

Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016

Report No. 20, 55th Parliament

**HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND
FAMILY VIOLENCE PREVENTION COMMITTEE**

JUNE 2016

HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

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Abbreviations

Act	<i>Child Protection Act 1999</i>
AIHW	Australian Institute of Health and Welfare
Bill	Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016
C&K	Crèche and Kindergarten Association Limited
DCCSDS	Department of Communities, Child Safety and Disability Services
Department	Department of Communities, Child Safety and Disability Services
DET	Department of Education and Training
ECEC	Early childhood education and care
ECS	Education and Care Services
FLP	Fundamental Legislative Principle
POQA	<i>Parliament of Queensland Act 2001</i>
QLRC	Queensland Law Reform Commission
QLS	Queensland Law Society

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts, unless otherwise specified.
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Chair’s Foreword

This Report presents a summary of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee’s examination of the Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016.

The Committee’s task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The purpose of the Bill is to extend mandatory reporting obligations to the Early Childhood Education and Care (ECEC) sector.

The Committee sought written submissions from the Department and other stakeholders, held a public briefing, public hearing and private hearing. The Committee received 12 submissions and spoke with numerous stakeholders during the course of its inquiry.

The Committee agreed that the Bill should be passed subject to amendment of the commencement date, from 1 January 2017 to 1 July 2017. Whilst agreeing that mandatory reporting should be expanded to include the ECEC sector, given the diversity of service types in the sector, the Committee was unable to agree on which individuals should be captured by the mandatory reporting provisions.

On behalf of the Committee, I would like to thank those individuals and organisations who lodged written submissions and appeared at the Committee’s public hearings.

In particular, the Committee wishes to acknowledge and thank Mr John and Mrs Susan Sandeman for their participation, both by providing a submission and speaking with the Committee via video conference. The Committee appreciates how heartfelt their pursuit of this issue is.

The Committee also wishes to acknowledge the assistance provided by the Member for Aspley, the Department of Communities, Child Safety and Disability Services, Hansard, Scrutiny of Legislation Secretariat staff and the Committee Secretariat.

Finally, I would like to thank my current and former fellow Committee Members for their contributions during examination of the Bill.

I commend this report to the House.



Leanne Linard MP
Chair

Summary of Recommendations

Recommendation 1 **3**

The Committee recommends the Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016 be passed, subject to recommendation 2.

Recommendation 2 **23**

The Committee recommends that clause 2 of the Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016 be amended to commence on 1 July 2017.

1. Introduction

1.1 Role of Committee

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) is a portfolio committee of the Legislative Assembly. The Committee was formerly known as the Health and Ambulance Services Committee which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.² On 16 February 2016, the Parliament agreed to amend Standing Orders, renaming the Committee and expanding its area of responsibility.

The Committee’s primary areas of responsibility include:

- Health and Ambulance Services;
- Communities, Women, Youth and Child Safety;
- Domestic and Family Violence Prevention; and
- Disability Services and Seniors.

Section 93(1) of the POQA provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

Section 92 of the POQA provides that a portfolio committee is to also deal with an issue referred to it by the Legislative Assembly or under another Act, whether or not the issue is within its portfolio area.

1.2 Referral

On 17 March 2016, the then Shadow Minister for Communities, Child Safety and Disability Services, Ms Tracy Davis MP, Member for Aspley, introduced the Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016 (the Bill) into the Legislative Assembly.

In accordance with Standing Order 131, the House referred the Private Member’s Bill to the Committee to consider. The Committee is required to report to the Legislative Assembly by 8 June 2016.

1.3 Inquiry process

The Committee’s consideration of the Bill included calling for public submissions, receiving a briefing from the Member for Aspley, holding a public hearing and receiving a written briefing from the Department.

The Committee considered expert advice on the Bill’s conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.3.1 Submissions

The Committee received 12 submissions. Submissions authorised by the Committee have been published on the Committee’s webpage and are also available from the Committee secretariat. A list of individuals and organisations that made submissions is contained in Appendix A.

² *Parliament of Queensland Act 2001*, section 88 and Standing Order 194

1.3.2 Written briefing

The Committee wrote to the Department seeking advice on the Private Member’s Bill and a response to issues raised in submissions. The Committee received this written advice on 9 May 2016.

1.3.3 Public briefing

On 11 May 2016 the Member for Aspley briefed the Committee on the Private Member’s Bill. A transcript of the briefing is published on the Committee’s webpage and is available from the Committee secretariat.

1.3.4 Public hearing

On 11 May 2016 the Committee held a public hearing in Brisbane. Details of the witnesses that appeared before the Committee is contained in Appendix B. A transcript of the hearing is published on the Committee’s webpage and is available from the Committee secretariat.

The Committee also sought and received additional written information from stakeholders subsequent to the hearing.

1.3.5 Private hearing

On 11 May 2016 the Committee held a private hearing via video conference with Mr John and Mrs Susan Sandeman. A transcript of the hearing has not been published.

1.4 The Bill

1.4.1 Policy objectives

The objective of the Bill is to implement recommendations made by the Queensland Law Reform Commission (QLRC) in its report titled *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, tabled in the Parliament on 25 February 2016. The QLRC recommended that mandatory reporting provisions in the *Child Protection Act 1999* be expanded to apply to the early childhood education and care (ECEC) sector.

Explanatory Notes state that the objective of the Bill is to:

*...ensure that mandatory reporting obligations apply to the ECEC sector individuals identified by the Commission.*³

1.4.2 Consultation

Explanatory Notes advise that the QLRC undertook consultation during its review:

*Extensive consultation has occurred during the Commission’s review which can be found in Chapter 1 (1.20) of its report. It includes the release of a Discussion Paper and call for submissions, along with consultation meetings with a number of key stakeholders including Government Departments and representative bodies of the ECEC sector. A total of 29 written submissions were received by the Commission (a full list of respondents can be found in Appendix B of the Commission’s report).*⁴

³ Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016, Explanatory Notes, p2

⁴ Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016, Explanatory Notes, p3

1.5 Outcome of Committee considerations

Standing Order 132(1)(a) requires that the Committee after examining the Bill determine whether to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by stakeholders, the Committee agreed to recommend that the Bill be passed.

The Committee agreed that the Bill should be amended to commence on 1 July 2017.

The Committee was unable to agree on who in the ECEC sector should be mandated to report child protection concerns. The Non-Government Members acknowledged the Queensland Law Reform Commission (QLRC) recommendation on this topic, and expressed support for the Bill in its current form.

The Government Members noted the issues raised by stakeholders and considered whether mandatory reporting requirements should be linked to the role undertaken by the ECEC staff rather than the qualification as proposed by the Bill. Refer section 4.3 of this report. The Government Members of the Committee, acknowledged the Queensland government response to the QLRC report, noting that given the diversity of service types in the ECEC sector, it is critical that individual professionals are appropriately captured under new legislative provisions.

Recommendation 1

The Committee recommends the Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016 be passed, subject to recommendation 2.

