

Submission by

**MY FAMILY LAWYERS** Pty Ltd

**QUEENSLAND CHILD PROTECTION COMMISSION OF  
INQUIRY**

Contact:

Janelle Meyers-Young

Email: [janelle@myfamilylawyers.com.au](mailto:janelle@myfamilylawyers.com.au)

24 August 2012

TO: Queensland Law Society ('QLS')

AND TO: Queensland Child Protection Commission of Inquiry

FROM: My Family Lawyers Pty Ltd ('My Family Lawyers')

Date: 24 August 2012

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My Family Lawyers provides these submissions to the Queensland Child Protection Commission of Inquiry, by way of response to the request by the QLS for feedback on the following issues:

- any concerns regarding the operation of child protection legislation such as the *Child Protection Act 1999 (Qld)* and *Children's Court Rules 1997*;
- possible amendments to the legislation which would address concerns;
- case examples which highlight the practical operation of the child protection system.

#### SUBMISSIONS BY MY FAMILY LAWYERS:

1. Concerns are held regarding the *Child Protection Act 1999 (Qld)* ("the Act") not providing for broader mandatory reporting of child abuse; and we identify legislative changes to the Act to provide for mandatory reporting by teachers and school employees of child abuse:

- 1.1. It is submitted that the chronology of approaches to reporting child abuse in Queensland indicates a reluctance to amend the Act for mandatory reporting by the groups of professionals who have "frontline contact" with children.
- 1.2. It is submitted that this apparent reluctance continues, notwithstanding that the *Child Protection Act 1999 (Qld)* provides protections for the notifier of the requisite harm to a child pursuant to, inter alia, section 22 (**Doc 1**).
- 1.3. As at September 2000, Queensland had a system of minimal mandatory reporting of child abuse or harm. In Queensland, the only persons required to report child abuse or neglect appeared to be: a medical practitioner, the licensee of a child care centre or family day care scheme, or Family Court personnel and counsellors who suspect child abuse. The Department of Education, Training and Employment ("the Department of Education") required that teachers advise the Principal of suspected child abuse, but any notification to the Department of Communities, Child Safety and Disability Services ("the Department") was not mandatory (refer *Meyers-Young, J. (September 2000) "Mandatory Reporting of Child Abuse in Queensland", Proctor, Queensland Law Society 20 (8) 18-19 (Doc 2.1) and Letter to Editor of Proctor (August 2000) Queensland Law Society 20 (7) 3 (Doc 2.2)*).
- 1.4. In 2004, in relation to known or suspected sexual abuse of a student by a school employee, the *Education and Other Legislation (Student Protection) Amendment Act 2003 (Qld)* amended the *Education (General Provisions) Act 1989 (Qld)* and two new provisions, sections 146A and 146B, were



inserted into the *Education (General Provisions) Act 1989 (Qld)*. Legislative amendments commencing in 2004 were to impose a new obligation on teachers and staff in Queensland schools to report known or suspected sexual abuse of a student by a school employee. The obligation to report this class of abuse was the first statutory obligation ever imposed on teachers in Queensland regarding the reporting of child abuse. However, when compared with the mandatory reporting legislation then applying to teachers in other Australian jurisdictions, the Queensland provisions remained very limited (refer *Mathews, B. and Walsh, K. (2004) "Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse". Australia & New Zealand Journal of Law & Education Queensland University of Technology, Brisbane, 9 (1) 1327-7634 (pp. 2-40) (Doc 3)*).

- 1.5. As at 2008, the Department of Education published a "Policy" for employees to report suspected harm to the Principal (or the Executive Director (Schools)). The Principal then was to decide if they reasonably suspected that the student had been harmed or was at risk of harm, or an unborn child may be at risk of harm. To "reasonably suspect" meant that the Principal suspected on grounds that were reasonable in the circumstances. The right of the employee was reserved to make a voluntary report to the Department, however the policy stated that such a reporter (in a personal capacity) would not be eligible for Crown indemnity. The Policy included:

**Excerpt: Obtaining guidance when an employee suspects a student has been harmed or is at risk of harm**

*"Employees are not expected to be experts in the area of harm and should err on the side of caution in terms of reporting their suspicions, to enable those who are experts to investigate further. Employees who have any suspicion that a student is being harmed or is at risk of harm are required to report their concerns to the principal or Executive Director (Schools). Employees who suspect that an unborn child may be at risk of harm are required to report their suspicion to the principal (eg: In the case of a pregnant student engaging in substance abuse/misuse).*

*Employees (including principals) are not to investigate (except as part of an internal process to determine a School Disciplinary Absence or Public Service Disciplinary matter) any aspect of a suspicion of harm or risk of harm but, where appropriate, are required to report the matter to the Department of Communities (Child Safety Services) and Queensland Police Service."*

**"Reporting harm caused by a person not employed by the department including family members, strangers, parent helpers, volunteers, regular or on-going school visitors or unknown"**

*"Principals discuss employees' suspicions with them and decide if they reasonably suspect the student has been harmed or is at risk of harm, or an unborn child may be at risk of harm. To reasonably suspect means the principal suspects on grounds that are reasonable in the circumstances.*

*"If the principal decides that he/she reasonably suspects the student has been harmed or is at risk of harm, or an unborn child may be at*



risk of harm, the employee is required to complete SP4: Report of Suspected Harm or Risk of Harm, have it counter-signed by the principal, and forward it to the Department of Communities (Child Safety Services) and Queensland Police Service as a matter of urgency.

*“In the situation where a principal does not reasonably suspect that a student has been harmed or is at risk of harm, or an unborn child may be at risk of harm, the principal is required to take steps to risk manage the student’s situation. This may include advising the employee who reported the suspicion to closely monitor the student’s situation and to report any further concerns to the principal. The employee is to also be advised that they have the right to make a voluntary report directly to the Department of Communities (Child Safety Services) or Queensland Police Service. Where a report is made voluntarily, in a personal capacity, the reporter will not be eligible for Crown indemnity. The principal’s decision and risk management steps are to be documented and the record stored in a secure location.*

*“Since the legislative framework is different for different situations, it is crucial that this policy is followed carefully with respect to reporting sensitive information. Staff who are threatened with legal action as a result of making a child protection report under either the **Child Protection Act 1999 (Qld)** or **Education (General Provisions) Act 2006 (Qld)** should contact the department’s Legal and Administrative Law Branch to obtain advice and discuss the Crown indemnity process.*

*“If principals or employees require guidance or advice in relation to a student protection matter they are advised to contact the Education Queensland district child safety contact (in their local district office), the department’s Student Services Division or Ethical Standards (in the case of harm caused by an employee).” (Doc 4)*

- 1.6 As at 2012, the Department of Education has a “Student Protection” policy that provides: “If a school employee suspects that a student has been harmed or is at risk of harm, they must report their concerns to the school Principal. When the Principal receives information and is satisfied that grounds exist to reasonably suspect that a student has been harmed or is at risk of harm (including harm or risk of harm to an unborn child), the Principal follows specific reporting procedures detailed in the Student Protection policy”.

**Excerpt from the 2012 Policy as follows:** *“The Student Protection procedure outlines the responsibilities and commitment of Education Queensland to providing a safe, supportive and disciplined learning environment, to preventing reasonably foreseeable harm to students and to responding when an Education Queensland employee or an employee of a state school reasonably suspects harm or risk of harm to students.*

*The procedure applies to all Education Queensland employees including school staff members and regional and central office personnel. It also includes other employees of state schools (e.g. Youth Support Coordinators, School-Based Youth Health Nurses and*



Chaplains), volunteers and on-going visitors that have regular contact with students.

Harm is:

*Harm, to a student, is any detrimental effect of a significant nature on a student's physical, psychological or emotional wellbeing. Harm can be caused by physical abuse, psychological or emotional abuse, neglect or sexual abuse or exploitation.*

*If a school employee suspects that a student has been harmed or is at risk of harm, they must report their concerns to the school principal.*

*When the principal receives information and is satisfied that grounds exist to reasonably suspect that a student has been harmed or is at risk of harm (including harm or risk of harm to an unborn child), the principal follows specific reporting procedures detailed in the Student Protection policy.” (Doc 5)*

- 1.7. Other states and territories of Australia appear to have mandatory reporting by teachers.

Excerpt from the June 2012 Report of the Australian Institute of Family Studies (AIFS) **“Who is mandated to make a notification?”**:

*“The groups of people mandated to notify their concerns, suspicions or beliefs to the appropriate statutory child protection authority range from a limited number of specified persons in specified contexts (Queensland) through to every adult (Northern Territory).”*

*“The relevant Acts and Regulations in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia contain lists of particular occupations that are mandated to report. Some states have a limited number of occupations listed, such as Queensland (doctors, departmental officers, and employees of licensed residential care services) and Victoria (police, doctors, nurses and teachers). Other jurisdictions have more extensive lists (Australian Capital Territory, South Australia, Tasmania) or use generic descriptions such as “professionals working with children”.*

Table 1 provides an overview of who is legally mandated to report suspected child maltreatment to statutory child protection services in each state and territory.

*In addition to state and territory law, there are provisions within Commonwealth legislation that relate to mandatory reporting. Under the **Family Law Act 1975 (Cth)**, personnel from the Family Court of Australia, the Federal Magistrates Court and the Family Court of Western Australia also have mandatory reporting obligations. This includes registrars, family counsellors, family dispute resolution practitioners or arbitrators, and lawyers independently representing children's interests. Section 67ZA states that when in the course of performing duties or functions, or exercising powers, the above court personnel have reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion (see Section 67ZA of the*

Table 1: Mandatory reporting requirements across Australia\*

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
<p>ACT</p> <p>A person who is: a doctor; a dentist; a nurse; an enrolled nurse; a midwife; <u>a teacher at a school</u>; a person providing education to a child or young person who is registered, or provisionally registered, for home education under the Education Act 2004; a police officer; a person employed to counsel children or young people at a school; a person caring for a child at a child care centre; a person coordinating or monitoring home-based care for a family day care scheme proprietor; a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families; the public advocate; an official visitor; a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation</p>	<p>A belief, on reasonable grounds, that a child or young person has experienced or is experiencing sexual abuse or non-accidental physical injury; and the belief arises from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid)</p>	<ul style="list-style-type: none"> <li>▪ Physical abuse</li> <li>▪ Sexual abuse</li> </ul>	<p>Section 356 of the Children and Young People Act 2008 (ACT)</p>



Table 1: Mandatory reporting requirements across Australia\*

	Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
NSW	A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, <u>education</u> , children's services, residential services or law enforcement, wholly or partly, to children; and a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, <u>education</u> , children's services, residential services or law enforcement, wholly or partly, to children	Reasonable grounds to suspect that a child is at risk of significant harm; and those grounds arise during the course of or from the person's work	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> <li>Exposure to family violence</li> </ul>	Sections 23 and 27 of the Children and Young Persons (Care and Protection) Act 1998 (NSW)
NT	<u>Any person with reasonable grounds</u>	<p>A belief on reasonable grounds that a child has been or is likely to be a victim of a sexual offence;</p> <p>or otherwise has suffered or is likely to suffer harm or exploitation</p>	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> <li>Exposure to physical violence (e.g., a child witnessing violence between parents at home)</li> </ul>	Sections 15 and 26 of the Care and Protection of Children Act 2007 (NT)

Table 1: Mandatory reporting requirements across Australia\*

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
Registered health professionals	Reasonable grounds to believe a child aged 14 or 15 years has been or is likely to be a victim of a sexual offence and the age difference between the child and offender is greater than 2 years.	<ul style="list-style-type: none"> <li>Sexual abuse</li> </ul>	Section 26 of the Care and Protection of Children Act 2007 (NT)
QLD An authorised officer, employee of the Department of Child Safety, a person employed in a departmental care service or licensed care service	Awareness or reasonable suspicion of harm caused to a child placed in the care of an entity conducting a departmental care service or a licensee	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse or exploitation</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> </ul>	Section 148 of the Child Protection Act 1999 (Qld)
A doctor or registered nurse	Awareness or reasonable suspicion during the practice of his or her profession of harm or risk of harm	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse or exploitation</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> </ul>	Sections 191-192 and 158 of the Public Health Act 2005 (Qld)



