);

- 26% outside school hours care (centre-based service for school-aged children out-of-school hours during and outside school terms);
- 18% kindergarten (centre-based in the year before Prep, operating during school terms);
- 4% family day care (provided by educators in their homes);
- 1% limited hours care (caring for up to 30 children for ≤ 20 hours per week).

In sum, mandatory reporting of physical abuse and sexual abuse should apply to the ECEC sector because:

1. The social science evidence shows that physical abuse and sexual abuse are widespread, harmful, costly, and affect highly vulnerable children (with physical abuse especially infants and the youngest children);
2. The reporting law is consistent with other legal principles but moves beyond them to support a coherent, systematic approach to enhance child protection;
3. The reporting law promotes theoretical and ethical principles which form the bedrock of a legitimate liberal democracy which has as one of its core functions the protection of the vulnerable from severe harm;
4. The reporting duty is consistent with and promotes major national and international policy initiatives in the reduction and prevention of violence;
5. The empirical evidence indicates that ECEC practitioners can make a very strong and improved contribution to child protection when mandated;
6. A reporting duty embodies an essential aspect of a public health approach to child abuse;
7. The economic benefits from enhanced early intervention are significant and likely far exceed the investment required to implement reporting;
8. Practical and administrative measures can be innovatively designed to facilitate centralised, cost-efficient, workable systems which also add to professionalisation of the ECEC workforce.

#### **Discussion Question 8-5**

If yes to Question 8-3, which particular professionals, office holders and workers within the early childhood education and care sector should be required to report? For example, should it apply to:

- (a) approved providers;
- (b) supervisors;
- (c) educators;
- (d) other staff members;
- (e) volunteers?

#### **Response**

Our conclusion is that the duty should not be extended to volunteers. It is important that mandated reporters have received training in this aspect of their role, as well as in child development generally.

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. It can be noted however that the Northern Territory extends the duty to all citizens, and a large minority of jurisdictions in the USA also adopt this position (Mathews & Kenny, 2008).

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.