2. Background

2.1 Voluntary reporting

In Queensland, the *Child Protection Act 1999* provides that any person may inform the chief executive if the person reasonably suspects 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.⁵ In forming a reasonable suspicion about whether a child has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm, a person may consider:

(a) whether there are detrimental effects on the child’s body or the child’s psychological or emotional state—

(i) that are evident to the person; or

(ii) that the person considers are likely to become evident in the future; and

(b) in relation to any detrimental effects mentioned in paragraph (a)—

(i) their nature and severity; and

(ii) the likelihood that they will continue; and

(c) the child’s age.⁶

The person’s consideration may be informed by an observation of the child, other knowledge about the child or any other relevant knowledge, training or experience that the person may have.⁷

The Department told the Committee:

While there is no mandatory requirement for ECEC professionals to report a child protection concern about a child to DCCSDS [Department of Communities, Child Safety and Disability Services], DET [Department of Education and Training] recommends that services voluntarily report any child protection concerns to the appropriate authorities. Under section 84 of the Education and Care Services National Regulations, the approved provider of an education and care service must ensure that supervisors and staff members who work with children are advised of the existence and application of the current child protection law and any obligations they may have under that law.⁸

2.2 Mandatory reporting

The *Child Protection Act 1999* identifies which professionals are mandated to report a ‘reportable suspicion’ about a child to the Department.⁹ A ‘reportable suspicion’ is a reasonable suspicion that the child:

(a) has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and

(b) may not have a parent able and willing to protect the child from the harm.¹⁰

⁵ *Child Protection Act 1999*, s13A

⁶ *Child Protection Act 1999*, s13C(2)

⁷ *Child Protection Act 1999*, s13C(3)

⁸ Department of Child Safety, Community and Disability Services, written briefing, 9 May 2016, p4

⁹ *Child Protection Act 1999*, s13E

¹⁰ *Child Protection Act 1999*, s13E(2)

Doctors, registered nurses, teachers, a police officer who works in child protection¹¹ and a person engaged to perform a child advocate function under the *Public Guardian Act 2014* are mandatory reporters.¹² That is, they are required to report reasonable suspicions about a child, as described above.

With regard to a child in care, an authorised officer, a public service employee employed in the department and a person employed in a departmental care service or licensed care service are mandated to report a reportable suspicion to the Department.¹³ A child in care is a child placed in the care of an entity conducting a departmental care service or a licensee.¹⁴

The Department advised the Committee:

Parents have the primary responsibility for the care, wellbeing and development of their children. The Department of Communities, Child Safety and Disability Services (DCCSDS) has a statutory obligation to investigate and assess an allegation of harm to a child, or to take other action considered appropriate, when there is a reasonable belief that a child may be ‘in need of protection’. Under the Child Protection Act 1999 (CPA), a child is ‘in need of protection’ if the child:

- *has suffered, is suffering or is at an unacceptable risk of suffering, significant harm*
- *does not have a parent who is able and willing to protect the child from the harm.*¹⁵

The Department also acknowledged that:

*Significant harm, as defined in the CPA, often occurs in private and children, particularly younger children, may be unable to ask for help. DCCSDS is assisted to perform its statutory obligations by receiving reports from people who see the signs or impacts of harm to a child. Legislative mandatory reporting requirements are recognised as one mechanism to place a responsibility on certain professionals who work with children and their families to appropriately report child protection concerns to DCCSDS.*¹⁶

2.3 Mandatory and voluntary reporting data

In 2014-15, there were 159 reports from child care personnel in Queensland that led to child protection investigations, out of a total of 22,350 notifications. This equates to 0.71% of all reports in Queensland, and 9.57% of all reports from child care personnel in Australia.¹⁷

Queensland had the second highest number of investigations resulting from notifications by child care personnel in Australia. All other states and territories except WA require certain child care providers/employees to report child protection concerns. Refer to section 2.4 of this report.

A number of other professionals voluntarily report potential harm to children. Table 1 summarises the number and percentage of investigations initiated by these professions and whether the reporter is mandated to do so. Data shows that, other than those who did not state their profession or relationship to the child they reported, the police made the most notifications (3,650) in 2014-15, followed by family members (3,359), school personnel (2,071) then medical/health personnel (2,018).

¹¹ 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*, is responsible for reporting under section 13E(d) of the *Child Protection Act 1999*

¹² *Child Protection Act 1999*, s13E(1)

¹³ *Child Protection Act 1999*, s13F

¹⁴ *Child Protection Act 1999*, s13F(4)

¹⁵ Department of Communities, Child Safety and Disability Services, written briefing, 9 May 2016, p1

¹⁶ Department of Communities, Child Safety and Disability Services, written briefing, 9 May 2016, p1

¹⁷ Australian Institute of Health and Welfare, *Child protection Australia 2014-15*, p73

The total number of investigations decreased between 2013-14 and 2014-15, from 23,256 to 22,350 respectively. There were 112 less notifications by child care personnel in 2014-15.¹⁸

Table 1: Number of investigations, by source of notification, 2014-15.¹⁹

	Mandatory (M) / voluntary (V)	Number	Percentage
Police	M – If have child protection responsibilities V – Other police	3,650	16.3
School personnel	M – Teacher V – Other personnel	2,071	9.3
Medical/health professional	M – Doctor, nurse	2,018	9.0
Family	V	3,359	15.0
Friend/neighbour	V	1,192	5.3
Social worker	V	0	0
Non-government organisation personnel	M /V	785	3.5
Departmental officer	M/V	480	2.2
Child care personnel	V	159	0.7
Other	V	1,563	7.0
Subject child	V	148	0.7
Not stated	Unknown	6,925	31.0
Total		22,350	100

2.4 Early childhood education and care sector

The ECEC sector in Queensland provides a range of child care services. Long day care, family day care, outside school hours care and kindergarten services are regulated under the National Quality Framework (NQF). Services such as occasional care and limited hours care funded by the Queensland Government are regulated under the *Education and Care Services Act 2013*.²⁰

¹⁸ Australian Institute of Health and Welfare, *Child protection Australia 2014-15*, p73 and Australian Institute of Health and Welfare, *Child protection Australia 2013-14*, p70

¹⁹ Australian Institute of Health and Welfare, *Child protection Australia 2014-15*, p73

²⁰ Queensland Government, *Legal requirements for child care providers in Queensland*, <site accessed 16 May 2016> www.business.qld.gov.au/industry/service-industries/child-care/legal-requirements

In its submission, PeakCare advised:

*The combined national and state regulatory frameworks provides that all educators and staff in ECEC services who work with children are aware of child protection law and understand their obligations under the organisation’s child and youth risk management strategy. The regulatory framework places an obligation on employers to ensure training is provided so that all staff are aware of their legislated and other obligations. This framework provides a comprehensive foundation for the protection of children in ECEC.*²¹

The Department of Education and Training is the regulatory authority for early childhood education and care services in Queensland. With regard to the ECEC services, it is responsible for:

- approving, licensing and regulating early childhood education and care services in Queensland
- funding services to support the early childhood education and care of Queensland children²²

In 2014, there were 283,103 children enrolled in 2,858 approved ECEC services in Queensland.²³

In its written briefing, the Department provided additional background on the ECEC sector in Queensland:

Early childhood education and care (ECEC) services are one of the universal services available to all families. Universal services are at the frontline and are well placed to identify vulnerable and high-risk families.

*The ECEC sector includes over 2,800 approved services that are regulated under Queensland and national laws. An approved service is an education and care service approved under the Education and Care Services National Law or the Education and Care Services Act 2013 (Queensland). Examples of such services include family day care, kindergarten, limited-hours, long day care and outside school hours care. In Queensland, the Department of Education and Training (DET) licenses and regulates early childhood education and care services, which are predominantly delivered by non-government providers.*²⁴

2.5 Who are the mandatory reporters in other jurisdictions?

All Australian states and territories have legislated mandatory reporting laws. Most jurisdictions require nominated professionals to report child protection concerns, where as some use broader provisions. For example, the NT requires any person who reasonably believes a child is at risk of harm to report these concerns.²⁵

At the public briefing, the Member for Aspley noted:

*... the laws are not the same across all jurisdictions, with the main difference being who has to report and what types of abuse and neglect have to be reported. There are also differences in these laws across the jurisdictions such as the triggers of the reporting duty—for example, having a concern, suspicion or belief on reasonable grounds. In Queensland our current mandatory reporting laws are triggered when a mandatory reporter becomes aware or reasonably suspects significant detrimental effect on the child's physical, physiological or emotional wellbeing. In Queensland our mandatory reporting provisions are contained in the Child Protection Act 1999 and were first introduced in 1980.*²⁶

²¹ Submission 8, p4

²² Department of Education and Training, *Early childhood education and care* <site accessed 16 May 2016> <http://deta.qld.gov.au/earlychildhood/about/index.html>

²³ Department of Education and Training, *Service level enrolments - all 2014* <site accessed 16 May 2016> deta.qld.gov.au/information/.../31-attachment5-2014-servicelevelenrolments.xlsx

²⁴ Department of Communities, Child Safety and Disability Services, written briefing, 9 May 2016, pp3-4

²⁵ *Care and Protection of Children Act 2007* (NT) s26(1)

²⁶ Transcript, public briefing, Member for Aspley, 11 May 2016, p2

Table 2 summarises who is required to report child protection concerns in each state and territory.

