

# Child Protection (Mandatory Reporting - Mason's Law) Amendment Bill 2016

## Explanatory Notes

### Short title

The short title of the Bill is the Child Protection (Mandatory Reporting-Mason's Law) Amendment Bill 2016

### Policy objectives and the reasons for them

Mandatory reporting laws are enacted in each Australian jurisdiction. It is broadly accepted that these laws are an important component of the broader child protection system.

Currently in Queensland the *Child Protection Act 1999* (the Act) identifies the following groups as mandatory reporters:

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

Queensland and Western Australia are the only two Australian jurisdictions that do not extend mandatory reporting to the Early Childhood Education and Care sector (ECEC sector).

Whilst previous reviews into the child protection system in Queensland have looked at the mandatory reporting provisions they have not recommended that they be expanded to include the ECEC sector. The most recent inquiry<sup>1</sup> recommended that mandatory reporting requirements be consolidated into one provision and that a consistent approach to reporting child protection concerns be established. These changes commenced after a period of training and education on 1 January 2015.

On 6 November 2014, the Queensland Law Reform Commission (the Commission) was requested by the then Government to review child protection mandatory reporting laws for the ECEC sector.

The overwhelming majority of submissions received by the Commission supported extending the mandatory reporting obligation under the Act to apply to the ECEC sector. The Commission recognised 'the protective role of the ECEC sector in relation to children aged 0–5 years, who are particularly vulnerable. Staff employed in ECEC services are in regular and direct contact with children and their families, and are well-placed to observe and report concerns that children are at risk of significant harm, thereby enabling timely intervention and the protection of children from harm'.

It also noted that ECEC services are already subject to child protection obligations, have internal policies and procedures in place and can, and do, voluntarily report concerns to Child Safety. The Commission considered that the expansion of the mandatory reporting obligation to the ECEC sector aligned with these existing obligations. It also aligned with the increasing regulation of ECEC services and professionalisation of the workforce that has taken place in recent years.

The Commission's report titled '*Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*' was presented to Government in December

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<sup>1</sup> Queensland Child Protection Commission of Inquiry

2015. It made a key recommendation that the mandatory reporting provisions in Queensland be expanded to apply to the ECEC sector.

In accordance with the Commission's recommendation, the objective of this Bill is to ensure that mandatory reporting obligations apply to the ECEC sector individuals identified by the Commission.

The Commission found that extending the mandatory reporting obligation to certain individuals in the ECEC sector could be adequately addressed through appropriate training and education about the scope and content of the reporting obligation, and the provision of adequate support and resourcing to the ECEC sector to fulfil the obligation.

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.

## **Achievement of policy objectives**

To achieve the policy objectives the Bill will amend the Act to include three additional categories of mandated reporters under Chapter 2, Part 1AA, Division 2, 13E.

It is noted that the exact phraseology used in the Commission's report is not reflected in the Bill as the wording needs to reflect Queensland's current drafting practice and account for the various defined terms used in the Act and the *Education and Care Services National Law (Queensland) Act 2011*.

The Commission's report identifies in the list of recommendations that mandatory reporting is only to apply to individuals<sup>2</sup>, where it sets out 'which individuals should the mandatory reporting obligation apply to'.

The amendment is therefore reflected as:

- (f) an individual who is—
  - (i) a Queensland approved provider under the ECS 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.

Note: ECS National Law means the *Education and Care Services National Law (Queensland)*; and ECS Act means the *Education and Care Services Act 2013*.

The addition of Section 13E(1), paragraph (f) will limit the application to 'an individual who is' an approved provider. The word 'person' is defined in the *Acts Interpretation Act 1954 (Qld)* as including corporations. It is therefore appropriate to only apply the mandatory reporting obligation to approved providers who are individuals, and not corporations.

The insertion of section 13E(1), paragraphs (g) and (h) are intended to cover all persons employed (ie. family day care coordinators, family day care educators etc), provided those persons hold the relevant approved qualification.

## **Alternative ways of achieving policy objectives**

The proposed legislation is essential to commence implementation of the recommendations made by the Commission. There are no alternative ways of achieving the recommendation as it relates to a mandatory reporting obligation of certain individuals.

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<sup>2</sup> In accordance with the Commission's recommendation, neither volunteers nor staff members who do not meet the minimum professional qualification requirements would be subject to the mandatory reporting obligation.

## Estimated cost for implementation

Cost in relation to the Bill can be met from contingency allocations to the Queensland Child Protection Reform.

## Consistency with fundamental legislative principles

The Bill is fundamentally consistent with the legislative principles of mandatory reporting whereby 'the safety, wellbeing and best interests of a child are paramount'.

In developing their recommendations, the Commission noted it was guided by six key considerations that are consistent with fundamental legislative principles:

- the paramount principle of protecting children from harm or risk of harm;
- the critical protective role of the ECEC sector in relation to children aged 0–5 years, who are particularly vulnerable;
- that staff employed in ECEC services are in regular and direct contact with children and their families, and are well-placed to observe and report concerns that children are at risk of significant harm, thereby enabling timely intervention and the protection of children from harm;
- that the threshold for a 'reportable suspicion' under the mandatory reporting provision in section 13E of the Act is confined to significant harm 'caused by physical or sexual abuse' where the child 'may not have a parent able and willing to protect the child from harm';
- that mandatory reporting aligns with the existing child protection obligations of the ECEC sector; and
- the increasing regulation of ECEC services and staff qualification requirements for its workforce.

## Consultation

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).

## Consistency with legislation of other jurisdictions

The extension of mandatory reporting to certain individuals in the ECEC sector in Queensland is a step towards national consistency. Currently, the legislation in the Australian Capital Territory, South Australia, Tasmania, Victoria, New South Wales and the Northern Territory specifically includes certain child care providers or employees as mandatory reporters (although the Victorian provision has not yet commenced operation).

### **Notes on provisions**

Clause 1 refers to the short title of the Bill.

Clause 2 confirms that the amendments to the *Child Protection Act 1999* commence on 1 January 2017.

Clause 3 refers to Chapter 2, Part 1AA, Division 2, 13E which amends the *Child Protection Act 1999*.

Clause 4 amends the scope of mandatory reporting by persons engaged in particular work to reflect the additional ECEC sector individuals.