## References

- Australian Bureau of Statistics [ABS]. (2015). *4402.0 - Childhood Education and Care, Australia, June 2014*. Retrieved 4 October 2015 from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4402.0Main+Features1June%202014?OpenDocument>
- Beauchamp, T and Childress, J. (2013). *Principles of Biomedical Ethics* (7th ed). New York: Oxford University Press.
- Bishop, A., Lunn, P., & Johnson, K. (2002). 'I would just like to run away and hide, but I won't!' Exploring attitudes and perceptions on child protection issues with early years teacher trainees on the threshold of their careers. *Westminster Studies in Education*, 25, 187-199.
- Carter, Y., Bannon, M., Limbert, C., Docherty, A., & Barlow, J. (2006). Improving child protection: A systematic review of training and procedural interventions. *Archives of Disease in Childhood*, 91, 740-743.
- Christian, C. (2008). Professional education in child abuse and neglect. *Pediatrics*, 122, 13-17.
- Commonwealth of Australian Governments [COAG]. (2009). *Protecting children is everyone's business: National framework for protecting Australia's children 2009-2020*. Commonwealth of Australia. Retrieved 4 October 2015 from <https://www.communities.qld.gov.au/resources/childsafety/child-protection/national-framework.pdf>
- Commonwealth of Australian Governments [COAG]. (2011). *National Plan to Reduce Violence Against Women and Their Children 2010-2022*. Commonwealth of Australia. Retrieved 4 October from <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>.
- Cummins, P., Scott, D. & Scales, B. (2012). *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne: Victoria Department of Premier and Cabinet.
- Currie, J. & Widom, C. (2010). Long-term consequences of child abuse and neglect on adult economic wellbeing. *Child Maltreatment*, 15, 111-120.
- Department of Education, Training and Employment. (2014). *Early Childhood Education and Care Services Census 2013: Regulated Education and Care Services in Queensland*. Retrieved 4 October 2015 from <http://deta.qld.gov.au/earlychildhood/pdfs/6-all-services-fact-sheet.pdf>
- Dinehart, L., & Kenny, M. C. (2015). Knowledge of child abuse and reporting practices among early care and education providers. *Journal of Research in Childhood Education*, 29, 429-443.
- Drake, B. (1996). Unraveling "unsubstantiated". *Child Maltreatment*, 1, 261-271.
- Dunne, M., Purdie, D., Cook, M., Boyle, F. & Najman, J. (2003). Is child sexual abuse declining? Evidence from a population-based survey of men and women in Australia. *Child Abuse & Neglect*, 27, 141-152.
- Fang, X., Brown, D., Florence, C., & Mercy, J. (2012). The economic burden of child maltreatment in the United States and implications for prevention. *Child Abuse & Neglect*, 36, 156-165.
- Fang, X., Fry, D., Brown, D., Mercy, J., Dunne, M., Butchart, M., Corso, P., Maynzyukh, K., Dzhygyrh, Y., Chena, Y., McCoy, A., & Swales, D. (2015). The burden of child maltreatment in the East Asia and Pacific region. *Child Abuse & Neglect*, 42, 146-162.
- Feng, J.-Y., Huang, T.-Y., & Wang, C.-J. (2010). Kindergarten teachers' experience with reporting child abuse in Taiwan. *Child Abuse & Neglect*, 34, 124-128.
- Feng, J.-Y., Chen, S.-J., Wilk, N., Yang, W.-P., & Fetzer, S. (2009). Kindergarten teachers' experience of reporting child abuse in Taiwan: Dancing on the edge. *Children & Youth Services Review*, 31, 405-409.
- Florida Department of Children and Families. (2010). *Chapter 65C-22: Florida Administrative Code Child Care Standards*. Retrieved 4 October 2015 from <https://daycare.com/florida/florida-daycare-center-licensing-requirements.html>
- Gershoff, E. (2002). Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review. *Psychological Bulletin*, 128, 539-579.
- Gilbert, R., Widom, C., Browne, K., Fergusson, D., Webb, E., & Janson, S. (2009). Burden and consequences of child maltreatment in high-income countries. *Lancet*, 373(9657), 68-81.
- Gostin, L. (2014). *Global Health Law*. Cambridge, MA: Harvard University Press.
- Hawkins, R., & McCallum, C. (2001). Mandatory notification training for suspected child abuse and neglect in South Australian schools. *Child Abuse & Neglect*, 25, 1603-1625.
- Heckman, J. (2006). Skill formation and the economics of investing in disadvantaged children. *Science*, 312, 1900-1902.
- Hussey, J., Chang, J. & Kotch, J. (2006). Child Maltreatment in the United States: Prevalence, Risk Factors, and Adolescent Health Consequences. *Pediatrics*, 118(3), 933-942.
- Kempe, C., Silverman, B., Steele, B., Droegemuller, W., & Silver, H. (1962). The Battered-Child Syndrome. *Journal of the American Medical Association*, 181, 17-24.
- Kenny, M. (2004). Teachers' attitudes toward and knowledge of child maltreatment. *Child Abuse & Neglect*, 28, 1311-1319.
- Kenny, M. (2007). Web-based training in child maltreatment for future mandated reporters. *Child Abuse & Neglect*, 31, 671-678.