Table 1: Mandatory reporting requirements across Australia\*

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
The staff of the Commission for Children and Young People and Child Guardian	A child who is in need of protection under s10 of the Child Protection Act (i.e., has suffered or is at unacceptable risk of suffering harm and does not have a parent able and willing to protect them)	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse or exploitation</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> </ul>	Section 20 of the Commission for Children Young People and Child Guardian Act 2000 (Qld)
SA Doctors; pharmacists; registered or enrolled nurses; dentists; psychologists; police officers; community corrections officers; social workers; <u>teachers</u> ; family day care providers; employees/volunteers in a government department, agency or instrumentality, or a local government or non-government agency that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children; ministers of religion (with the exception of disclosures made in the confessional); employees or volunteers in a religious or spiritual organisations	Reasonable grounds that a child has been or is being abused or neglected; and the suspicion is formed in the course of the person's work (whether paid or voluntary) or carrying out official duties	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> </ul>	Section 11 of the Children's Protection Act 1993 (SA)

Table 1: Mandatory reporting requirements across Australia\*

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
<p>TAS Registered medical practitioners; nurses; dentists, dental therapists or dental hygienists; registered psychologists; police officers; probation officers; principals and teachers in any educational institution; persons who provide child care or a child care service for fee or reward; persons concerned in the management of a child care service licensed under the Child Care Act 2001; any other person who is employed or engaged as an employee for, of, or in, or who is a volunteer in, a government agency that provides health, welfare, education, child care or residential services wholly or partly for children, and an organisation that receives any funding from the Crown for the provision of such services; and any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons</p>	<p>A belief, suspicion, reasonable grounds or knowledge that: a child has been or is being abused or neglected or is an affected child within the meaning of the Family Violence Act 2004; or there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides</p>	<ul style="list-style-type: none"> <li>▪ Physical abuse</li> <li>▪ Sexual abuse</li> <li>▪ Emotional / psychological abuse</li> <li>▪ Neglect</li> <li>▪ Exposure to family violence</li> </ul>	<p>Sections 13 and 14 of the Children, Young Persons and Their Families Act 1997 (Tas.)</p>



Table 1: Mandatory reporting requirements across Australia\*

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
<p>VIC Registered medical practitioners, registered nurses, a person registered as a teacher under the Education, Training and Reform Act 2006 or <u>teachers granted permission to teach under that Act, principals of government or non-government schools, and members of the police force</u></p>	<p>Belief on reasonable grounds that a child is in need of protection on a ground referred to in Section 162(c) or 162(d), formed in the course of practising his or her office, position or employment</p>	<ul style="list-style-type: none"> <li>▪ Physical abuse</li> <li>▪ Sexual abuse</li> </ul>	<p>Sections 182(1) a-e, 184 and 162 c-d of the Children, Youth and Families Act 2005 (Vic.)</p>
<p>WA Court personnel; family counsellors; family dispute resolution practitioners, arbitrators or legal practitioners representing the child's interests</p>	<p>Reasonable grounds for suspecting that a child has been: abused, or is at risk of being abused; ill treated, or is at risk of being ill treated; or exposed or subjected to behaviour that psychologically harms the child.</p>	<ul style="list-style-type: none"> <li>▪ Physical abuse</li> <li>▪ Sexual abuse</li> <li>▪ Emotional / psychological abuse</li> <li>▪ Neglect</li> </ul>	<p>Section 160 of the Western Australia Family Court Act 1997 (WA)</p>

Table 1: Mandatory reporting requirements across Australia\*

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
Licensed providers of child care or outside-school-hours care services	Allegations of abuse, neglect or assault, including sexual assault, of an enrolled child during a care session	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> <li>Neglect</li> </ul>	<p>Regulation 20 of the Child Care Services Regulations 2006</p> <p>Regulation 19 of the Child Care Services (Family Day Care) Regulations 2006</p> <p>Regulation 20 of the Child Care Services (Outside School Hours Family Day Care) Regulations 2006</p> <p>Regulation 21 of the Child Care Services (Outside School Hours Care) Regulations 2006</p>
Doctors; nurses and midwives; <u>teachers</u> ; and police officers	Belief on reasonable grounds that child sexual abuse has occurred or is occurring	<ul style="list-style-type: none"> <li>Sexual abuse</li> </ul>	Section 124B of the Children and Community Services Act 2004

Notes: \*Section 67ZA of the **Family Law Act 1975 (Cth)** applies to all states and territories. (**Doc 6**)

1.8 As at 2012, sections 364, 365 and 366 of the **Education (General Provisions) Act 2006 (Qld)**, oblige teachers and staff in Queensland schools to report known or suspected sexual abuse of a student by a school employee (**Doc 7**). It is noted that this mandatory reporting is only for sexual abuse when the



suspected perpetrator is a school employee.

## **SUBMISSIONS**

1.9 We submit that teachers in Queensland should be required to mandatorily report suspected child abuse to the Department, noting in particular, that they are at the “coal face” of daily interaction with children.

1.10 We submit that the concern in relation to liability can be met by protection afforded to the notifier of suspected harm directly to the Department (section 22 ***Child Protection Act 1999 (Qld)*** (refer Doc 1). Similar or additional protections can be added to the ***Education (General Provisions) Act 2006 (Qld)*** (refer Doc 7).

1.11 We submit that the notification by an employee of the Department of Education to the Principal could still be required as a matter of an employee/employer contract between the Department of Education and its staff. However the employee/employer relationship should not hamper or hinder the timely, and direct reporting of suspected child abuse directly to the Department.

1.12 We submit that there are clear advantages for the protection of a child of early and appropriate detection by a professional person who sees a child say, 5 of 7 days a week, for about 40 weeks a year. Teacher training facilitates identification of the indicators of abuse and teachers with appropriate notifier protections are appropriate candidates for mandatory reporting.

1.13 We submit that any “floodgate of notifications” argument is not persuasive, given the professionalism and training of teachers and the overwhelming need to protect children from abuse.

1.14 We submit that any increased workload for the Department may require greater allocation of funds to the Department. Priorities should be reassessed to allow the Department to be funded at a level where they can retain senior “frontline” staff with appropriate support structures to ensure abused children are identified early and retrieved from abusive situations.

2. Concerns are held regarding the failure of the ***Child Protection Act 1999 (Qld)*** to adequately protect children when they remain in the home with the alleged perpetrator; and we identify legislative changes to the ***Domestic and Family Violence Protection Act 1989 (Qld)*** to provide that Children may make their own Applications as the Aggrieved against a Parent as the Respondent (with the assistance of the Legal Aid Office and/or the Police):

2.1 The recommendations from “**Protecting Children: An Inquiry into Abuse of Children in Foster Care**” (Report of Crime and Misconduct Commission, January 2004) included:

*“5.15 That child-centred casework and the provision of parental support be vested, as far as is possible, in different staff members.*

“5.16 That, as a preventive response, 40 specialist FSO positions be created to work exclusively with parents whose children have already been the subject of a low-level notification and continue to reside at home. These positions should be filled progressively over the next two financial years” (underlining added).”

2.2. Children who have been subjected to low-level harm or family violence may continue to reside at home with, or spend time in the home of, the parent who is the alleged perpetrator. These living arrangements may continue after a low-level notification has been made to the Department of Communities, Child Safety and Disability Services (“the Department”) pursuant to **Child Protection Act 1999 (Qld)** and/or after Parenting Orders have been made pursuant to the **Family Law Act 1975 (Cth)**.

2.3. The legislation in Queensland for child protection includes the **Child Protection Act 1999 (Qld)**; the **Domestic and Family Violence Protection Act 1989 (Qld)** and the **Criminal Code 1899 (Qld)**. The **Family Law Act 1975 (Cth)** applies throughout Australia.

2.4.1. The Queensland and Commonwealth Acts respectively define “harm”, “domestic violence”, and “abuse” / “family violence” of or towards children including:

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

##### **Section 9: What is harm**

(1) Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by—

- (a) physical, psychological or emotional abuse or neglect; or
- (b) sexual abuse or exploitation.

(4) Harm can be caused by—

- (a) a single act, omission or circumstance; or
- (b) a series or combination of acts, omissions or circumstances

#### **Domestic and Family Violence Protection Act 1989 (Qld)**

##### **Section 11: What is domestic violence**

(1) Domestic violence is any of the following acts that a person commits against another person if a domestic relationship exists between the 2 persons—

- (a) wilful injury;
- (b) wilful damage to the other person's property;

Example of paragraph (b)—  
wilfully injuring a defacto's pet

(c) intimidation or harassment of the other person;



Examples of paragraph (c)—

- 1 following an estranged spouse when the spouse is out in public, either by car or on foot
  - 2 positioning oneself outside a relative's residence or place of work
  - 3 repeatedly telephoning an ex-boyfriend at home or work without consent (whether during the day or night)
  - 4 regularly threatening an aged parent with the withdrawal of informal care if the parent does not sign over the parent's fortnightly pension cheque
- (d) indecent behaviour to the other person without consent;
  - (e) a threat to commit an act mentioned in paragraphs (a) to (d).
- (2) The person committing the domestic violence need not personally commit the act or threaten to commit it.

### **Family Law Act 1975 (Cth)**

**Section 4: "abuse"**, in relation to a child, means:

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the **first person**) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- (c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- (d) serious neglect of the child.

### **Family Law Act 1975 (Cth)**

**Section 4AB: Definition of family violence etc.**

- (1) For the purposes of this Act, **family violence** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the **family member**), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to):
  - (a) an assault; or
  - (b) a sexual assault or other sexually abusive behaviour; or
  - (c) stalking; or
  - (d) repeated derogatory taunts; or
  - (e) intentionally damaging or destroying property; or
  - (f) intentionally causing death or injury to an animal; or
  - (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or

- (h) *unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or*
  - (i) *preventing the family member from making or keeping connections with his or her family, friends or culture; or*
  - (j) *unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.*
- (3) *For the purposes of this Act, a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.*
- (4) *Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:*
- (a) *overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or*
  - (b) *seeing or hearing an assault of a member of the child's family by another member of the child's family; or*
  - (c) *comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or*
  - (d) *cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or*
  - (e) *being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.*

2.4.2 The various forms of “harm”, “domestic violence”, and/or “abuse” / “family violence” may range from high-level to a low-level impact on a child.

2.5 It is submitted that the protections and processes available pursuant to State and Commonwealth legislation are relatively streamlined for children who are the subjects of high-level notifications of serious “harm” or “assault” (sexual or physical).

2.6 The Department pursuant to the ***Child Protection Act 1999 (Qld)*** has the power to remove a child from his or her home, seek a series of Orders from the Children’s Court and place the child with foster or other carers, on a short-term or other basis (**refer Doc 8**).

2.7 Allegations of child “abuse” in a Family Law matter pursuant to the ***Family Law Act 1975 (Cth)*** (as defined in section 4 ***Family Law Act 1975 (Cth)***); and allegations of “family violence” (as defined in section 4AB of the ***Family Law Act 1975 (Cth)***) that are within the definition of “abuse” (being assault including sexual assault), require (after an appropriate notice is filed) notification by the Registry Manager of the Family Court to a ‘prescribed child welfare authority’ (e.g. to the Department if the child is in Queensland) (sections 67Z (2) and 67ZBA (2) ***Family Law Act 1975 (Cth)***). (The reference to the Family Court in these submissions incorporates all Courts with the same jurisdiction in these matters) (**refer Doc 9**).



2.8 The parties to any parenting application must inform the Family Court (section 60CF **Family Law Act 1975 (Cth)**) of any “family violence order” (defined as “an order (including an interim order) made under a prescribed law of a State or Territory to protect a person from family violence”, section 4 of the **Family Law Act 1975 (Cth)**). Likewise, the Family Court must be informed (section 60CI **Family Law Act 1975 (Cth)**) of notifications to, and investigations by, prescribed State or Territory agencies.

2.9 The Family Court can not make Parenting Orders for children whilst they are under the care of a person pursuant to a child welfare law (unless the orders are made after the release of the child from the State-based Orders, or otherwise with the agreement of the State-based authority (section 69ZK **Family Law Act 1975 (Cth)**)).

2.10 The perpetrator may be charged pursuant to the **Criminal Code 1899 (Qld)** (e.g. section 286 Breach of Duty to Care, section 364 Cruelty, section 340 Serious Assault, and sections 210 and 215 in relation to Indecent Treatment or Carnal Knowledge of a child under 16 years) (**refer Doc 10**).

2.11 It is submitted that the protections and processes available pursuant to State and Commonwealth legislation, are not streamlined for children who have been subjected to low-level harm or family violence - particularly for those children who continue to reside at home with, or spend time in the home of, the parent who is the alleged perpetrator.

2.12.1 The Department pursuant to the **Child Protection Act 1999 (Qld)** on receipt of information about low-level harm to a child may regard the information as a notification or an intake. If classified as a notification and then investigated, an outcome is recorded (substantiated or unsubstantiated). The child may be interviewed, possibly in the presence of one of the parents. The Department may decide not to remove the child from the home, although the low-level notification is substantiated.