Table 2: Professions mandated to report child protection concerns in Australian state and territories.²⁷

	ACT	QLD	SA	TAS	Vic*	WA	NT	NSW
Doctors	Yes	Yes	Yes	Yes	Yes	Yes	Any person	A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children’s services, residential services or law enforcement, wholly or partly, to children; or a person who holds a management position with duties that include direct responsibility for, or supervision of, such services.
Nurses	Yes	Yes	Yes	Yes	Yes	Yes		
Police	Yes	Yes	Yes	Yes	Yes	Yes		
Teachers	Yes	Yes	Yes	Yes	Yes	Yes		
Midwives	Yes	No	No	Yes	Yes	Yes		
Dentists	Yes	No	Yes	Yes	No	No		
Pharmacists	No	No	Yes	No	No	No		
Psychologists	Yes	No	Yes	Yes	Yes*	No		
School counsellors	Yes	No	No	No	No	No		
Certain childcare providers/ employees	Yes	No	Yes	Yes	Yes*	No		
Ministers of Religion	No	No	Yes	No	No	No		
Particular Social Workers	No	No	Yes	No	Yes*	No		
Community corrections/ Probation/ Parole Officers	No	No	Yes	Yes	Yes*	No		
Certain Public Servants	Yes	Yes	No	Yes	Yes*	No		
Other	Yes	Yes	Yes	Yes	Yes	No		
Provisions commenced	Yes	Yes	Yes	Yes	In part*	Yes	Yes	Yes

* These provisions apply on and from a relevant date to be fixed by an Order in Council. No Order has been made.

²⁷ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, page 52

All jurisdictions except Queensland and Western Australia extend mandatory reporting obligations to the ECEC sector.²⁸

2.6 Mason John Parker

Mason Parker was a 16 month old child who attended two daycare centres in North Queensland. Mason died in April 2011 of abdominal injuries that led to a ruptured bowel, days after his carers had documented his injuries. Concerns about Mason’s welfare were not reported to the Department by his carers or Directors of the daycare centres he attended.

At the public briefing, the Member for Aspley told the Committee:

*In the weeks leading up to Mason's death, bruising was observed on his little body by staff at the centre that he regularly attended. These bruises and concerns were raised to the appropriate person within the centre who was the Director, but unfortunately those concerns were not reported to the statutory authorities.*²⁹

Mason’s mother’s (then) boyfriend was charged with his murder in November 2013 and sentenced to life imprisonment. In August 2014 an appeal against his conviction was dismissed.

Mason’s grandparents, Mr John and Mrs Susan Sandeman, have campaigned for the ECEC sector to be mandatory reporters of harm as “[t]hey do not want to see any other child tragically lose their life because the reporting system failed them.”³⁰ The Member for Aspley told the Committee:

*The impetus for Queensland to have another look at this came from a public campaign led by John and Susan Sandeman, who live in Townsville ... Their grandson Mason Parker, who was just 16 months old, was murdered by his mother's then partner in 2011.*³¹

At the public briefing, the Member for Aspley told the Committee the then Government referred the matter of mandatory reporting to the QLRC for review after meeting with Mr and Mrs Sandeman in 2014.³²

3. Queensland Law Reform Commission review 2015

3.1 Background to the review

On 6 November 2014, the then Attorney-General and Minister for Justice requested the QLRC to review child protection mandatory reporting laws for the ECEC sector. The QLRC was to consider:

- whether the legislative mandatory reporting requirements under the *Child Protection Act 1999* (the Act) 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.³³

The majority of submissions made to the QLRC supported extending mandatory reporting obligations to the ECEC sector.³⁴

²⁸ Transcript, public hearing, 11 May 2016, p3

²⁹ Transcript, public briefing, 11 May 2016, p3

³⁰ Transcript, public briefing, 11 May 2016, p3

³¹ Transcript, public briefing, 11 May 2016, p3

³² Transcript, public briefing, 11 May 2016, p3

³³ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, pi

³⁴ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, pi

The QLRC reported in December 2015 and recommended that mandatory reporting be expanded to apply to certain ECEC staff. Its recommendations were incorporated into the Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016.

At the public briefing, the Member for Aspley advised the Committee:

The QLRC considered that the expansion of the mandatory reporting obligation to the ECEC sector aligned with these existing obligations. It also aligned with increasing regulation of ECEC services and professionalisation of the workforce that has taken place in recent years.³⁵

3.2 Mandatory reporting

The QLRC review noted that mandatory reporting laws are generally founded on three main assumptions:

- children cannot protect themselves and need others to do so
- abusive parents will not usually request help
- people who deal directly with children are best placed to detect abuse or neglect.

The review made the following arguments for and against mandatory reporting, as presented in Table 3.

Table 3: Reasons for and against mandatory reporting identified by the review³⁶

For mandatory reporting	Against mandatory reporting
Enables timely detection of child abuse and the provision of assistance	Causes over-reporting, straining resources and detracting from agencies’ ability to resolve legitimate abuse cases
Professionals such as doctors and teachers are well-placed to detect abuse given their regular contact with children and their training and experience	Shifts staff focus and resources from providing family support and addressing underlying social, personal and financial problems to investigating large numbers of cases
Raises public awareness of child abuse and sends a message that it will not be tolerated	A person might not seek professional help if they believe they may be reported
Recognises and protects children’s rights	May increase reports that burden the system and obscure the identification of genuine cases
	Does not address underlying socio-economic problems

3.2.1 The case for mandatory reporting in the ECEC sector

Most submissions to the QLRC review considered that mandatory reporting should be extended to the ECEC sector in Queensland. The main issues provided in submissions to the review were:

- children should be protected from harm
- the ECEC sector is uniquely placed to detect and reported suspected abuse due to:
 - the number of children in their care – as ECEC staff care for over 280,000 children, the Queensland Catholic Education Commission suggested ECEC staff must be considered a key child protection agency

³⁵ Transcript, public briefing, 11 May 2016, p3

³⁶ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, pp81-86

- the nature of the relationship between ECEC staff and the children and families in their care – ECEC staff are in regular contact with children and are often the first service to identify potential issues
- the vulnerability of children to abuse and the need for strong protection – children under 6 can often not seek help themselves, which is why others must help them. ECEC staff are well-placed to do this

Other reasons in support of mandatory reporting provided to the QLRC were:

- ECEC staff already have responsibilities to the children they care for and this reform would add a small burden to their workload
- it could provide improved guidance and support to staff and could overcome barriers to reporting
- it will increase the professionalisation of ECEC staff
- it will increase national consistency³⁷

3.2.2 The case against mandatory reporting in the ECEC sector

Reasons raised in submissions to the QLRC against extending mandatory reporting to the ECEC sector include:

- it may deter some parents, especially Indigenous and disadvantaged parents, from sending their children to an ECEC service
- there may be over-reporting of cases
- existing provisions are adequate
- there would be a financial and administrative burden
- it may negatively impact staff recruitment and retention³⁸

3.2.3 Does mandatory reporting help to uncover child abuse?

The evidence considered by the QLRC review was mixed. The review noted that various Australian inquiries have concluded that mandatory reporting increases the number of reports made. It also referred to a 1988 report from Victoria which found that in addition to increasing reports made by people covered by the mandatory reporting provisions, reports from people not covered by the provisions also increased, due to the community education campaigns that usually accompany the introduction of mandatory reporting laws.