- Kenny, M. (2015). Training in Reporting of Child Maltreatment: Where We Are and Where We Need To Go. In B Mathews and D Bross (Eds.), *Mandatory reporting laws and the identification of severe child abuse and neglect*. Dordrecht: Springer, pp. 327-346.
- Kim, S., Gostin, L., & Cole, T. (2012) Rethinking child protection. *Journal of the American Medical Association*, 308, 37-38.
- Kohl, P., Jonson-Reid, M., & Drake, B. (2009). Time to Leave Substantiation Behind: Findings From A National Probability Study. *Child Maltreatment*, 14, 17–26.
- Lansford, J., Dodge, K., Pettit, G., Bates, J., Crozier, J., & Kaplow, J. (2002). A 12 year prospective study of the long-term effects of early child physical maltreatment on psychological, behavioural, and academic problems in adolescence. *Archives of Pediatric and Adolescent Medicine*, 156, 824-830.
- Levi, B., Crowell, K., Walsh, K., & Dellasega, C. (2015). How childcare providers interpret 'reasonable suspicion' of child abuse. *Child and Youth Care Forum*. Published online 27 February 2015.
- Mathews, B., Bromfield, L., Walsh, K., & Vimpani, G. (2015). *Child abuse and neglect: A socio-legal study of mandatory reporting in Australia - Report for the Australian Government, Volumes 1-9*. Commonwealth of Australia.
- Mathews, B. (2015). A theoretical framework for designing and evaluating strategies to identify cases of serious child abuse and neglect. In B Mathews and D Bross (Eds.), *Mandatory reporting laws and the identification of severe child abuse and neglect*. Dordrecht: Springer, 127-156.
- Mathews, B. (2012). Exploring the contested role of mandatory reporting laws in the identification of severe child abuse and neglect. In M Freeman (Ed.), *Current Legal Issues Volume 14: Law and Childhood Studies*. Oxford: Oxford University Press, 302-338.
- Mathews, B. (2011). Teacher education to meet the challenges posed by child sexual abuse. *Australian Journal of Teacher Education*, 36, 13-32.
- Mathews, B., & Bross, D. (2008a). Mandated reporting is still a policy with reason: empirical evidence and philosophical grounds. *Child Abuse & Neglect*, 32, 511-516.
- Mathews, B., & Kenny, M. (2008b). Mandatory reporting legislation in the USA, Canada and Australia: a cross-jurisdictional review of key features, differences and issues. *Child Maltreatment*, 13, 50-63.
- Mazza, D., Dennerstein, L., Garamszegi, C., & Dudley, E. (2001). The physical, sexual and emotional violence history of middle-aged women: A community-based prevalence study. *Medical Journal of Australia*, 175, 199-201.
- Mercy, J. (1999). Having New Eyes: Viewing Child Sexual Abuse as a Public Health Problem. *Sexual Abuse: A Journal of Research and Treatment*, 11, 317-321.
- Mills, R., Alati, R., O'Callaghan, M., Najman, J., Williams, G., Bor, W., & Strathearn, L. (2011). Child Abuse and Neglect and Cognitive Function at 14 Years of Age: Findings from a birth study cohort. *Pediatrics*, 127, 4-10.
- Moore, S., Scott, J., Ferrari, A., Mills, R., Dunne, M., Erskine, H., Devries, K., Degenhardt, L., Vos, T., Whiteford, H., McCarthy, M., & Norman, R. (2015). Burden attributable to child maltreatment in Australia. *Child Abuse & Neglect*, 48, 208-220.
- Nightingale, N., & Walker, E. (1986). Identification and reporting of child maltreatment by head start personnel: attitudes and experiences. *Child Abuse & Neglect*, 10, 191-199.
- Nussbaum, M. (2011). *Creating Capabilities*. Cambridge MA: Harvard University Press.
- Price-Robertson, R., Smart, D., & Bromfield, L. (2010). Family is for life: How childhood experiences within the family help or hinder the lives of young adults. *Family Matters*, 85, 7-17.
- Productivity Commission. (2014). *Childcare and Early Learning: Overview, Inquiry Report No. 73*. Canberra. Retrieved 4 October 2015 from <http://www.pc.gov.au/inquiries/completed/childcare>
- Putnam, F. (2003). Ten-year research update review: Child sexual abuse. *Journal of the American Academy of Child & Adolescent Psychiatry*, 42, 269–278.
- Rheingold, A., et al. (2012). Feasibility and Acceptability of a Child Sexual Abuse Prevention Program for Childcare Professionals: Comparison of a Web-Based and In-Person Training. *Journal of Child Sexual Abuse*, 21, 422–436.
- Rosenman, S., & Rodgers, B. (2004). Childhood adversity in an Australian population. *Social Psychiatry and Psychiatric Epidemiology*, 39, 695-702.
- Spataro, J., Mullen, P., Burgess, P., et al. (2004). Impact of child sexual abuse on mental health: Prospective study in males and females. *British Journal of Psychiatry*, 184, 416–421.
- Springer, K., Sheridan, J., Kuo, D., & Carnes, M. (2007). Long-term physical and mental health consequences of childhood physical abuse: Results from a large population-based sample of men and women. *Child Abuse & Neglect*, 31, 517-530.
- Stoltenborgh, M., van Ijzendoorn, M., Euser, E. & Bakermans-Kranenburg, M. (2011). A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World. *Child Maltreatment*, 16(2), 79–101.
- Svensson, B., & Janson, S. (2008). Suspected child maltreatment: Preschool staff in a conflict of loyalty. *Early Childhood Education Journal*, 36, 25–31.
- Trickett, P., Noll, J., & Putnam, F. (2011). The impact of sexual abuse on female development: Lessons from a multigenerational, longitudinal research study. *Development and Psychopathology*, 23, 453–476.
- United Nations. (2015). Sustainable Development Goals. Retrieved from <https://sustainabledevelopment.un.org/topics>

United States Department of Health and Human Services. (2014). *Child Maltreatment 2012*. Washington DC: US Government Printing Office.

United States Department of Health and Human Services. (2009). *Child Maltreatment 2007*. Washington DC: US Government Printing Office.

Veltman, M., & Browne, K. (2001). Three decades of child maltreatment research: implications for the school years. *Trauma, Violence and Abuse, 2*, 215-239.