2.12.2 The information about the low-level harm to a child may not be reported directly to the Police, and may not come to the attention of Police other than through the SCAN team. The **Criminal Code 1899 (Qld)** may not be enlivened if the actions constituting the harm are alleged to be “domestic discipline” pursuant to section 280 of the **Criminal Code 1899 (Qld)** which states “It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances” (**refer Doc 8**).

2.13.1 In some cases the child's parents may have separated and one parent may have commenced proceedings in the Family Court pursuant to the **Family Law Act 1975 (Cth)** for a Parenting Order;

2.13.2 An allegation of “family violence” in an Application for a Parenting Order, may affect the quantity of time spent between a child and parent. However it is submitted that it is unlikely (in the absence of other factors) that low-level “family violence” will result in an Order that the parent (who is the alleged perpetrator) not spend time with the child.

2.13.3. On any Application for Parenting Orders, the best interests of the child are



paramount. Those interests are determined by considerations, including two primary considerations:

- (1) the benefit to the child of having a meaningful relationship with both of the child's parents; and,
- (2) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence (sections 60CA, 60B and 60CC of the ***Family Law Act 1975 (Cth)***).

2.13.4. The Family Court must ask each party whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence (section 69ZQ ***Family Law Act 1975 (Cth)***).

2.13.5. In the event that the Family Court has reasonable grounds to believe that there has been “family violence” or “abuse” or if the evidence otherwise satisfies the Court, then the presumption of “equal shared parental responsibility” may be rebutted. If the presumption is not rebutted, then the Family Court considers whether the parents are to have equal time, or substantial and significant time with the child (sections 61DA and 65DAA ***Family Law Act 1975 (Cth)***) and makes Orders in the best interests of the child as governed by the prescribed considerations to determine those interests. If the presumption is rebutted, Orders may be made that are in the best interests of the child, again as determined by the relevant considerations (**refer Doc 9**).

2.13.6. An allegation submitted to the Family Court of “family violence” (as defined) does not preclude an Order for time to be spent between a child and the parent who is the alleged perpetrator of that “family violence”. A certain friction may be evident between the two primary considerations of the benefit to the child of having a meaningful relationship with both of the child's parents; and the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence. The Family Court, in considering what Order to make to the extent that it is possible to do so consistently with the child's best interests being the paramount consideration, shall ensure that the Order is consistent with any Family Violence Order and does not expose a person to an unacceptable risk of family violence. To ensure the same the Family Court may include in the Order any safeguards that it considers necessary for the safety of those affected by the Order (section 60CG ***Family Law Act 1975 (Cth)***) (**refer Doc 9**).

2.14. The ***Family Law Act 1975 (Cth)*** recognises there is some overlap of “family violence” (as defined in section 4AB of the ***Family Law Act 1975 (Cth)***) and “abuse” (as defined in section 4 ***Family Law Act 1975 (Cth)***), however some forms of “family violence” do not amount to “abuse” as defined. Allegations of “family violence”, which do not amount to “abuse,” do not necessitate a notification to ‘prescribed child welfare authority’.

2.15. Examples of “family violence” listed in the ***Family Law Act 1975 (Cth)*** that are not included in the definition of “abuse” include actions such as stalking, repeated derogatory taunts, intentionally damaging or destroying property, intentionally causing death or injury to an animal; or unlawful depriving the



family member of his or her liberty; or witnessing assaults on or hearing threats to family member (sections 4AB (c), (d), (e), (f) and (j) **Family Law Act 1975 (Cth)**).

2.16. These examples of 'family violence' listed in the **Family Law Act 1975 (Cth)** may constitute "harm" to a child as a "detrimental effect of a significant nature on the child's physical, psychological or emotional well-being" pursuant to section 9 and 10 of the **Child Protection Act 1999 (Qld)**. They may also constitute "domestic violence" as "wilful damage to the other person's property" or "intimidation or harassment of the other person pursuant to section 11 (b) and (c) of the **Domestic and Family Violence Protection Act 1989 (Qld)** (refer Doc 11).

2.17. A Domestic Violence Order made pursuant to the **Domestic and Family Violence Protection Act 1989 (Qld)** protects the Aggrieved and the children, if the children are named relatives and associates of the Aggrieved. A Domestic Violence Order is recorded on the Queensland Police data system. A child may be an Applicant for his or her own Protection Order, but for a child to be an Applicant, the child must be in a certain form of relationship with the Respondent (that excludes a "family relationship" of parent and child):

**"Domestic and Family Violence Protection Act 1989 (Qld)**

**SECTION 12D: Children as applicants and respondents generally**

(1) Subject to this section, a person who is a child may be named as the aggrieved or the respondent in a domestic violence order.

(2) However, the child may be named as the aggrieved or the respondent only if a spousal relationship, intimate personal relationship or informal care relationship exists between the child and the other party named in the domestic violence order" (refer Doc 11).

2.18. It is submitted that the Queensland legal system already facilitates Child Applicants pursuant to section 12D of the **Domestic and Family Violence Protection Act 1989 (Qld)**. The Court may adjourn the hearing to enable a child to have a reasonable opportunity to obtain representation by a lawyer (section 12E **Domestic and Family Violence Protection Act 1989 (Qld)**). The Legal Aid office of Queensland offers free legal advice and the Youth Advocate runs a telephone advice line. The Duty Lawyer system also operates at Courts and the Independent Child Lawyers Unit in Family Law matters may assist to ensure the children they represent have adequate personal protections. The Domestic Violence Court Assistance Service has also been assisting women apply for Domestic Violence Orders ("DVO") since 2000 at Court and may be able to expand its role to assist children as Applicants (refer Doc 12).

2.19. No "ouster" Order is apparently available pursuant to the **Child Protection Act 1999 (Qld)** to require that the alleged parent abuser leave the home. The Applicant for Orders pursuant to the **Child Protection Act 1999 (Qld)** is usually a duly authorised Department representative.

2.20. Pursuant to the **Family Law Act 1975 (Cth)**, the Family Court may make "exclusive occupancy Orders" (dependant on the nature of the application and source of the requisite power) in favour of one party for sole occupation of the home. Further, to ensure a Parenting Order is consistent with the best interests of the child and any Family Violence Order, the Family Court may



include in the Order any safeguards that it considers necessary for the safety of those affected by the Order (section 60CG **Family Law Act 1975 (Cth)**). However, discrete applications for Orders for the protection for children are usually not made in the Family Court. The Orders, in the ordinary course, are usually sought in proceedings for Parenting Orders, with any relevant time delays and expenses in relation to those broader applications.

2.21. Conversely, the **Domestic and Family Violence Protection Act 1989 (Qld)** provides that an “ouster” Order may be made as one of the conditions of a DVO, causing an alleged perpetrator to leave the home (section 25A **Domestic and Family Violence Protection Act 1989 (Qld)**). The Magistrate orders that the Respondent be of “good behaviour” towards the Aggrieved and may impose further conditions subject to express exceptions (e.g. to ensure the Respondent does not approach the protected persons other than, say, in accordance with a Family Law Order for time with a child) (section 25 **Domestic and Family Violence Protection Act 1989 (Qld)**) (refer Doc 11).

2.22. We submit that as the law currently stands, a child may spend time in a home with a perpetrator of some form of low level “family violence” towards the child (as defined in section 4AB of the **Family Law Act 1975 (Cth)**), or with some forms of behaviour causing the child lesser ‘harm’ (as defined in section 9 of the **Child Protection Act 1999 (Qld)**); or some form of “domestic violence” against the child (as defined in section 11 of the **Domestic and Family Violence Protection Act 1989 (Qld)**); in circumstances where the child does not have the right to make an application pursuant to the **Domestic and Family Violence Protection Act 1989 (Qld)** for a timely, relatively inexpensive and effective Protection Order.

## **SUBMISSIONS**

Based on above excerpts and experiences as a family lawyer:

2.27 We submit that it appears commonplace for a child to continue to reside at home or spend time in the home with the perpetrator of lower level harm committed against the child, whether or not a low-level notification is made to the Department, both before and after parents have separated.

2.28 We submit that the pattern of low-level harm to children may be interspersed with times when the parent is remorseful or sober. Often the more protective parent may not separate from the abusive parent due to financial or other reasons. An abused parent may be also psychologically a “victim” and not be able to psychologically separate from the abuser, or recognise the detrimental effects of the behaviours on the children. All of these factors are out of the control of the child. The child may not wish to separate from siblings or leave their home in any event.

2.29 We submit that the **Child Protection Act 1999 (Qld)** is drafted to protect children primarily by the removal of the child, including from the home of the allegedly abusive parent/s. Orders sought by the Department are made through the Children’s Court and after a series of interim-type Orders, with probable Court-Ordered extensions for any Assessment Order, the child may be the subject of a Protection Order effective for year/s. The child may be placed with foster carers (refer Doc 9).



2.30. We submit that other than the removal of the child pursuant to the ***Child Protection Act 1999 (Qld)*** from the alleged perpetrator (necessary for the child's protection), the long term parenting relationship between each separated parent and the child may be determined pursuant to the ***Family Law Act 1975 (Cth)***. A Family Court Order may provide that the child spend certain times in the homes of each parent.

2.31. We submit that as the law currently stands, a child may spend time in a home with a perpetrator who causes the child low-level 'harm' (as defined in section 9 of the ***Child Protection Act 1999 (Qld)***); or commits low-level "family violence" towards the child (as defined in section 4AB of the ***Family Law Act 1975 (Cth)***) or some form of "domestic violence" against the child (as defined in section 11 of the ***Domestic and Family Violence Protection Act 1989 (Qld)***).

2.32. We submit that the current provisions of the ***Domestic and Family Violence Protection Act 1989 (Qld)*** do not allow a child to make an Application pursuant to the ***Domestic and Family Violence Protection Act 1989 (Qld)*** for an effective Protection Order, when the perpetrator of the "harm" or violence is a parent with whom they live, although the ***Domestic and Family Violence Protection Act 1989 (Qld)*** has often been used to regulate the behaviour between husbands and wives who continue to live in the same home. These Orders can be made for "good behaviour" and (depending on the Magistrate) on a "Without Admissions" basis.

2.35 We submit that the Queensland Police act protectively to ensure the safety of children in all circumstances irrespective of whether any Orders are in place. In the case of a Domestic Violence Order pursuant to the ***Child Protection Act 1999 (Qld)***, the Queensland Police Service can be involved in many aspects of the Orders including obtaining the Orders, the service of Orders on the Respondent, the recording of the Orders on State-wide systems, and the enforcement of the Orders. However, anecdotal reports indicate that there is some confusion about any enforcement role State-based Police may have in relation to a Family Court Order containing protective safeguards, noting the Family Court is a federal Court.

2.36 We submit that the quasi-criminal nature of the proceedings pursuant to the ***Domestic and Family Violence Protection Act 1989 (Qld)*** facilitates Domestic Violence Orders, without affecting the criminal history of the parent. An alternative of an Undertaking to the Court by the parent may be acceptable to the Court. Breaches of Orders can lead to a criminal record of the parent, yet this detriment to the parent must be balanced against protecting a child from abuse. An 'ouster' Order would remain at the discretion of the Court.

2.37 We submit that the fact that a child cannot obtain his or her own DVO seems to be a "gap" in the law, noting the ***Child Protection Act 1999 (Qld)*** has, at its core, an apparent assumption that the child victim and the parent perpetrator shall not continue to be living in the same home. The practical effect is that the child (the victim) is required to leave their home, and the alleged abuser remains in the home. We submit that this is an unsatisfactory outcome for the child.

2.38 Further Family Court Orders for some form of time spent with both parents are likely, as the Court seeks to ensure the child has an ongoing relationship with both parents if those times are in the child's best interests.



2.39 The obtaining of an Order by the child for “good behaviour” of the parent pursuant to the **Domestic and Family Violence Protection Act 1989 (Qld)** may be catalyst for improved behaviour by the parent perpetrator, particularly if the Magistrate accepts an Undertaking by the parent given in good faith and the Magistrate is empowered on such an Application to order the parent to attend counselling or anger management courses.

2.40 We submit, that amending section 12D of the **Domestic and Family Violence Protection Act 1989 (Qld)** to permit children (possibly with the assistance of the Legal Aid office, Police, or the Police Prosecutor) to be Applicants for their own protection Orders against a parent, may ensure they have protection achieved through a reasonably inexpensive and efficient Court process.

2.41 In all the circumstances, we seek amendment of the section 12D of the **Domestic and Family Violence Protection Act 1989 (Qld)** to include the “family relationship” of child and parent.