The review noted the work of Professor Benjamin Mathews, which concluded that mandatory reporting identifies most cases of severe child maltreatment. Professor Mathews also found several sources of data from the USA which found that mandatory reporting may contribute to long-term declines in abuse, especially physical and sexual abuse and fatalities.³⁹

³⁷ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, pp108-112

³⁸ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, pp104-121

³⁹ 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

A 2004 review in the Australian Capital Territory concluded that mandatory reporting should not be expanded in a system that was already insufficiently resourced.⁴⁰ This review claimed the effectiveness of mandatory reporting in informing the Department of child abuse was unknown, and that there was no clear evidence mandatory reporting improved child protection.

A 2002 Western Australian report concluded that while there was considerable evidence that mandatory reporting increased reporting of potential cases, there was:

*...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.*⁴¹

3.2.4 Does mandatory reporting lead to over-reporting?

Evidence considered as part of the QLRC review regarding whether mandatory reporting leads to over-reporting, was again mixed. The review states that data from Australia and the USA show that mandatory reporting laws (and the associated publicity) increases both substantiated and unsubstantiated reports.⁴²

The review also notes the view that just because a report is not substantiated does not mean that no harm was being caused to a child – it may be that there was insufficient evidence of abuse or the abuse was not considered serious enough. In addition, some reports are followed through, but not by an investigation. In some cases people are referred to relevant services or given advice.⁴³

The review references a 2008 report from New South Wales, which concluded that:

*...evidence of a flood of reports with a reduction in outcomes, at least by reference to investigations and substantiations, is not evident.*⁴⁴

The review notes an academic’s conclusion that over-reporting in Australia and the USA is not sustained by the evidence.⁴⁵ It also references reports on the issue from South Australia, New South Wales and Victoria that concluded mandatory reporting should be maintained in each of those states.

The review noted the success of mandatory reporting laws is reliant on other factors, such as an adequately resourced child protection system. A 1993 report from Victoria noted that there was:

*...little point in setting up a system which encourages increased notifications if the overall system is unable to cope with that increase.*⁴⁶

The review also noted work, which stated that overall, criticisms of mandatory reporting laws related mainly to implementation issues such as resourcing and training, rather than the requirement itself.

⁴⁰ 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

⁴¹ 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

⁴² Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, p86

⁴³ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, p87

⁴⁴ The Hon J Wood, *Special Commission of Inquiry into Child Protection Services in New South Wales*, Report (2008) vol 1, 181

⁴⁵ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, p87

⁴⁶ Mr Justice Fogarty, *Protective Services for Children in Victoria*, Report (1993),133

3.3 Key conclusions of the review

3.3.1 Which services should mandatory reporting provisions apply to?

The review concluded 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 *Education and Care Services Act 2013*. This includes long day care and family day care services, kindergartens and outside school hours care services operated by approved ECEC services.⁴⁷

The reasons for this were that ECEC services:

- have the most children enrolled in them and are the main services offering frequent and ongoing education and care
- must comply with operational and other requirements to gain a licence and are subject to quality assessment and inspection by the Department of Education and Training
- have existing child protection responsibilities
- the burden for larger operators is likely to be small⁴⁸

3.3.2 Which individuals should mandatory reporting provisions apply to?

The review concluded that the mandatory reporting obligation under section 13E of the *Child Protection Act 1999* 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*; 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*.⁴⁹

The reasons for this were:

- staff who have direct and frequent contact with children and their families, and have the appropriate skills to recognise harm, are the most appropriate people to be classed as mandatory reporters
- the people listed are the broadest number of staff with the most contact and appropriate skills
- other staff and volunteers will still be able to voluntarily report any concerns. This is consistent with the approach taken in schools.⁵⁰

⁴⁷ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, p131

⁴⁸ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, p131

⁴⁹ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, p141

⁵⁰ Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73, December 2015, p140

3.4 Government response to QLRC review

The Government responded to the QLRC review in May 2016, accepting the recommendations that mandatory reporting provisions in the *Child Protection Act 1999* be expanded to apply to the ECEC sector. The Government accepted in principal the recommendation regarding which individuals in the ECEC sector mandatory reporting should apply to, noting:

The Queensland Government accepts the intent of this recommendation, noting that given the diversity of service types in the ECEC sector, it is critical that individual professionals are appropriately captured under new legislative provisions.

*The Queensland Government will continue to work with the ECEC sector to enable amendments to be made to the *Child Protection Act 1999* that are practical and workable. We will support all educators who work with children and their families to appropriately report a child protection concern to DCCSDS. Children’s health, safety and well-being are the Government’s key consideration.⁵¹*

The Government is currently undertaking a comprehensive review of the *Child Protection Act 1999*, concluding consultation in February 2016. A range of reforms are currently being undertaken in the child protection and family support service system, of which review of the Act forms a part:

*As a key part of its reforms, the Queensland Government is considering the role and purpose of legislation in improving opportunities and life outcomes for children and their families. We are reviewing the *Child Protection Act 1999*, as recommended by the Queensland Child Protection Commission of Inquiry, to design a contemporary legal framework for the child protection and family support system. It is essential that new laws support effective and efficient services for children and families, now and into the future.*

The current Act is more than 15 years old. There have been major advances in the field of child protection and family support across Australia over the past decade. The community’s expectations of government, and the way that human services are delivered, have changed dramatically since 1999.⁵²

⁵¹ Queensland Government, Queensland Government response to the Queensland Law Reform Commission report, May 2016, p2 <site accessed 16 May 2016> www.communities.qld.gov.au/resources/childsafety/child-protection/queensland-government-response-to-queensland-law-reform-commission-report.pdf

⁵² Discussion paper, www.communities.qld.gov.au/resources/childsafety/about-us/legislation/discussion-paper-review-child-protection-act-1999.pdf

4. Examination of the Bill

This section identifies key issues raised during the Committee’s examination of the Bill, including the Committee’s commentary on the issues and where appropriate, recommendations to address them.

4.1 What will the Bill change?

The Bill expands the type of professionals mandated to report specific child protection concerns to include:

(f) an individual who is-

(i) a Queensland approved provider under the ECS [Education and Care Services] Act; or

(ii) an approved provider under the ECS National Law;

(g) a supervisor for, or a staff member who holds an approved qualification of, a QEC service under the ECS Act;

(h) the nominated supervisor, or a staff member who holds an approved qualification, of an education and care service under the ECS National Law.

An approved qualification means an approved certificate III level education and care qualification under the Education and Care Services National Regulations, section 4; or a higher qualification.⁵³ Table 4 highlights the changes introduced by the Bill.

At the public briefing, the Member for Aspley told the Committee:

The bill is quite straightforward. It is simply inserting a new cohort which is reflective of the ECEC sector. There are no other changes to the act; there no penalties. It aligns very neatly with the reporting obligations of every other mandatory reporter that appears in the Child Protection Act.⁵⁴

The Member for Aspley considers:

... there is already an assumption in the community that they [ECEC staff] are mandatory reporters and this will really reflect what the community believes anyway.⁵⁵

Table 4 highlights the new provisions introduced by the Bill.