### Conclusion

In conclusion two legislative reforms – one to the **Child Protection Act 1999 (Qld)** and the other to the **Domestic and Family Violence Protection Act 1989 (Qld)** – have been submitted to ensure that Queensland’s child protection system addresses the best possible outcome to protect children and support families.

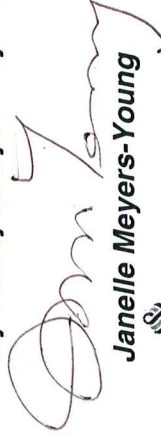
The premises of the submissions include that the legislation should:

1. facilitate the mandatory notification by teachers of children in need of protection; and
2. provide a direct and relatively inexpensive and effective recourse for children to the State Courts for Domestic Violence Orders.

The submissions are matters of opinion expressed to a Commission of Inquiry for the purposes of discussion only.

No legal advice is provided or can be construed from these submissions. Reliance on any content would be misplaced.

My Family Lawyers Pty Ltd



 ACCREDITED  
FAMILY LAW SPECIALIST

Legal Practitioner Director



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Meyers-Young, J. (September, 2000). Mandatory Reporting of Child Abuse in Queensland. *Proctor*, Queensland Law Society, 20 (8) 18-19.

### **Legislation**

*Child Protection Act 1999 (Qld)*

*Criminal Code 1899 (Qld)*

*Domestic and Family Violence Protection Act 1989 (Qld)*

*Education (General Provisions) Act 2006 (Qld)*

*Family Law Act 1975 (Cth)*

**CHILD PROTECTION ACT 1999**

**SECTION 22: Protection from liability for notification of, or information given about, alleged harm or risk of harm**

- (1) This section applies if a person, acting honestly—
  - (a) notifies the chief executive or another officer of the department that the person suspects—
    - (i) a child has been, is being or is likely to be, harmed; or
    - (ii) an unborn child may be at risk of harm after he or she is born; or
  - (b) gives the chief executive, an authorised officer or a police officer—
    - (i) information about alleged harm or alleged risk of harm to a child; or
    - (ii) information, relating to an unborn child, about a suspected risk of harm to the child after he or she is born.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the notification or information.
- (3) Also, merely because the person gives the notification or information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.



## DOC 2.1

Proctor

QUEENSLAND LAW SOCIETY (SEPTEMBER 2000)

FAMILY LAW

Mandatory reporting of child abuse in Queensland

BY JANELLE MEYERS-YOUNG

**QUEENSLAND** has a system of minimal mandatory reporting of child abuse or harm.

In Queensland the only persons required to report child abuse or neglect appear to be:

- a medical practitioner who suspects on reasonable grounds the maltreatment or neglect of a child – s.76K *Health Act 1937 (Qld)*
- the licensee of a child care centre or family day care scheme who suspects the child has suffered abuse or neglect 'at the Centre' or 'while in that care', respectively – s.39 child care (child care centres) regulations 1991, s.11 child care (family day care) regulations 1991 of the *Child Care Act 1991 (Qld)*
- Family Court personnel and counsellors who suspect child abuse – s.67ZA *Family Law Act 1975 (Cth)*

In addition, the Department of Education requires that teachers advise the principal of suspected child abuse.

The argument for mandatory reporting by a wider circle of professionals who are in regular contact with children is compelling. Mandatory reporting accords with the absolute priority of protection of our children. However, the report 'Seen and Heard: priority for children in the legal process' by the Human Rights & Equal Opportunities Commission and the Australian Law Reform Commission, expressed concerns that:

- mandatory reporting was often introduced without sufficient resources to ensure it works effectively, and
- it may divert resources from prevention and treatment.<sup>1</sup>

Historically, the approaches of the different Australian states and territories range from mandatory reporting by all persons other than police, the Northern Territory in 1996, and no mandatory reporting at all, WA in 1996 – see table A.<sup>2</sup>

The rates at which children are subjected to notification of abuse or neglect, investigation by both state or territory welfare departments and substantiation of abuse or neglect, vary considerably between the states and territories. Australia-wide statistics from 1995/1996 (see table B)<sup>3</sup> do not indicate a strong relationship between an increase in the number of professionals mandated to report, and the number of substantiated cases of child abuse.

The states with the four highest notification rates – NSW, Victoria, South Australia and Tasmania – each had more professionals mandated than the states with the least requirement for professionals to report abuse, Queensland and WA. The states with the most notifications per 1,000 children were also the states with the most cases of substantiated neglect or abuse, with the exception of Tasmania.

Overall, the statistics appear to reveal, more so, a correlation, though not causation, between the number of finalised investigations and substantiations. The more investigations finalised appears to lead to a greater number of substantiations of original notifications. The statistics, and concerns of the report may belie the effect of parlous funding of state and territory welfare departments where investigations of notifications by relevant authorities are underfunded.

In Queensland, the legislative, industry and community standards appear to promote reporting on a voluntary basis.<sup>4</sup>

Strategies recently employed by the Department of Families, Youth & Community Care have included media campaigns on child abuse and prevention, information for parents and teachers, and teaching parent and child communication skills.

In financial 1998 there were 10,243 notifications of child abuse which resulted in 17,233 cases. This is an increase of 18% on the number of cases in the previous year. The cases involved 12,972 children. The number of substantiated cases of abuse increased by 30.7%. Neglect accounted for 2,644 (41.8%) of all substantiated cases.<sup>5</sup>

Voluntary reporting is encouraged by increased legislative protection of the rights of notifiers. The *Children's Services Act 1965 (Qld)*, now repealed, required confidentiality of investigations, however, notifier information was not specifically mentioned.<sup>6</sup>

Departmental policy was apparently to keep information concerning the notifier confidential. Enormous advancements have been made in understanding child abuse and the concerns of notifiers of harm since the enactment of the *Children's Services Act* over 30 years ago.

The *Child Protection Act 1999* appears to recognise:

- that a system of protecting children reliant on voluntary reporting must protect the notifier from civil liability
- the right of the child to be protected from harm overrides fundamental legislative principles set out in the *Legislative Standards Act 1992 (Qld)* and
- there is increased community expectation that children be protected from abuse and neglect.

The salient provisions of the *Child Protection Act 1999* include:

- 'harm' is defined as significant detrimental effect on the physical, psychological or emotional well-being of a child – s.9
- the Department may investigate alleged harm and notify police if the Department reasonably believes the alleged harm may have involved a criminal offence – s.14
- a child's parents are to be told about the allegation of harm and outcome of investigation unless telling parents may expose the child to harm or jeopardise an investigation into a criminal offence – s. 15
- a Department or police officer, after notifying the principal or other person in charge of a school or place – child care centre or family day care – may contact the child at that place before telling the parents, where it is believed the parents, knowing in advance, will adversely affect or prevent the investigation – s. 17
- the entry by the police or Department officers must be 'lawful' – with permission; details of actions must be recorded on a register – s.17
- a Department or police officer may enter a place, search for and seize a child, in circumstances where the officer has been denied contact with the child and the child is at immediate risk of harm – s.16; the officer may take the child into custody for up to 8 hours – s.18; or move a child to a safe place, where the child is under age 12 – s.21
- section 22 provides for protection from liability for persons who, acting honestly, notify or give information about suspected harm to a child; nor is it a breach of professional conduct
- section 180 requires the person who receives the notification to not disclose the identity of the notifier – subject to exceptions such as where leave of the court is granted.

A move towards mandatory reporting has been acknowledged as testimony to the belief that "moral, legal and professional accountability have thus far proved to be inadequate... to effect sufficient reporting."<sup>7</sup>

Logic dictates that requiring professionals with probable daily interaction with children and training to detect child abuse – nurses, teachers, psychologists, social workers, school counsellors and some police officers – to report a reasonable belief that a child has been abused must reduce the risk of child abuse going undetected.

The *Child Protection Act 1999* missed the opportunity to mandate reporting of abuse by a greater number of professionals and persons in regular contact with children in Queensland. Queensland has the least number of mandated professionals other than WA which, in 1998 had no state-based mandatory reporting.



The argument against an expansion of mandatory reporting because of lack of resources of a government department is unacceptable. However, broad-based professional mandatory reporting may have inherent problems.

On December 15, 1997, the Magistrates Court sitting at Ringwood, Victoria, dismissed a charge brought under Victoria's mandatory reporting legislation against a school principal for failing to report suspected child abuse of a local primary school pupil.

The principal concerned had become aware of the allegations and investigated the matter but was unsure if the child was telling the truth and the allegations were not reported. Subsequently the concerns came to the attention of the Child Protection Authority, and the father of the child was later convicted of multiple charges of incest and sexual penetration of a minor. He was sentenced to nine years imprisonment.

In the action brought against the principal for failure to report, the magistrate noted that although concerned about the alleged abuse, the principal had not formed the necessary belief that the child had been abused, and so had concluded there was no obligation to report.<sup>8</sup> Further, although the ultimate purpose of mandatory reporting legislation is not to prosecute people for failing to report, but to protect children from harm, it is arguable that civil and criminal consequences may flow from failure to report.<sup>9</sup>

In summary, Queensland appears to have minimal mandatory reporting and remains reliant on voluntary reporting in an environment of heightened media exposure and, hopefully, increased public response.

Child abuse is unacceptable; arguably, so is experimentation with modes of detection.

#### Notes

1. Human Rights & Equal Opportunity Commission and Australian Law Reform Commission 'Seen and Heard: priority for children in the legal process.'
2. Table A from Tomison, A: "A summary of mandatory reporting across Australia in June 1996". National Child Protection Clearing House Newsletter Vol. 4 No. 2, Spring 1996 – amended to reflect Queensland legislation.
3. Table B from A Broadbent & R Bentley "Child abuse and neglect Australia 1995-96" Child Welfare Series 17 AIHW Canberra 1997, 28.
4. See, for example: Department of Education (Queensland) 'Child Protection Policy'.
5. Information sheet number 1, Department of Families, Youth & Community Care.
6. Section 114 *Children's Services Act 1965 (Qld)*.
7. Aaron J 'Civil liability for teachers' negligent failure to report suspected child abuse', (1981-2) 28 Wayne Law Review 183-213 at 185 reported in Swain, Phillip 'What is belief on reasonable grounds?' Alternative Law Journal Vol 23 No. 5 October 1998, 230-233 at 230 – subsequently referred to as 'Swain'.
8. Swain Supra reporting from Age 10.12.97.
9. Compare *AS v State of Victoria*, Supreme Court of Victoria, Justice Gillard – charges to jury on 15.6.2000 (awaiting print at time of article).

Table A	Mandatory reporting of abuse, Australia, June 1996			
Reporting Act or abuse	mechanisms Recipient to be reported	Persons required to notify of abuse of	Type	of notification
<b>Commonwealth</b>				
<i>Family Law Act 1975</i>	prescribed welfare authority	personnel of the Family Court	all	a
<b>ACT</b>				
<i>Children's Services Act</i>	Family Services Branch,	medical practitioners, dentists	physical	or
1986 (mandatory reporting abuse to be introduced 1 June 1977)	Children's Youth & Family Services Bureau	registered nurses, teachers, police officers, school counsellors, public servants engaged primarily in child	sexual	

welfare work, child care workers in licensed centres

#### NSW

<i>Children (Care &amp; Protection) Act 1987</i>	medical practitioners	physical abuse	Department of Community Services	or neglect
<i>Child Welfare Act 1939</i>	deputy principals, teachers, school	sexual		
abuse	"as above"			
	social workers, school psychologists			

#### Northern Territory

<i>Community Welfare Act</i>	any person not a member of the all			
1983	Department of Health & police force	Community Services		
<b>Victoria</b>				
<i>Children &amp; Young Persons Act 1989</i>	doctors, nurses, police officers, teachers			
	physical or sexual	Department of Human Services		
	abuse			

#### Queensland

<i>Health Act 1937</i>	medical practitioners	all	Queensland Health	
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#### South Australia

<i>Children's Protection Act</i>	medical practitioners, nurses,	all		
1993	Department for Family & dentists, psychologists, pharmacists	Community Services		
	teachers, teacher aides, pre-school workers, police officers, probation officers, employees of agency providing health and welfare services to children, social worker in health services			

#### Tasmania

<i>Child Protection Act 1974</i>	probation officers, child welfare	all	Child	
Protection Board				
<i>Child Protection Order</i>	officers, welfare officers, persons			
1977	Child Protection Unit, holding boarding home or day nursery	Department	of	
Community &	licenses, school principals (including nursery schools, preschools), officers engaged primarily in welfare work, Education Department guidance officers, psychologists, social workers, medical practitioners, nurses	Health Services		

**Western Australia** No provision for mandatory reporting Nil –

Table A from Tomison, A 'A summary of mandatory reporting across Australia in June 1996'. National Child Protection Clearing House Newsletter Vol. 4 No. 2, Spring 1996 – amended to reflect Queensland legislation.