Table 4: Proposed amendments to section 13E of the *Child Protection Act 1999*

Current <i>Child Protection Act 1999</i> s13E	Proposed <i>Child Protection Act 1999</i> s13E
<p>13E Mandatory reporting by persons engaged in particular work</p> <p>(1) This section applies to a person (a relevant person) who is any of the following —</p> <p>(a) a doctor;</p> <p>(b) a registered nurse;</p> <p>(c) a teacher;</p> <p>(d) a police officer who, under a direction given by the commissioner of the police service under the</p>	<p>13E Mandatory reporting by persons engaged in particular work</p> <p>(1) This section applies to a person (a relevant person) who is any of the following —</p> <p>(a) a doctor;</p> <p>(b) a registered nurse;</p> <p>(c) a teacher;</p> <p>(d) a police officer who, under a direction given by the commissioner of the police service under the</p>

⁵³ Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016, clause 4

⁵⁴ Transcript, public hearing, 11 May 2016, p4

⁵⁵ Transcript, public hearing, 11 May 2016, p7

<p><i>Police Service Administration Act 1990</i>, is responsible for reporting under this section;</p> <p>(e) a person engaged to perform a child advocate function under the <i>Public Guardian Act 2014</i>.</p> <p>(2) For this section, a reportable suspicion about a child is a reasonable suspicion that the child—</p> <p>(a) has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and</p> <p>(b) may not have a parent able and willing to protect the child from the harm.</p> <p>(3) 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 under section 13G.</p>	<p><i>Police Service Administration Act 1990</i>, is responsible for reporting under this section;</p> <p>(e) a person engaged to perform a child advocate function under the <i>Public Guardian Act 2014</i>.</p> <p>(f) an individual who is-</p> <p>(i) a Queensland approved provider under the ECS Act; or</p> <p>(ii) an approved provider under the ECS National Law;</p> <p>(g) a supervisor for, or a staff member who holds an approved qualification of, a QEC service under the ECS Act;</p> <p>(h) the nominated supervisor, or a staff member who holds an approved qualification, of an education and care service under the ECS National Law.</p> <p>(2) For this section, a reportable suspicion about a child is a reasonable suspicion that the child—</p> <p>(a) has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and</p> <p>(b) may not have a parent able and willing to protect the child from the harm.</p> <p>(3) 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 under section 13G.</p> <p>(4) In this section <i>approved qualification</i> means-</p> <p>(a) an approved certificate III level education and care qualification under the Education and Care Services National Regulations, section 4; or</p> <p>(b) a higher qualification.</p> <p><i>ECS Act</i> means the <i>Education and Care Services Act 2013</i>.</p>
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4.2 Overview of support and opposition

The vast majority of evidence received by the Committee supports the expansion of mandatory reporting to the ECEC sector.⁵⁶ However, PeakCare did not consider mandatory reporting should apply to the ECEC sector.⁵⁷ Many stakeholders identified issues affecting implementation of the Bill, which are examined in subsequent sections of this report.

⁵⁶ See for example, Submissions 3, 7, 9, 11 and 12

⁵⁷ Submission 8

Mr John and Mrs Susan Sandeman identified a number of reasons about why mandatory reporting requirements should be expanded to include the ECEC sector:

- *Children aged between 0 and 5 years are limited if not, are preverbal on their ability to disclose what is actually happening to them is a crime. Mandatory Reporting will assist in alleviating this problem.*
- *Secondly, Australia has committed herself to protecting and ensuring children’s rights are adhered to and to be held accountable for this commitment before the international community.*
- *A core principle of the convention and in Mission statements from ECEC sector in one form or another emphasises their devotion to best interests of the child.*
- *The Queensland Government must not discriminate against children who attend ECEC sector by not providing adequate protection through the introduction of Mandatory Reporting, when primary and secondary students are already given that right.*
- *Domestic violence is at a crises point at present with recent murders being committed in public. It is known that children and babies who do attend ECEC sector are sometimes caught up in domestic violence. It needs to be nipped in the bud with the help of introducing ECEC sector to be mandated reporters of suspected child abuse.⁵⁸*

Protect All Children Today (PACT) also supports the Bill as a means to:

...provide greater protection for vulnerable younger children at risk, due to their regular contact with, and observation of, individual children and families. We also believe that by embedding this into legislation it formally acknowledges the importance of the protective role they play and cements the current voluntary reporting practices of the ECEC sector.⁵⁹

The Early Childhood Teachers’ Association Inc (ECTA) represents students, associations, schools, early learning centres, kindergartens, individual and educators in the early childhood sector. It surveyed its members about mandatory reporting in the ECEC sector and found that 83% of members support an extension of these reporting obligations.⁶⁰

United Voice represents early years workers in the not-for-profit and profit sectors. At the public hearing, it advised that these workers support extending mandatory reporting to the ECEC sector, while expressing concern around timing of the Bill’s implementation.⁶¹ At the public hearing, ECTA told the Committee:

The Early Childhood Teachers' Association submission was based on a member survey conducted by ECTA which resulted in just under 100 responses. Our members overwhelmingly support the introduction of mandatory reporting for all early childhood settings including family day care and outside-school-hours care.⁶²

Churches of Christ Care also expressed support for the Bill, as it will “... support a more consistent approach across states and territories and send the message that children's safety and wellbeing is taken seriously.”⁶³

Crèche and Kindergarten Association Limited (C&K) also expressed support for extending mandatory reporting to the ECEC sector, noting it is an important part of the statutory child protection system.⁶⁴

⁵⁸ Submission 3, p5

⁵⁹ Submission 2, p1

⁶⁰ Submission 5, p1

⁶¹ Transcript, public hearing, 11 May 2016, p4

⁶² Transcript, public hearing, 11 May 2016, p5

⁶³ Submission 6, p1

⁶⁴ Transcript, public hearing, 11 May 2016, p3

At the public hearing, the Queensland Catholic Education Commission expressed overall support for the Bill, while noting concerns including training and timing of commencement.⁶⁵

In their submission, Professor Ben Mathews and Associate Professor Kerryann Walsh cited the following reasons why they support the Bill:

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.*⁶⁶

At the public briefing, the Member for Aspley advised the Committee:

*They are the most vulnerable cohort—zero to five—and I do not think you would find anybody in early childhood education who would not hold that view. They are most vulnerable for a range of reasons, particularly that they cannot articulate necessarily what has happened to them. The ECEC sector is made up of very caring people. People who work in early childhood do not do it for the money; they do it because they care about our children. I think this just provides them with an extra tool should they feel that there is an issue of abuse or neglect surrounding a child.*⁶⁷

ECTA told the Committee that mandatory reporting would:

*...increase early childhood education and care staff’s professional alertness and sense of responsibility in relation to child protection and would send a clear and consistent message to early childhood professionals and the community.*⁶⁸

Section 2.7.3 of this report summarises reasons provided to the QLRC review about why mandatory reporting should be extended to the ECEC sector.

⁶⁵ Transcript, public hearing, 11 May 2016, p2

⁶⁶ Submission 12, p2

⁶⁷ Transcript, public briefing, 11 May 2016, p7

⁶⁸ Transcript, public hearing, 11 May 2016, p5

PeakCare provided a number of reasons why it does not consider mandatory reporting is appropriate for the ECEC sector. Key reasons for this include:

...these amendments are not evidence based decisions, are not well timed given the review of the Child Protection Act 1999 and progressive implementation of responses to the recommendations from the Queensland Commission of Inquiry into Child Protection (the Carmody Inquiry), and may cause further financial strain on social services in Queensland.⁶⁹

At the public hearing, PeakCare advised that the real issue in protecting children from harm is not mandatory reporting, rather it is about:

...providing initial and ongoing support, resourcing, training and education to early childhood and education care workers and fostering collaborative relationships between the sector, Child Safety, family support services and other helping agencies. What is needed is more awareness raising, staff training, support and supervision of those workers to enable full appreciation of the need to raise concerns with parents and carers and how to do this effectively, rather than mandatory reporting to the statutory child protection agency.

4.3 Who in the ECEC sector should report child protection concerns?

Divergent views were provided to the Committee with regard to which staff in the ECEC sector should be mandated to report child protection concerns. Some stakeholders were of the view that reporting should be linked to a qualification, as is currently provided by the Bill, whilst others consider mandatory reporting should be tied to the role undertaken by ECEC staff. Some thought the level of qualification provided by the Bill is too low and should be increased.

The Bill requires those with an approved certificate III level education 3 and care qualification under the Education 4 and Care Services National Regulations, 5 section 4, or higher, to mandatorily report child protection concerns to the Department.⁷⁰

ECTA considers that approved providers, supervisors and those with a teaching diploma or certificate qualification should be mandated to report child protection concerns:

ECTA therefore recommends that all supervisors, providers and educators with a qualification of a certificate III or higher should be mandated to report. This will bring parity to our members currently teaching in a school setting.⁷¹

Churches of Christ Care supports the extension of mandatory reporting requirements to the ECEC sector, but is concerned that the Bill requires staff with too low a qualification level (Certificate III) to be required to report an incident. It suggested that only approved providers under the *Education and Care Services National Law* should be required to report suspected abuse, as they have the skills and training to determine if a staff member’s view about potential abuse is valid.

At the public hearing, Churches of Christ elaborated on this view:

...some of the staff that are certificate III qualified do not have the professional understanding to make those sorts of decisions. What currently happens is that they bring up a concern and they report it to the service manager approved provider. The report is then made with that professional viewpoint of understanding the components.

⁶⁹ Submission 8, p3

⁷⁰ Bill, clause 4

⁷¹ Transcript, public hearing, 11 May 2016, p5

When you are looking at very small rural communities where you have a 22-place childcare centre with a service manager who left school at 14 and has the minimum qualifications to run a service plus about two staff who work for her, this puts a great deal of pressure on somebody at that certificate III level. The way that we currently do it, by reporting through, removes the pressure from the service around being the one who reports but also it reinforces to the staff that their views are taken but somebody else is doing it for them, which I think gives them a degree of security.⁷²

C&K noted in its submission that many child care staff are relatively young and low paid and some are not fully qualified. It does not support linking mandatory reporting and qualifications, instead suggesting that only educators and/or those who work day-to-day with children should be covered by the Bill.⁷³

C&K expanded on this view in response to a question taken on notice at the public hearing, advising the Committee:

- 1. Many people in direct contact with children in ECEC are not yet qualified (ie. they are studying). It would be problematic if these people did not undertake their Mandatory Reporting duty because they felt they did not yet meet the qualification threshold.*
- 2. Conversely some staff on ECEC sites may have this qualification yet may not have any contact with children (eg. Chef, or Administrator). While nothing prohibits any person anywhere from reporting; it may be problematic if these ‘non-contact’ workers were later found to have neglected a duty that they were not in a position, nor employed, to carry out (ie. closely supervise and care for individual children).⁷⁴*

At the public hearing, United Voice also expressed that mandatory reporting should be linked to those positions that have contact with children:

There may be people within a centre who hold a qualification like a teaching qualification who are removed from direct contact with the children by virtue of their qualification. I am not sure there should be a legalised obligation that they mandatorily report. It should really be about the contact that the educators are having with the child which is one of the main reasons I had understood that the Law Reform Commission had come to a view that it was really appropriate that mandatory reporting be broadened to this sector.⁷⁵

In its response to a question taken on notice from the public hearing, ECTA advised that the Bill could require those ‘with’ or ‘working towards’ a qualification to report, if the relevant training was included in the first unit of study. This would assure that all those working towards a relevant qualification have received appropriate training.⁷⁶

C&K highlighted the practical implantation of mandatory reporting at schools, whereby although teachers are legislated mandatory reporters:

...in practice it is the Principal who makes the notification after a collegiate conversation with the teacher, and after consideration of any additional information that the Principal is privy to.⁷⁷

⁷² Transcript, public hearing, 11 May 2016, pp2-3

⁷³ Submission 10, p3

⁷⁴ Crèche and Kindergarten Association Limited, response to question on notice, 16 May 2016, pp1-2

⁷⁵ Transcript, public hearing, 11 May 2016, p8

⁷⁶ Early Childhood Teachers’ Association, response to question on notice, 12 May 2016, p1

⁷⁷ Crèche and Kindergarten Association Limited, response to question on notice, 16 May 2016, p2

4.4 Potential over-reporting of incidents

Some submissions noted the potential for the Bill to lead to the over-reporting of cases where no abuse has occurred, diverting the Department’s resources from valid cases.

PeakCare advised that:

Mandatory reporting can lead to over-reporting of cases that do not meet the statutory threshold for intervention, which in turn puts a strain on resources and detracts from the ability of government agencies, particularly the statutory child protection agency, to respond to children and families who require a statutory child protection response.⁷⁸

In its submission, United Voice noted that it considers appropriate training and resourcing would address the potential for over-reporting stating:

Whilst it is widely recognised that the main criticism of mandatory reporting is that it causes over-reporting, and that the resulting increase in unsubstantiated notifications puts a strain on resources and detracts from the ability to respond to legitimate serious cases of child abuse, United Voice considers this can be addressed in the ECEC sector by the requisite level of training, resourcing and support of ECEC employees and ECEC employers.⁷⁹

At the public hearing, all stakeholders highlighted the importance of training in reducing the potential for over-reporting. QCEC advised:

If you do not want over-reporting, it is really important that people understand what the terms mean, what is a reportable submission, parent willing and able—there is a whole lot of terminology which is quite new to people. The role of Family and Child Connect, which many people have mentioned, is not familiar to many people. If you want to ensure they are trained appropriately and they do not over-report, the training becomes quite critical.⁸⁰

C&K identified the need for a whole-of-system approach for the training of staff to avoid over-reporting resulting from the introduction of mandatory reporting to the ECEC sector:

In order to avoid issues of over-reporting and to take a whole systems approach, it needs to be not just about mandatory reporting but, as Jane mentioned, there are services like Family and Child Connect. It needs to be a whole-of-system approach to the training of staff to avoid the over-reporting.⁸¹

4.5 Commencement of the Bill

In its current form, the Bill would commence on 1 January 2017.⁸² Explanatory Notes state that:

Implementing this Bill will provide for sufficient time for the Department of Education to prepare a comprehensive training and education program about the scope of the reporting obligation prior to proclamation on the operation of the legislation on 1 January 2017.⁸³

⁷⁸ Submission 8, p5

⁷⁹ Submission 7, p2

⁸⁰ Transcript, public hearing, 11 May 2016, p6

⁸¹ Transcript, public hearing, 11 May 2016, p3

⁸² Bill, clause 2

⁸³ Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016, Explanatory Notes, p2

At the public briefing, the Committee sought additional information regarding the reasons behind the proposed commencement date. The Member for Aspley advised the Committee:

It is the same length of time that we gave doctors and nurses and those who are already mandated reporters dealt with by Carmody, so we felt that that was an appropriate time. I think also it is around the start of a school year period and that was just a neat and tidy fit. It was really about mirroring what was asked of the other mandatory reporters to get themselves ready but there is, as I understand it, the framework now that can be provided to the ECEC sector in terms of the material that they would need.⁸⁴

While supportive of the Bill, the QCEC noted the education and care sector would need sufficient lead-in time before the Bill came into effect stating:

While approved providers that manage a number of early education and care (ECEC) services will be better placed to ensure the legislative changes are fully understood by relevant staff and embedded in policy than those approved providers that manage a sole service, all ECEC service providers will require time and appropriate support resources to train staff.⁸⁵

With regard to the development of policies to support mandatory reporting, the Member for Aspley noted:

...the ECEC sector in the main already has established policies in place, so it is not something new that is being put on them. It might look a little bit different, but it is not a whole new process. Some of the conversations that I have had with providers are that it is unlikely to be hugely problematic. We always like a bit of extra time for anything that we do, but that is why the timing was selected and I think it is entirely doable, particularly if there is a sense of resolve by government and the sector to make this happen.⁸⁶

United Voice also noted its concern that the proposed commencement date of 1 January 2017 does not provide enough time for the Department to prepare a training and education program to ensure compliance with the Bill.⁸⁷

At the public hearing, the QCEC recommended that the end of January would be a more appropriate time for the Bill to commence, given the school term dates:

Our practical experience is that many of our staff are working in kindergartens which operate on school term times which start towards the end of January. Many of them are not employed until then. A 1 January start date implies that you will have done your training in December. That is a very difficult time of year to do any training or staff professional development. It is not an optimal time, particularly as you are not picking up any new staff who will start at the beginning of the next year. The practice would normally be to start at the beginning of a school term, so towards the end of January. To have a 1 January start date would make that extremely difficult to do.⁸⁸