#### Table B

Table B 1995-6 rates at which children aged 0 to 16 were subject to notification, investigation and substantiation by State/Territory, per 1000 children of the relevant population.

State/Notifications	Finalised	Substantiations	
Territory investigations			
NSW	15.8	13.8	8.1
VIC	22.0	11.9	6.0
QLD	12.4	10.4	4.0



WA	7.2	5.3	2.2
SA	18.0	14.4	6.0
TAS	18.6	8.9	1.8
ACT	14.9	11.1	4.9
NT	8.7	8.4	4.4
Australia	16.3	11.6	5.8

Excerpt from:

A Broadbent & R Bentley 'Child abuse and neglect Australia 1995-96', Child Welfare Series 17 AI HW Canberra 1997, 28.

## Doc 2.2

Letters to the Editor of Queensland Law Society, Proctor

Child abuse laws "half there"

The *Child Protection Act 1999* was a missed opportunity to better detect and handle reporting alleged child abuse in Queensland. Improvement in the methods of detection of child abuse must accord with the absolute priority of protecting our children.

Bruce Doyle states, in the May issue of Proctor in '*Child Protection Act 1999* - key features in context' that: "The *Act* envisions more intensive early intervention to avoid long-term state management". The changes are appropriate and overdue, but two further areas require attention.

Firstly, Queensland has a system of minimal mandatory reporting of child abuse or harm. Logic dictates that requiring professionals with probable daily interaction with children and training to detect child abuse (such as nurses, teachers, psychologists, social workers, school counsellors and some police officers) to report a reasonable belief that a child has been abused must reduce the risk of child abuse going undetected.

The *Act* could have mandated such professionals to report suspected child abuse, particularly in light of S.22 of the *Act* that provides a notifier with protection from breaches of professional conduct, and from civil and criminal liability.

Secondly, the *Act* defines 'harm' as any detrimental effect of a significant nature of a child's physical, psychological or emotional well-being; it is immaterial how the harm is caused. Although the *Act* provides for court flexibility not provided under the repealed *Childrens' Services Act* it appears the intake procedures of the Department of Families, Youth and Community Care have not changed.

The intake or notification procedures still do not address the needs of well-meaning but otherwise ineffectual parents of uncontrollable children, particularly where the Department is requested by parents to assist.

Existing procedures require the assessment to categorise key individuals as 'maltreaters' with the 'outcome' of substantiated 'abuse'. The rigidity of categorisation is at odds with the apparent emphasis on 'case management' and family meetings to resolve difficulties in the child's favour.

In light of what the *Act* may have addressed and doesn't it may be criticised as half a legislative response. What does one say to a child whose abuse is not reported, when it otherwise may have been?

Janelle Meyers-Young, accredited family law specialist

## Doc 3

# Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse

Ben Mathews & Kerryann Walsh

Queensland University of Technology, Brisbane, Australia

## Abstract

Legislative amendments commencing in 2004 impose a new obligation on teachers and staff in Queensland schools to report known or suspected sexual abuse of a student by a school employee. The obligation to report this class of abuse is the first statutory obligation ever imposed on teachers in Queensland regarding the reporting of child abuse. However, when compared with the mandatory reporting legislation applying to teachers in other Australian jurisdictions, the Queensland provisions are very limited. This article examines the legislative changes and their context, compares the Queensland legislation with that in other Australian jurisdictions, and discusses the issue of whether there should be a general obligation imposed on teachers in Queensland to report all known or suspected child abuse and neglect. This discussion involves a consideration of the incidence and consequences of child abuse and neglect, the role of teachers, and arguments for and against imposing such a general obligation.

## Introduction

Unlike most other Australian jurisdictions, in Queensland until 2004 there has been no legal obligation imposed on teachers to report any knowledge or reasonable suspicion that a student has suffered or is at risk of suffering sexual, physical or psychological abuse. Despite recent legislative changes that slightly change this situation, there is still no general statutory obligation on teachers to report known or suspected child abuse of any form. Since amendment, the Education (General Provisions) Act 1989 (Qld) now compels school staff members (including but not limited to teachers) to report knowledge or reasonable suspicions of a limited type of child abuse committed by a limited group of individuals. The legislation was passed on 18 November 2003, but the provisions relevant here commenced on 19 April 2004.

This piecemeal legislative change is significant in two related senses. First, the new obligation is motivated by the findings of the 2003 Report Of The Board Of Inquiry Into Past Handling Of Complaints Of Sexual Abuse In The Anglican Church Diocese Of Brisbane (O'Callaghan and Briggs, 2003), and in substance is primarily directed at managing educational authorities' legal liability in cases of sexual abuse of students by school staff, rather than being concerned with a broader child protection agenda of early detection, intervention and response in cases of diverse forms of child abuse. That the obligation appears in the Education (General Provisions) Act 1989 (Qld) and not the Child Protection Act 1999 (Qld) further demonstrates this. Second, in comparison with every other Australian jurisdiction except Western Australia, the legal obligation now imposed on staff and teachers in Queensland schools is uniquely limited in scope. In other jurisdictions, teachers (among many other professional groups) are legally compelled to report

or suspected abuse of children, and the obligation extends to reporting known or suspected abuse of multiple types: sexual, physical, psychological and emotional. In contrast to Queensland, the statutory obligations in these jurisdictions clearly promote child protection as the key goal.

This article first describes Queensland's legislative changes and their context. It then compares the obligations imposed on teachers in Queensland with those imposed on teachers in other Australian jurisdictions. The issue of whether teachers in Queensland should have a broader obligation to report known and suspected child abuse and neglect is then discussed. The discussion of this question includes a consideration of arguments supporting and opposing teacher obligations to report known and suspected child abuse.

## Recent Queensland Legislative Changes and Their Context

The Education and Other Legislation (Student Protection) Amendment Act 2003 (Qld) amended the Education (General Provisions) Act 1989 (Qld). Two new provisions, sections 146A and 146B, were inserted into the EGPA. These provisions impose an obligation on a staff member of a school who 'becomes aware, or reasonably suspects, that a student under 18 years of age attending the school has been sexually abused by someone else who is an employee of the school'. The obligation is to immediately give a written report about the abuse or suspected abuse to the school's principal or the principal's supervisor. Sections 146A and 146B impose this obligation on staff members in State schools and non-State schools respectively. It is an offence not to give such a report (s 146A(2); s 146B(2): maximum penalty of 20 penalty units (\$1500)). Individuals who make such a report are immune from civil and criminal liability connected with making the report (s 146A(6) and (7); s 146B(5) and (6)).

The explanatory notes to the Education and Other Legislation (Student Protection) Amendment Bill 2003 state that the object of these provisions is to ensure there is an appropriate response to complaints of sexual abuse of school children by school-based employees.<sup>1</sup> The purpose of the entire Bill is to improve the Board of Teacher Registration's ability to screen, monitor and make decisions about the suitability of teachers to work with children, with the aim of giving greater protection for children in schools from sexual abuse by school-based employees.<sup>2</sup> The Bill was motivated by the report of a Ministerial Taskforce which was formed to act on the recommendations of the Anglican Church Report (ACR). The explanatory notes observe that the ACR 'highlighted the issue of sexual abuse in schools and weaknesses in existing systems for checking and monitoring the suitability of teaching and non-teaching staff to work with children and for responding to complaints of sexual abuse perpetrated in school settings'. It is stated that there is 'strong community expectation and support for prompt and effective action to address these deficiencies'; the deficiencies being the weaknesses in existing systems for checking and monitoring the suitability of teaching staff and for responding to complaints of sexual abuse perpetrated in school settings.

The central concern of the legislative changes is therefore responding to sexual abuse that occurs in school settings, perpetrated by school staff. However, this goal is inextricably linked with a wider goal of child protection, and it cannot be adequately analysed without placing the substance of the legislative changes in this context. There is explicit reference to a broader child protection agenda, particularly in comments made in Parliamentary debates. The Minister for Education, Anna Bligh, stated that the ACR 'put beyond any doubt that activities of that nature [ie sexual abuse] that harm our children thrive most actively in closed environments where there is little scrutiny and a culture exists which all too often puts the interests of adults ahead of the *Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse*



safety of children ... this bill seeks to remedy this in both state and non-state schools in a number of ways [including] by increasing the responsibilities of teachers ... to take appropriate action where issues are brought to their attention, either formally or informally'.<sup>3</sup>

Other statements by government members of parliament, while made in the context of the bill, also demonstrate the overarching child protection framework within which the measures operate, or allegedly operate. The Australian Labor Party member for Kallangur Ken Hayward stated that 'The important thing about this bill is that it makes protecting children the main focus, as it should be'.<sup>4</sup> The ALP member for Greenslopes Gary Fenlon stated that the bill was 'voracious in its approach, in going as far as we can to having a comprehensive result in protecting our children every day of the year, every day of their school lives ... This is comprehensive legislation in terms of addressing current issues of abuse of children'.<sup>5</sup> The ALP member for Hervey Bay Andrew McNamara stated 'There has been much talk about protecting children for sexual abuse in particular ... it is vital that the government gets on and continues with the process of looking forward and passing legislation for the future. Inquiries looking back are part of the role of government; so too is passing legislation to make a better regime of child protection at all levels ... Teachers, who have such great access to and who have the care and control of children and who are in the place of parents for a very large section of every child's day, will accept that responsibility [to report known or suspected sexual abuse of a student by teachers or other employees]'.<sup>6</sup>

Education Minister Anna Bligh has indicated no commitment to extend the statutory obligation on teachers to report all categories of known or suspected child abuse inflicted by any person whether inside or outside the school environment, stating in late 2003 that 'In general ... caution needs to be exercised about mandatory reporting'. (Welch, 2003).

### Education Queensland Policy

Queensland's Department of Education (Education Queensland) has maintained a child protection policy in some form since 1989 when the then Department of Education issued Information Statement No.128: Suspected Child Abuse in a supplement to the Education Office Gazette. Further versions of this policy followed in 1993 and 1998 (Department of Education, 1993; Education Queensland, 1998a).

State-wide compulsory training for school staff across Queensland only began in 1999 (Education Queensland, 1999). The Child Protection Training Package (Education Queensland, 1998b) was distributed to every State school for use by principals and guidance officers who were trained to deliver the training. It was the largest inservice training effort ever undertaken by Education Queensland as it involved not only teachers, but all people who had contact with children, estimated to be about 55 000 people. Principals of schools were charged with the responsibility to ensure that all existing staff were trained by June 1999 and to ensure thereafter that new staff also received training. Training for staff took the form of interactive workshops using videos, activities and discussions on issues and case scenarios. Categories of information presented in the training package included: defining child protection; determining how harm is recognised by staff; recommending the scope of an appropriate staff/student relationship; discussing how staff maintain the best interests of students without leaving themselves vulnerable; determining the reporting roles of staff; and prescribing what is appropriate physical contact with students (Education Queensland, 1998b). It is not known whether the training of all employees in *Ben Mathews & Kerryann Walsh 28*

the Child Protection Policy eventuated, as there were discrepancies in record keeping, and there was no independent or continuing audit of the training provided to new employees (CJC, 2000).

Allegations in 1998 of sexual misconduct by Education Queensland employees against students forced an inquiry by the Criminal Justice Commission, which published its findings in its 2000 report entitled *Safeguarding Students: Minimising The Risk Of Sexual Misconduct By Education Queensland Staff*. The CJC found that Education Queensland's child protection policy was 'a daunting mix of policy and procedural guidance and convoluted and contradictory statements that do not give substance to the Policy's stated focus: the care and safety of students ... the accountabilities of staff are not set out in an organised fashion ... some employees would have difficulty in understanding what was expected of them'. (CJC, 2000).

After criticism of the content and form of the policy by the Criminal Justice Commission, the policy was rewritten to separate staff misconduct from other types of child abuse and neglect and to bring the policy into line with the Child Protection Act 1999 (Qld). The revised 2003 policy, *Health and Safety – HS-17: Student Protection*, covers student protection from harm, and from the risk of harm, from a number of sources including those 'outside of the immediate state educational institution environment' (9), defined as 'parents, siblings, other relatives, family friends or care providers' (26). More importantly, it contains sections to assist employees in the prevention, detection, notification and response to four categories of harm that can be caused to a student. The categories of harm include that caused by Education Queensland employees; other students; forces outside the State education institutions environment; and students themselves in the form of self-harm (14). There is a detailed section on preventing harm to students from outside the State educational institution environment (26-30) which details common indicators of the following:

- \* physical abuse and excessive punishment
- \* emotional abuse and or deprivation
- \* physical neglect and or inadequate supervision or care
- \* child sexual abuse

The policy then gives a guide about how to respond appropriately in different situations to suspected harm inflicted on a child by a person outside the school environment.<sup>7</sup>

Two key points must be made when discussing past and present Education Queensland policy in this context. First, the policy is simply a policy document, and so no 'requirement' imposed on teachers by the policy document possesses, or ever has possessed, the status of a legal obligation. Second, the policy only applies to Queensland state schools. For both these reasons, the policy does not constitute a legal obligation on teachers to report known or suspected child abuse.

### Mandatory Reporting of Child Abuse in Australian Jurisdictions

Mandatory reporting is the term generally used to describe a statutory obligation imposed on certain people, usually nominated professional groups, to report known or suspected cases of child abuse to a government authority. Where this obligation exists, mandated professionals are usually required to make a report as soon as possible after gaining the knowledge or forming the reasonable suspicion, and penalties can be (but are very rarely) applied for failure to report (Best, 2001).

All Australian jurisdictions except Queensland and Western Australia have enacted strong legislative schemes that compel members of multiple professional groups to report known or *Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse 29*



suspected child abuse. The obligation commonly extends to reporting several types of abuse. The content and extent of the obligations imposed justify detailed synthesis for comparative purposes.

In New South Wales, the Children and Young Persons (Care and Protection) Act 1998 (NSW) s 23 imposes an obligation to report a suspicion that a child has been or is at risk of being harmed. A child is defined as being at risk of harm in s 23 if, among other definitions, the child has been, or is at risk of being physically or sexually abused or ill-treated (c), or is at risk of serious physical or psychological harm as a result of living in a household where there have been incidents of domestic violence (d), or has suffered or is at risk of suffering serious psychological harm from a parent or caregiver (e). Section 27(2) imposes the obligation to report reasonable suspicions that a child is at risk of harm and the grounds arise during the course of the person's work. The obligation to report is imposed on teachers through the operation of s 27(1)(a) and (b). These subsections impose the obligation on those who in the course of their work or paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children. The provision extends in s 27(1)(b) to those holding management positions in these organisations.

In Victoria, the Children and Young Persons Act 1989 (Vic) s 64(1A) imposes an obligation to report a suspicion that a child is in need of care and protection (through having suffered or being likely to suffer, physical, sexual, psychological or emotional harm: s 63(c)-(e). The obligation is imposed on all teachers (s 64(1C)(d)), and on medical practitioners (a), psychologists (b), nurses (c), State school principals (e), proprietors of and persons qualified in, children's services (f), persons qualified in youth, social or welfare work who work in health, education or community welfare services (g), other youth and child welfare workers (h), police (i), probation officers (j), youth parole officers (k), and members of a prescribed class of persons (l).

In South Australia, the Children's Protection Act 1993 (SA) s 11(1) imposes obligations to report suspected abuse or neglect on persons who form that suspicion in the course of their work or voluntary duties. The obligation is imposed on all teachers (s 11(2)(h)) as well as (a) medical practitioners, (ab) pharmacists, (b) nurses, (c) dentists, (d) psychologists, (e) police, (f) community corrections officers, (g) social workers, (i) family day care providers, (j) employees and volunteers in government departments delivering health, welfare, education, childcare or residential services for children. 'Abuse or neglect' is defined in s 6 to include sexual, physical, emotional, physical and psychological abuse.

In Tasmania, the Children, Young Persons and Their Families Act 1997 (Tas) s 14(2) imposes obligations to report known or suspected abuse or neglect, or of a reasonable likelihood of abuse being inflicted on a child, on persons who form that suspicion in the course of their work or voluntary duties. The obligation is imposed by s 14(1)(h) on all teachers, as well as on (a) medical practitioners, (b) nurses, (c) dental practitioners, (d) psychologists, (e) police, (g) probation officers, (i) child care providers, (j) managers of child care services, and (k) employees and volunteers in government departments delivering health, welfare, education, childcare or residential services for children. 'Abuse or neglect' is defined in s 3(1) to include sexual, physical, emotional, and other abuse.

In the Northern Territory, the Community Welfare Act 1983 s 14 compels every member of the community to report child maltreatment, including teachers. Section 4(3) defines maltreatment to include physical, emotional, psychological and sexual abuse. *Ben Mathews & Kerryann Walsh* 30

In the Australian Capital Territory, the Children and Young People Act 1999 (ACT) s 159(2) imposes obligations to report reasonable suspicions of sexual abuse or non-accidental physical injury, on persons who form that suspicion in the course of their work or voluntary duties. The obligation is imposed by s 159(1)(d) on all school teachers. It is also imposed on (a) doctors, (b) dentists, (c) nurses, (e) police, (f) school counsellors, (g) child care workers, (h) home-based care providers, (j) public servants who provide services related to the health and welfare of children, young people or families, (j) the community advocate, (k) the official visitor and (l) a prescribed person.

### Who is Mandated to Report in Queensland and to What Extent?

From a broad child protection perspective, the legislative framework in Queensland is far weaker than every other Australian jurisdiction except Western Australia, in two senses. First, there is a smaller number of professional groups whose members are legally compelled to report suspected child abuse. Second, the types of abuse to which the obligation applies are more restricted. It is also significant that instead of the child protection statute detailing who is required to report abuse, and the types of abuse to which the obligation relates, in Queensland the obligations are scattered throughout different statutes. Under the Health Act 1937 (Qld) s76K(1), medical practitioners who reasonably suspect the maltreatment or neglect of a child must notify an authorised person. Under the Child Protection Act 1999 (Qld) s148(1), an officer or employee of the Department of Families has a limited obligation to report known or suspected harm caused to a child in residential care. 'Harm' is defined in s 9(1) to include 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing' and includes in (3) physical, psychological, emotional and sexual abuse. The draft Child Protection Legislation Amendment Bill 2004 (Qld) s 33(4), pursuant to recommendation 6.13 of the Crime and Misconduct Commission 2004 report into sexual abuse of children in Queensland foster care, seeks to amend the Health Act by extending the obligation imposed on medical practitioners to nurses – but not to anyone else.<sup>9</sup>

### Should Queensland Schoolteachers be Legally Compelled to Report All Known and Suspected Child Abuse?

There was clearly a need for the government to respond to the Anglican Church report. It could be argued that the legislative amendments are a targeted response to the specific findings of this report, and are hence confined to one type of conduct, namely the abuse of students by school staff. It could also be argued that the new legal obligation imposed on staff at both state and non-state schools constitutes progress by improving the likelihood of this class of abuse being responded to more appropriately.

Yet the limited nature of the legislative response produces an important question. If it is accepted that one particular class of known and suspected child abuse should be the subject of a legal obligation on school staff to report to authorities, why is the obligation confined to this class? This question assumes even more significance when the new Queensland position about teachers' responsibilities in this context is contrasted with the legislative obligations operating throughout almost the rest of Australia, and is found to represent only a fraction of the measures taken in other jurisdictions. A brief discussion of this question must consider arguments supporting and opposing teacher obligations to report known and suspected child abuse. There are three major factors that need to be considered: the incidence of child abuse and neglect, the costs of child *Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse* 31



abuse and neglect, and the role of teachers in detecting and reporting child abuse and neglect. Substantial bodies of evidence exist about all three of these considerations; it is necessary for the purposes of this article to summarise the evidence.

### Incidence of Child Abuse and Neglect in Australia and Queensland

The most recent Australian and Queensland statistics demonstrate that for many children, the historian Lloyd de Mause's finding that childhood throughout history has been characterised by brutality and abuse, remains current in Australia in the 21st century (de Mause, 1974). Considering that child abuse and neglect are underreported phenomena, the statistics are even more disturbing than they initially appear.

In Australia in the year 2002-2003, there were 198 355 child protection notifications to State and Territory authorities (AIHW 2003). Of these, there were 40 416 substantiated cases involving 30 953 children. In Queensland in 2002-03 there were 31 068 notifications of child abuse and neglect to State authorities, involving 22 027 children (AIHW 2003). Of these, there were 12 203 substantiated cases involving 9032 children (AIHW 2003). As well, AIHW annual statistics over several years demonstrate certain trends (AIHW 2002; AIHW 2003). In all States and Territories, boys are more likely to be the subject of substantiated physical abuse, whereas girls are more likely to be the subject of substantiated sexual abuse. Younger children are more likely to be the subject of substantiated abuse or neglect. Children from indigenous backgrounds are more likely to be the subject of substantiation than other Australian children. Physical abuse and neglect are the two types of maltreatment which account for the most substantiations.

### Consequences of Child Abuse and Neglect

A substantial body of evidence now exists about the multiple short-term and long-term consequences of child abuse and neglect. Commonly, but not universally, these consequences affect the individual's physical, psychological, psychiatric, cognitive, social and emotional health, both in the short-term and the long-term. The consequences of child abuse and neglect also result in an enormous cumulative financial cost to society. Among individuals, the types and severity of both the immediate and continuing consequences of abuse will differ, depending on a number of factors such as the type, degree and duration of abuse, family structure and support, intervention type and the identity of the perpetrator (Cicchetti & Toth, 1995). This makes it impossible to draw certain conclusions about the effects of any type of abuse on any particular individual. However, there is sufficient and growing evidence from jurisdictions worldwide to be able to draw general conclusions about the range of consequences of abuse and neglect typically suffered, and those actually suffered by significant numbers of survivors of abuse and neglect. A summary of this body of evidence demonstrates the most common consequences of abuse and neglect, which informs a discussion of the issues in this context.

### Immediate and Medium-Term Consequences

As well as any physical injuries sustained, short and medium-term social and psychological consequences resulting from abuse commonly include negative self-concept (Kinard, 1980), increased aggression (Shields and Cicchetti, 1998; Gross and Keller, 1992), difficulties forming relationships with peers (Bolger and Patterson, 2001), depression (Finzi *et al.*, 2001), substance abuse (Roy, 1999), and increased mental health problems in general (Mullen *et al.*, 1996; Johnson *et al.*, 2002). Evidence also indicates an impact on child criminal offending. Numerous studies Ben Mathews & Kerryann Walsh 32

indicate that children who suffer physical abuse and neglect are more likely to commit criminal offences (Stewart, Dennison & Waterson 2002; National Crime Prevention 1999; Weatherburn & Lind 1998). Children who suffer abuse and neglect are also likely to suffer in a cognitive and academic sense, being less likely to achieve well at school, and being more likely to leave school at an earlier age, without the qualifications they need for future participation in society (Hildyard and Wolfe, 2001; CREATE Foundation, 2001). Queensland has mapped educational outcomes for children and young people who have experienced abuse or neglect and are in care using the state-wide Year 3, 5 and 7 tests. Results show that these children do not perform as well as other children within their school or their state. Thirty-two percent required additional literacy support and 37.4% required additional numeracy support. Further, 43% had been suspended or expelled from school (CREATE Foundation, 2003).

### Long-Term Consequences

The long-term consequences of child abuse and neglect are often severe and persistent. Long-term psychological and psychiatric disorders as a result of child abuse and neglect are common, with the most frequent manifestations being post-traumatic stress disorder, anxiety, and depression. Associated problematic behavioural consequences include poor self-esteem, substance abuse, difficulty maintaining adult relationships, poor social adjustment and poor attachment.<sup>10</sup> From an economic perspective, it is difficult to arrive at precise estimates of the cumulative cost of child abuse and neglect since few detailed studies have been performed, and since there is no precise measurement of the incidence and ongoing record of adverse consequences of child abuse and neglect. However, it is safe to estimate that even on conservative estimates, there is an enormous cumulative economic cost to the community produced by, among other things, physical and mental health care, child welfare, law enforcement and judicial programs, foster care, special education, drug and alcohol treatment, permanent disability, injury, and loss of productivity. The first comprehensive estimate in Australia of the overall economic cost of child abuse and neglect estimated an annual cost in the year 2001-02 of \$4.929 billion, based on conservative estimates of the actual incidence of abuse and neglect.<sup>11</sup>

Policy responses and advocacy from numerous different interest groups demonstrate the recognition of the incidence and consequences of child abuse and neglect. In 2003 the Commonwealth government launched a National Agenda for Early Childhood (Commonwealth Government, 2003) which has the ultimate aim of improving children's health, literacy and numeracy, and reducing the number of children with social and emotional problems, reducing the amount of substance misuse in later years, and reducing the number of juvenile criminal offenders. This agenda recognises that 'early childhood development and experiences have a direct impact on future educational, career and health outcomes'.<sup>12</sup> Most recently, in February 2004 the Australian Medical Association held a summit on child protection and called for a national policy for child protection and recovery.<sup>13</sup>

### The Role of Teachers

The incidence and consequences of child abuse and neglect are two factors contributing to an argument that teachers should be legally required to report known and suspected child abuse and neglect, purely as a useful additional opportunity for early detection and prevention of child abuse and its consequences. However, in addition to this argument, there are features peculiar to teachers as a profession which constitute cogent reasons why they should be mandated reporters. *Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse*



These features include: children's exposure to teachers, teachers' expertise in being able to detect and respond to child abuse and neglect, and evidence of teachers' demonstrated practice of successful reporting of child abuse and neglect.