United Voice, on the other hand, considers 12 months would be required to prepare for the expanded mandatory reporting requirements, which would result in an implementation date of mid-2017:

In terms of the time frame, I think in our submission we referred to a meeting of stakeholders that has occurred and there has been very preliminary discussion about the impact of the bill. The time frame that was discussed, which would concur with what Michael has said, is about a 12-month period, which would take us to the middle of next year.⁸⁹

⁸⁴ Transcript, public briefing, 11 May 2016, p5

⁸⁵ Submission 4, pp1-2

⁸⁶ Transcript, public briefing, 11 May 2016, p5

⁸⁷ Submission 7, p3

⁸⁸ Transcript, public hearing, 11 May 2016, p5

⁸⁹ Transcript, public hearing, 11 May 2016, p6

With regard to whether the Bill could be implemented on 1 January 2017, the QCEC advised the Committee:

...it depends on whether you want it done well or not. Can it be done? Yes. People will meet their mandated requirements. Will it be done well? I think there would be doubt around that.

The Committee sought information from the Department regarding the practical implications of implementing the provisions of the Bill. The Department advised that they are well placed to draw upon the experience of implementing the current legislative mandatory reporting requirements during the implementation of any further amendments that apply within the ECEC sector. They advised:

When rolling out changes to mandatory reporting requirements in 2015, DCCSDS developed a comprehensive suite of information and training modules to support professionals to understand their obligations so they would be able to appropriately report child protection concerns. In particular, DCCSDS revised the Child Protection Guide (the Guide). A lead-in period of approximately 12 months, from the development of the Child Protection Reform Amendment Bill 2014 in early 2014 and the commencement of the provisions on 19 January 2015, was required in relation to the current legislative mandatory reporting requirements. A commencement date was chosen that enabled training and information to be provided at a suitable time within the professional sectors impacted by the provisions.⁹⁰

4.5.1 Committee comment

The Committee acknowledges the issues raised regarding timing of commencement of the Bill, and considers that clause 2 should be amended so that mandatory reporting requirements commence on 1 July 2017.

Recommendation 2

The Committee recommends that clause 2 of the Child Protection (Mandatory Reporting – Mason’s Law) Amendment Bill 2016 be amended to commence on 1 July 2017.

4.6 Training

A number of inquiry participants identified the importance of staff training⁹¹ and updating policies as part of the expanded mandatory reporting obligations, and the impact this would have on the ability to implement the Bill on 1 January 2017.

In its submission, the QCEC identified some key tasks required to be considered before the Bill is implemented, including policy development, staff training and community awareness:

o Policy development

Approved providers will need to update existing child protection policies to clearly identify the internal processes and steps to be taken by all staff (those that come under the legislation and those who do not) to ensure all aspects of the legislative requirements are understood and met.

⁹⁰ Correspondence from CCSDS to HCDSDFVPC, 9 May 2016, pp7-8

⁹¹ See for example, Submissions 4, 7, 10, and 11

o Staff training

It will be vital for the effective implementation of the legislation that high quality training of relevant staff across the ECEC sector is provided. Consideration must be given to how mandatory reporters will be trained and supported – both as an initial and ongoing commitment. Consistent training that provides clarity about legislative requirements will need to be delivered across the diverse range of service and delivery types in the early childhood education and care sector.

Child Safety Services should be the lead agency in developing training packages. There already exists high quality packages for training in the school education sector which can be modified to include appropriate early childhood scenarios. It is important that the role, function and impact of Family and Child Connect services are considered as a major factor in the implementation of child protection legislation and policy.

Training will need to include:

- *Clarity about the meaning of such terms as: ‘significant harm’, ‘reasonable suspicion’, ‘parent not willing or able’*
- *Understanding the indicators and signs of child abuse - physical, sexual, emotional and neglect.*
- *Knowing which agency to contact – Child Safety Services or Family and Child Connect.*
- *The use of the Online Child Protection Guide (CPG) to support decision making.*
- *The steps that need to be taken by mandatory reporters so they are clear about the process for making a mandatory report.*

o Community awareness

It is suggested that the media campaign conducted by the Queensland Family and Child Commission to encourage families to take a positive view of assistance available from Child Safety Services should be repeated. The recent communications strategy on changes to child immunisation legislation may provide some guidance in this area.⁹²

At the public hearing, C&K outlined action that would be required to be taken should the mandatory reporting obligations be expanded to the ECEC sector:

...we support 186 community kindergartens that are affiliate services. I have just completed with my general manager of children's services parent management committee forums, and part of that is child protection awareness and training about their responsibilities. That is rolled out at the start of the year. We have online training for all of our staff. That takes up to two hours. That has just been rolled out for the year.

The other requirement will be to revise policies and procedures. We have 136 branch kindergartens, 28 long-day-care centres, family day care programs, in-home-care programs. There is a significant number of services where training will have to be revised, policies updated and the information got out in terms of time frames.⁹³

United Voice also acknowledged that policies would be required to be updated, and that staff would need to clearly understand who is required to report and when. The diversity of services and settings in which ECEC services are provided was also noted by United Voice.⁹⁴

⁹² Submission 4, p2

⁹³ Transcript, public hearing, 11 May 2016, p6

⁹⁴ Transcript, public hearing, 11 May 2016, p6

In its submission to the QLRC review, United Voice noted that a number of studies, found that mandatory reporting professionals considered they did not have the training required to fulfil their role. Specifically, studies found that professionals had a low levels of knowledge about the nature of the duty, indicators of abuse and neglect and how to make a report.⁹⁵

The Queensland Family and Child Commission (QFCC) expressed support for the Bill, while also citing a report⁹⁶ which stated that some education professionals’ considered they:

...did not have the expertise to determine whether ‘there may not be a parent able and willing’ in reporting to DCCSDS as required under sections 13A and 13E of the Child Protection Act 1999 (Qld).⁹⁷

QFCC also noted the importance of regional and remote workers being able to access training.

At the public hearing, the Queensland Catholic Education Commission cited their experience of when teachers became mandatory reporters. They told the Committee:

I think there is some terminology in the Child Protection Act—the threshold for reasonable suspicion that has been talked about that educators would really need to unpack. Even as Lee-Anne indicated, when the changes were made, teachers who had been working in this space for a good while were still grappling with, and were nervous quite often about, ‘Would I report or not report? What would be a reasonable circumstance where I would?’ I know there are a lot of great resources there—the flow chart—to know when they might make a report. I think there still would be a lot of nervousness amongst a lot of educators, so they would want to have time to unpack this. Even though they would, as you say, have policies, I think any change—which this will be—is going to need to be unpacked. I also think the reference to the Family and Child Connect services and the tiers of support within the child safety area need to be unpacked a lot more for the sector.⁹⁸

Churches of Christ consider that childcare workers’ view of themselves is a barrier to mandatorily report child abuse:

Those of us who have been around in the sector for many years have seen a journey, but it is generally recognised that the biggest barrier in this sector is the childcare workers’ view of themselves. They will start a conversation with ‘I am just a’. It is not, ‘I’m an educator. I teach children.’ It is, ‘I am just a childcare worker.’ I think that is a barrier when you are asking them to professionally report. I think there is a piece of work around giving them the self-respect and knowledge that their view is valuable. That is an ongoing battle in the sector right across-the-board for all childcare workers. Yes, we have policies and procedures, but it is the self-perception as being professional enough to actually do it.⁹⁹

4.7 Removal of children from childcare

PeakCare and C&K identified that mandatory reporting in the ECEC sector has the potential to alienate families who may fear the child protection system.