There is a substantial record of research evidence and public policy calling for teachers' active participation in the child protection system through involvement in detecting and reporting child abuse and neglect, both in Australia (Briggs & Hawkins, 1997; New South Wales Commission for Children and Young People, 2000; Layton, 2003) and in other jurisdictions (David, 1993, 1994; Romano, Casey & Daro, 1990; Tite, 1993; Lowenthal, 2001). Two major reasons exist for these demands. First, since virtually all child victims of abuse and neglect attend school, teachers constitute the professional group whose members spend more time with children than any other group; indeed, teachers will often spend more time with individual children than any adult, including the child's parents (Briggs & Hawkins, 1997). The unfortunate fact is that for many children whose private lives are places of hostility and danger, teachers are the most trustworthy adults in their lives.<sup>14</sup> Moreover, beyond this simple physical exposure that is a natural product of the school environment, there is an element of trust in the teacher/student relationship that appears to facilitate the making of disclosures by children about their experience. Although child abuse is a phenomenon that many victims do not ever complain of, when disclosures are made they are often made to teachers (Bradley & Wood, 1996). Second, even without the making of direct disclosures, teachers have expertise in child development (Briggs & Hawkins, 1997), the ability to detect changes in appearance, behaviour and progress (Briggs & Heinrich, 1985), and are able to note abnormal behaviour that manifests in the classroom (Briggs, 1986; Crenshaw, Crenshaw & Lichtenberg, 1995). They are therefore well equipped to intervene in this context.

These features of exposure and expertise combine with the heightened impact that early intervention can have in this context, which further adds to the argument for teachers' maximum involvement in this arena. There is an important relationship between the duration of abuse and neglect and its negative impact (Nurcombe *et al.*, 2000). Early identification of risk and ensuing prompt intervention may result in lower risk of future abuse and its consequences (Browne, 1988; Newberger, 1997). Less intensive intervention may be sufficient to achieve positive outcomes if families are identified before problems become entrenched. Further urgency accompanies the role of early childhood teachers because teachers' capacity to detect abuse decreases with children's advancing age (Briggs & Heinrich, 1985).

### Demonstrated Practice

After police, the most common professional source of child protection notifications in Australia is school personnel. In the year 2001-02, school personnel in New South Wales made 23% of notifications. The corresponding figures for the other jurisdictions are as follows: South Australia and Tasmania: 18%; Victoria: 16%; Western Australia and the ACT: 13%; Northern Territory: 12%. In Queensland that year, school personnel were responsible for 11% of all notifications (AIHW, 2002).

In the year 2002-03, school personnel in each jurisdiction made the following percentages of reports: Tasmania: 20%; South Australia: 18%; New South Wales and Victoria: 17%; Western Australia: 14%; the ACT: 11%; the Northern Territory: 10%. In Queensland in 2002-03, school personnel were responsible for 13% of all notifications (AIHW, 2003).

A report in September 2003 found that teachers in Queensland had reported 2222 cases of suspected child abuse in the last year (an increase of 40%) with 1597 (72%) of these reports being Ben Mathews & Kerryann Walsh 34

substantiated after investigations by police and the Families Department. The previous year, 1622 investigations were conducted after reports from teachers, with 1203 substantiations (Odgers, 2003).

Caution must be exercised in drawing conclusions from these statistics. To begin with, these figures do not show how many reports by teachers were substantiated. As well, the practical outcomes of the reports are unknown; for example, the statistics do not reveal what if any practical assistance was provided to the child, and to the child's family. However, these statistics do at least suggest that in Queensland, teachers play less of a role in child protection than they do in other Australian jurisdictions, if only from the perspective of how many reports of child abuse and neglect are made by them as a group. If it is possible to deduce from this (and arguably it is, although it is not capable of direct proof) that, assuming a roughly equal proportion of accurate reports, teachers in other states make a more robust contribution to child protection, then a conclusion that could be suggested in this respect is that Queensland teachers make less of a contribution because of the lack of a legal obligation to report. The second implication that can be drawn from the figures about Queensland teachers' reports and the proportion of substantiated reports, is that teachers in Queensland are able to and do make a significant number of accurate reports already.

### Opposing Arguments

The most common argument made against a legal obligation to report suspected abuse is that the obligation will produce an increase in the number of notifications that are not substantiated, which waste government time and resources, hence diverting scarce resources from where they are genuinely needed (Scott and Swain, 2002; Ainsworth, 2002; Tomison, 2002; Cashmore, 2002). Other arguments made against extending the legal obligation to teachers include the idea that there is a risk of mistaken reports made against teachers or parents, with the attendant grave damage that can then occur to reputations, careers and families. It is also pointed out that teachers would need training to be able to detect suspected abuse (Briggs & Hawkins, 1997), and that imposing this extra obligation (with threats of legal penalties) adds unnecessarily to the stress of being a teacher, and may itself produce inaccurate reports out of a fear of prosecution for failing to report. As well, in the Queensland context, opponents of extending the obligation to teachers might argue that since there is a policy encouraging teachers to make reports, and since Queensland teachers appear to already make a large number of reports, a significant proportion of which are substantiated, then why is there a need for a legal obligation?

These arguments all have some merit, but they are made within confined argumentative limits. They can each be repelled when placed in a broader context that involves consideration of interests of both greater number and gravity. First, the argument about unsubstantiated notifications diverting resources from deserving cases is not an argument against teacher reporting itself, but more precisely is against (a) insufficient resources; and (b) inaccurate reporting. The issue of insufficient resourcing is a matter for government. Ironically, it is in governments' interests to adequately fund the efficient early detection of and response to child abuse and neglect, since the phenomenon is such a huge and durable strain on the government purse. The issue of adequate government funding is a matter of political will and choice of what early interventions are properly funded. It is not a principled argument against extending the obligation to report to teachers (Tomison, 2002). If the Queensland government is not prepared to fund child protection to the extent necessary, then this raises a question of political will, and should not be conflated with the question of whether child protection can possibly be enhanced by robust and Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse 35



well-supported reporting requirements. Other states make these choices: South Australia has just further strengthened its overall child protection strategy, introducing a \$59 million package to reinforce mandatory reporting and other child protection strategies (Welch, 2003).

The claim regarding inaccurate reporting also embodies a separate issue that could be addressed through appropriately drafted legislative provisions, and through adequate preparation and training of teachers about the exact content of their obligations in this context. Like the resources-based claim, this claim too is not a principled argument against extending the obligation, but rather is an argument against inaccurate reporting. The related argument is that teachers may indeed need training and preparation for the fulfilment of their obligations, but this is also an argument based on resources rather than a normative argument against the presence of the obligation itself. The argument about the stress imposed on teachers can be partly absorbed by the provision of adequate training and support to teachers, and finally defused by comparing any increase in stress with the far more important goals being advanced by the obligation.

In all jurisdictions except Western Australia, these arguments have not prevented the imposition of a much broader obligation than has now been imposed in Queensland. Obviously, in the Queensland context, none of these arguments have prevented the obligation being imposed in the limited confines of the new legislation either. There remains the potential argument that if there is a government policy in Queensland, and if reporting already occurs in Queensland to a significant degree, there is no need for a legal obligation. This argument can be repelled in several ways. First, there is no universal policy in Queensland, since the new legislation applies only to a very confined class of cases, and the HS-17 policy only applies to state schools. Second, reporting may indeed still occur by Queensland teachers even in the absence of a legislative obligation, but the statistics indicate that this happens to a substantially lesser degree than in other jurisdictions where there is a legislative requirement. Third, the presence of a legislative requirement confirms that the issue of child abuse and the detection and prevention of it is an important social and political issue that justifies the most rigorous government approach and support possible. This can most successfully be achieved through efficient legislation and government resourcing. Fourth, policy can be ignored without any actual or possible consequence, whereas legislative obligations are legally binding and are therefore arguably more effective in this sense of securing compliance with the goal of enhancing child protection.

There should be cause for concern when a jurisdiction lacks the legislative framework and provisions in the context of child protection that exist in other jurisdictions. If it is the case that children in jurisdictions having broader reporting obligations have a better chance of having their lives improved by early detection of and intervention in abuse and or neglect that is being inflicted on them, then it is clearly unjust at best for children in the state lacking those protections to be placed in a worse situation than their counterparts in other Australian jurisdictions.

The primary goal of all legislation, policy and government administration in this context, including that concerning teachers, should be the accurate and early detection, reporting and prevention of all child abuse and neglect. Legislation that enhances that goal should be enacted. As it has been made here, this argument can be sustained on economic grounds, on pragmatic grounds, and on the more principled basis of securing a better system of child protection. The argument could also be made on bases not discussed in this article, including the basis of children's rights. The United Nations Convention on the Rights of the Child 1989 (UNCRC) urges, among other provisions, that all appropriate legislative, administrative, social and educational measures be taken to protect children from all forms of abuse and neglect while in the care of parents, guardians or any other carer, and that protective measures should include effective programmes Ben Mathews & Kerryann Walsh 36

of identification, prevention, reporting, investigation and treatment and follow-up of abuse (art 19). The UNCRC also urges that all appropriate measures be taken to promote children's recovery from any form of neglect and abuse (art 39) and to protect children from all forms of sexual exploitation and abuse (art 34).<sup>15</sup>

## Conclusion

Queensland's legislative changes do not significantly advance the primary goal of child protection. The new provisions enable intervention in cases where the abuse is sexual and inflicted by a school employee, and these cases are relatively few when placed in the broader context of child abuse and neglect. The goal of ensuring the safety of students at school is a necessary and admirable one, and the new obligation is an improvement, with its enactment in statutory form demonstrating the seriousness of the issue and the commitment of the government to achieving this object. However, from a child protection perspective, it is likely that there will be very limited gains made through this obligation, when compared with the possible gains that could be made by enacting a general obligation on teachers to report all categories of known and suspected child abuse, with adequate funding, support and training of teachers to fulfil this obligation, and with adequate funding to investigative bodies to investigate such reports, and with adequate funding for intervention services and treatment services to those families and children who need them. The admirable statements in Parliamentary debates about advancing child protection in a broader sense are not secured by these limited legislative changes. Child protection is not the main focus of these amendments, and the legislation is not comprehensive in terms of addressing current issues of abuse of children. Education Minister Anna Bligh referred to the fact that the abuse and neglect of children thrives most actively in closed environments where there is little scrutiny and a culture exists which puts the interests of adults ahead of the safety of children. Legislation to compel teachers to report known and suspected child abuse - whoever the perpetrator, whatever the abuse, and wherever it has been perpetrated - along with adequate training and resourcing of associated bodies, is a better way of opening these closed environments in which abuse occurs, and putting the interests of children first.