⁹⁵ United Voice, submission to the QLRC review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector Discussion Paper, 22 September 2015, p14

⁹⁶ *Healthcheck Report: Review of Professional Reporting Behaviours*, December 2015

⁹⁷ Submission 9, p2

⁹⁸ Transcript, public hearing, 11 May 2016, p6

⁹⁹ Transcript, public hearing, 11 May 2016, p7

At the public hearing, PeakCare expressed concern about potential for the expanded mandatory reporting provisions to drive families away from early education for fear of being reported:

This is a concern held especially in relation to Aboriginal and Torres Strait Islander families due to the history of distrust that contributes to the underrepresentation of Aboriginal and Torres Strait Islander children in early education and their overrepresentation within the child protection system.

As noted within our submission, almost 100 per cent of non-Indigenous Queensland children are enrolled in an early childhood education and care program compared with only 65 per cent of Aboriginal and Torres Strait Islander children. PeakCare holds similar concerns in relation to children from culturally and linguistically diverse communities, those whose parents have a disability and those whose families have experienced or are experiencing domestic and family violence.¹⁰⁰

C&K also identified the potential for expanded mandatory reporting to alienate some groups that are under-represented in early education and over-represented in child protection reporting and out-of-home care.¹⁰¹

PeakCare noted the difference in childcare enrolment between Indigenous and non-Indigenous children (almost 100% vs 65%). It suggested this difference could increase further as a result of the Bill, given the distrust that already exists between some Indigenous groups and child protection services.¹⁰²

The C&K also noted that any reform should not alienate groups that are under-represented in early education, especially Indigenous and culturally and linguistically-diverse families.

The Committee sought additional information regarding the impact on the ECEC sector when mandatory reporting is already required in the school sector. Churches of Christ Care advised:

Knowing and working out in some of those very small communities, I know that children have to go to school. The big piece of work that we are working with Indigenous communities on is the developmental value of getting your children into education earlier. It is not compulsory. Children do not have to go. Culturally, in a lot of those communities it is not seen as something that they do.

...Knowing well the overrepresentation in the sector, you have to step softly and very slowly with Indigenous communities to get them to accept the value of early childhood education and care before you even go down the track of mandatory reporting. It is a very sensitive issue in those sorts of Indigenous communities, because it is not compulsory. That is the difference between school and early childhood.¹⁰³

4.8 Penalties for non-compliance

The Department advised there is no criminal penalty for a report not being made under the Child Protection Act. However, failure to report may result in other disciplinary action such as a breach of code of conduct.¹⁰⁴

¹⁰⁰ Transcript, public hearing, 11 May 2016, pp3-4

¹⁰¹ Submission 10, p4

¹⁰² Submission 8, p6

¹⁰³ Ms Carter, Transcript public hearing, 11 May 2016, p9

¹⁰⁴ Department of Communities, Child Safety and Disability Services, written briefing, 9 May 2016, p2

PeakCare noted that if childcare workers, who are already low paid and hard to recruit, are penalised for not complying with the Bill they may feel they could be blamed for any adverse outcomes:

...while acknowledging that penalty units no longer apply in respect to failing to comply with mandatory reporting obligations under the Child Protection Act 1999, if failure to comply brings with it penalties on individual ECEC professionals for non-reporting, workers may feel there is greater potential for being singled out and blamed for adverse outcomes. Difficulties experienced in recruitment and selection for a traditionally low paid, high turnover workforce might be exacerbated.¹⁰⁵

United Voice also noted there was no prescribed penalty for not reporting a potential child abuse case and suggested the imposition of penalties should be approached with caution, especially if training and resourcing are insufficient.¹⁰⁶

4.9 Other issues

A number of other issues were raised by stakeholders, including the impact of expanding mandatory reporting to the ECEC sector on systems such as IT and HR, and on Departmental resourcing. The potential impact on the safety of family daycare workers was also identified.

In its submission to the Committee, C&K suggested that to ensure mandatory reporting does not overwhelm the child safety system, extra investment would be needed to process the additional reports the Department would receive. Specifically:

...a significant increase in resources, coordination and effort would be required across multiple areas --- as outlined in C&K’s attached previous response (and summarised below)

- *Investment in additional Child Safety investigators*
- *More training on child protection for the ECEC sector*
- *Investment to support the legal, insurance and HR implications of mandatory reporting*
- *More investment in early intervention services and collaborations*
- *More investment into ICT, evaluation, research and social policy*
- *A feedback system to reporters would improve the effectiveness of reporting¹⁰⁷*

C&K also highlighted that around 8 per cent of Queensland educators work from home. It suggested that if such staff reported potential child abuse their safety may be at risk, as the potential perpetrator may know their address. C&K questions whether mandatory reporting would “...be less effective in this sub-sector because of educators’ concerns that perpetrator/s know their address, and their family routines.”¹⁰⁸

4.9.1 Review of Child Protection Act 1999

The Committee notes that the Department is currently undertaking a review of the *Child Protection Act 1999*.

¹⁰⁵ Submission 8

¹⁰⁶ Submission 7

¹⁰⁷ Submission 10, p3

¹⁰⁸ Submission 10, p3

The Member for Aspley commented on this issue, advising:

I am fully aware that there is a review of the Child Protection Act currently. As a result of my former role I understand how long these things take. It would concern me if the committee were not aware that it could take up to 18 months to implement any legislative changes that come of a full review of the Child Protection Act, and I would respectfully ask that this legislation be viewed independently. We look after children who are five and above through mandatory reporting. This will capture our most vulnerable kids aged zero to five. I would ask that this be progressed as a matter of priority, although I do appreciate that there is a full review of the child protection system at the moment.¹⁰⁹

¹⁰⁹ Ms Davis, public briefing transcript, 11 May 2016, p4

5. Fundamental legislative principles

5.1 Rights and liberties of individuals

Section 4(2)(a) *Legislative Standards Act 1992* requires that legislation have sufficient regard to the rights and liberties of individuals.

The Bill aims to ensure that mandatory reporting obligations apply to the early childhood education and care sector individuals identified by the Commission.

Clause 4 seeks to amend the Act to include three additional categories of mandated reporters under Chapter 2, Part 1AA, Division 2, section 13E. This places a positive obligation on those listed to abide by mandatory reporting laws in the Act.

It could potentially be argued that this compulsory requirement to take action interferes with an individual’s rights and freedoms. However, this obligation is balanced against the best interests of children and in this case, children who are at risk of harm.

The Explanatory Notes to a child protection Bill recently examined by the Committee state (in the context of an individual’s right to privacy):

*The disclosure of confidential information under these provisions is justified as the care and protection needs of children take precedence over the protection of an individual’s privacy.*¹¹⁰

5.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

¹¹⁰ Director of Child Protection Litigation Bill 2016, Explanatory Notes, p4

Appendix A – List of submitters

Sub #	Submitter
001	Queensland College of Teachers
002	Protect All Children Today Inc
003	Mr John Sandeman and Mrs Susan Sandeman
004	Queensland Catholic Education Commission
005	Churches of Christ Care
006	Early Childhood Teachers’ Association Inc
007	United Voice, Industrial Union of Employees, Queensland
008	Peak Care Queensland Inc.
009	Queensland Family and Child Commission
010	The Creche and Kindergarten Association Limited
011	Queensland Law Society
012	Associate Professor Kerryann Walsh and Professor Ben Mathews

Appendix B – Witnesses who appeared at the public hearing

Early Childhood Teachers’ Association Inc

- Ms Kim Walters, President

Queensland Catholic Education Commission

- Dr Lee-Anne Perry AM, Executive Director
- Ms Jane Slattery, Executive Officer, Education

Churches of Christ Care

- Ms Jane Carter, General Manager, Children, Youth and Families

United Voice

- Ms Sharron Caddie, Branch Assistant Secretary
- Ms Leah Malzard, Branch Executive Member

Peak Care Queensland Inc

- Mr Lindsay Wegener, Executive Director

The Creche & Kindergarten Association Limited

- Mr Michael Tizard, Chief Executive Officer