**Keywords:** Child protection; legislation; teachers; mandatory reporting; child abuse.

**Address for correspondence:** Dr Ben Mathews, Faculty of Law, Queensland University of Technology, PO Box 2434, Brisbane, Queensland, 4001, Australia. Email: b.mathews@qut.edu.au

## Endnotes

1. *Education And Other Legislation (Student Protection) Amendment Bill 2003*, Explanatory Notes, 4.
2. *Education And Other Legislation (Student Protection) Amendment Bill 2003*, Explanatory Notes, 1.
3. Anna Bligh, *Parliamentary Debates*, Queensland, 12 November 2003, 4853.
4. Ken Hayward, *Parliamentary Debates*, Queensland, 12 November 2003, 4833.
5. Gary Fenlon, *Parliamentary Debates*, Queensland, 12 November 2003, 4846.
6. Andrew McNamara, *Parliamentary Debates*, Queensland, 12 November 2003, 4829.
7. It should be noted that the Queensland Teachers Union President Julie-Ann McCullough *Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse* 37



- has called for more teacher training about how to deal with suspected abuse of students: 'Sometimes these decisions to report abuse are very difficult to make and so there has to be ongoing professional development and support for teachers in this area ... it can't just be a one-off training session'. (cited in R Odgers, 'School checks reveal growth in child abuse', *Courier-Mail*, 18 September 2003.
8. In Western Australia, there are no provisions in either the *Child Welfare Act 1947* or the *School Education Act 1999*.
  9. The *Child Protection Act 1999* (Qld) s 22 protects any person who honestly notifies the Department of Families of suspected harm to a child from liability. Under s 186, confidentiality is preserved. Under Commonwealth legislation, the *Family Law Act 1975* (Cth) s 67ZA also imposes reporting obligations on Family Court personnel, and family and child counsellors, mediators and arbitrators.
  10. Regarding the consequences of physical and emotional abuse, see for example Garbarino, J. (1987) The consequences of child maltreatment: Biosocial and ecological issues. In R. Gelles & J. Lancaster (eds), *Child abuse and neglect: Biosocial dimensions*. New York: Aldine De Gruyter; Cicchetti, D., Carlson, V., Braunwald, K.G., & Aber, J.L. (1987) The sequelae of child maltreatment. In R. Gelles and J. Lancaster (eds), *Child abuse and neglect: Biosocial dimensions*. New York: Aldine De Gruyter; Cicchetti, D. & Toth, S. (1995) Developmental Psychopathology and Disorders of Affect. In D. Cicchetti and D. Cohen (eds), *Developmental Psychopathology - Volume 2: Risk, Disorder, and Adaptation*. New York: John Wiley & Sons. See generally regarding the consequences of child sexual abuse: Summit, R (1983) The Child Sexual Abuse Accommodation Syndrome. *Child Abuse and Neglect*, (7): 177; Browne, A. & Finkelhor, D. (1986) Initial and Long Term Effects: A Review of the Research. In D. Finkelhor (ed), *A Sourcebook on Child Sexual Abuse*. California, Sage; Mullen, P (1993) Childhood Sexual Abuse and Mental Health in Adult Life. *British Journal of Psychiatry*, (163): 721.
  11. Kids First Foundation, *Report Into The Cost Of Child Abuse And Neglect In Australia*, 2003, <[http://www.kidsfirst.com.au/uploads/files/1069451734264\\_0.3701907869736339.pdf](http://www.kidsfirst.com.au/uploads/files/1069451734264_0.3701907869736339.pdf)>, 108.
  12. Larry Anthony, Commonwealth Government Minister for Children and Youth Affairs, Media Release, 20 February 2003, <<http://www.facs.gov.au/internet/minister2.nsf/content/earlychildhood.htm>>. See also Commonwealth Government, *Consultation Paper: Towards the Development of a National Agenda for Early Childhood*, 2003, <[http://www.facs.gov.au/internet/facsinternet.nsf/via/early\\_childhood/\\$File/Consultpaper.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/via/early_childhood/$File/Consultpaper.pdf)>.
  13. Australian Medical Association, <<http://www.ama.com.au/web.nsf/doc/WEEN-5W999M>>.
  14. Queensland's Minister for Education Anna Bligh has admitted this, stating that 'It is clear that for many children who live in abusive and neglected situations, our teachers may be the only responsible adult in their lives.'; cited in R Odgers, 'School checks reveal growth in child abuse', *Courier-Mail*, 18 September 2003.
  15. The argument can also be made on philosophical grounds concerning the failure of government to secure a safe private sphere where most child abuse occurs, hence informing an argument for acting in the public sphere through ensuring that schools possess all possible mechanisms to intervene. Ben Mathews & Kerryann Walsh 38

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## Doc 4

### Extracts from the website of the Department of Education 2008

#### Statement of intent

This policy applies to all Education Queensland employees including school [staff members](#) (new window) 35k  as well as district, regional and central office personnel. It also includes other [employees](#) (new window) 35k  of State schools, that is, non departmental employees working in a school context (such as Youth Support Coordinators, School-Based Youth Health Nurses and Chaplains), volunteers and regular or on-going visitors to the school. Relevant contexts include escorting students on camps, [excursions](#), educational programs external to a school including a TAFE college and tours within or outside Australia. This policy should be considered in relation to the Department's [Code of Conduct](#) and the [Code of School Behaviour](#) (new window)  or where the employing agency has a Memorandum of Understanding or contractual arrangement with the Department.

In keeping with the principles set out in the Child Protection Act 1999, Education Queensland asserts that the welfare and best interests of children are paramount and all children have a right to protection from harm.

[Harm](#) (new window) 35k  includes any significant detrimental effect on a child's or young person's physical, psychological or emotional wellbeing. This could include harm to an unborn child.

[Harm](#) (new window) 35k  could be caused by:

- physical abuse
- psychological or emotional abuse
- neglect
- sexual abuse or exploitation
- substance abuse or self-harm.

For the purpose of this policy and procedure, harm to students is considered as being categorised as:

- harm caused by an employee
- harm caused by another student
- harm caused by a person not employed by the department including family members, strangers, parent helpers, volunteers, school visitors or unknown self-harm.

Education Queensland is committed to providing safe and supportive learning environments, to preventing incidents of harm to students and to responding when an Education Queensland employee or employee of a State school reasonably suspects harm or risk of harm to students. All personnel employed in schools are required to support students who are victims of harm, or at risk of harm and, where appropriate and permitted by law, work in partnership with other statutory agencies that are involved in child protection.

#### Student Protection Training

All State school employees (ie. Education Queensland employees and non-departmental employees), short-term contractors working on a school site, volunteers and regular and


on-going visitors are inducted into Education Queensland's Student Protection policy and procedure.

Members of teaching staff, principals and members of the administration team, specialist and support staff (eg. Guidance Officers, Chaplains and Youth Support Coordinators) complete the online course and discussion module when newly employed to work in schools.

All other school-based employees of Education Queensland complete either the online course and discussion module or school-based Student Protection training, including clarification of responsibilities and obligations of employees, when newly employed with the department.


School-Based Youth Health Nurses (employed by Queensland Health) complete the school-based Student Protection training when commencing work with the department.

School-based employees who have limited contact with students or where their levels of literacy may make participation in the online course problematic (eg. bi-lingual teacher aides) may complete the school-based Student Protection training.

Other non-departmental employees (including short-term contractors working on the school site), volunteers and regular and on-going visitors receive some form of student protection training, as determined by the principal, including provision of the [Student Protection Fact Sheet](#) (new window) .

Education Queensland employees based in regional, district and central offices complete either the online course or site-based Student Protection training when newly employed with the department.

#### Obtaining guidance when an employee suspects a student has been harmed or is at risk of harm

[Employees](#) (new window) 35k  are not expected to be experts in the area of harm and should err on the side of caution in terms of reporting their suspicions, to enable those who are experts to investigate further. Employees who have any suspicion that a student is being harmed or is at risk of harm are required to report their concerns to the principal or Executive Director (Schools). Employees who suspect that an unborn child may be at risk of harm are required to report their suspicion to the principal (eg: In the case of a pregnant student engaging in substance abuse/misuse).

Employees (including principals) are not to investigate (except as part of an internal process to determine a School Disciplinary Absence or Public Service Disciplinary matter) any aspect of a suspicion of harm or risk of harm but, where appropriate, are required to report the matter to the Department of Communities (Child Safety Services) and Queensland Police Service.

#### Reporting harm caused by a person not employed by the department including family members, strangers, parent helpers, volunteers, regular or on-going school visitors or unknown

Principals discuss employees' suspicions with them and decide if they **reasonably suspect** the student has been harmed or is at risk of harm, or an unborn child may be at risk of harm. To reasonably suspect means the principal suspects on grounds that are reasonable in the circumstances.

If the principal decides that he/she reasonably suspects the student has been harmed or is at risk of harm, or an unborn child may be at risk of harm, the employee is required to



complete SP4: Report of Suspected Harm or Risk of Harm, have it counter-signed by the principal, and forward it to the Department of Communities (Child Safety Services) and Queensland Police Service **as a matter of urgency**.

In the situation where a principal **does not** reasonably suspect that a student has been harmed or is at risk of harm, or an unborn child may be at risk of harm, the principal is required to take steps to risk manage the student's situation. This may include advising the employee who reported the suspicion to closely monitor the student's situation and to report any further concerns to the principal. The employee is to also be advised that they have the right to make a voluntary report <sup>17k</sup> directly to the Department of Communities (Child Safety Services) or Queensland Police Service. Where a report is made voluntarily, in a personal capacity, the reporter will not be eligible for Crown indemnity. The principal's decision and risk management steps are to be documented and the record stored in a secure location.

Since the legislative framework is different for different situations, it is crucial that this policy is followed carefully with respect to reporting sensitive information. Staff who are threatened with legal action as a result of making a child protection report under either the *Child Protection Act 1999* or *Education (General Provisions) Act 2006* should contact the department's Legal and Administrative Law Branch to obtain advice and discuss the Crown indemnity process.

If principals or employees require guidance or advice in relation to a student protection matter they are advised to contact the Education Queensland district child safety contact (in their local district office), the department's Student Services Division or Ethical Standards (in the case of harm caused by an employee).

Education Queensland will not condone behaviours (e.g. a child witnessing Domestic or Family Violence) that fall into the definition of harm (new window) <sup>35k</sup> <sup>17k</sup> <sup>17k</sup>. While recognising that parents and students come from diverse cultural backgrounds, Education Queensland will not condone behaviours based on cultural custom that fall into the definition of harm (e.g. caning children or Female Genital Mutilation (new window) <sup>17k</sup> <sup>17k</sup>).

#### **Voluntary reporting of suspected harm to a child or young person**

While this policy sets out the actions required to be taken by an employee in certain contexts, every employee, student, parent or member of the public has the right to make a voluntary report <sup>17k</sup> directly to the Department of Communities (Child Safety Services) or Queensland Police Service, if they suspect that a child or young person is being harmed or is at risk of harm; or an unborn child may be at risk of harm after being born (see section 22 Child Protection Act 1999 <sup>17k</sup> (new window) <sup>17k</sup>); or to make a report of suspected official misconduct (new window) <sup>35k</sup> <sup>17k</sup> directly to the Crime and Misconduct Commission. Where a report is made voluntarily, in a personal capacity, the reporter will not be eligible for Crown indemnity.

#### **Unlawful sexual relationships between children and young people**

There are particular legislative frameworks governing sexual activity with and between young people. In Queensland, engaging in sexual conduct with a young person **under the age of 16 years** - (see s215(1) Criminal Code <sup>17k</sup> (new window) <sup>17k</sup>) (under the age of 18 years, if the conduct involved is sodomy) - (see s208(1) Criminal Code <sup>17k</sup> (new window) <sup>17k</sup>) is a criminal offence, irrespective of whether this contact appears to be consensual or the persons involved are both under the age of 16. If a school staff member becomes aware or reasonably suspects that there has been sexual conduct

involving a young person under the age of 16 years (or 18 years for sodomy), they are required to report this to the principal.

Where the sexual activity is apparently consensual and involves two young people under the age of 16 (or 18 years, in the case of sodomy), the principal should **seek the consent** of the student/s concerned to discuss the matter with their parents. If the principal is reasonably satisfied that the young person is **unable to give consent** (by reason of immaturity, disability or other circumstances) the principal may contact the student/s parents. Such actions should be documented. In this situation it is the matter for the parents to make a report to the police if they so wish.

Where the student **does not consent** to the matter being discussed with their parents, the principal should advise the student/s that their unlawful conduct may be referred to the Queensland Police Service. Such actions should be documented.

In relation to making contact with parents about unlawful sexual relationships between children and young people principals should ensure that contact is appropriate (ie. consider if the student is an independent student or if they are potentially at risk of harm).

Prosecution of such cases is a matter of discretion for the Queensland Police Service and the Office of the Director of Public Prosecutions, depending on whether the investigation establishes that the situation involved consensual sexual experimentation by children of similar ages or that both parties should be considered as 'complainants'.

In all situations the principal is required to take action to support the best interests of the student/s, which may include involving the Guidance Officer or other support personnel.

Where the sexual activity involves a person under the age of 16 (or 18 years for sodomy) **and the other person involved is above the age of consent** the matter is to be referred immediately to the Queensland Police Service. If an Education Queensland employee is involved in sexual activity with a State school student, the matter is to be referred immediately to Ethical Standards who will notify the Queensland Police Service and provide the principal with direction and/or advice. If the sexual activity involves a principal the report is to be made to the Executive Director (Schools) who is required to immediately forward the written report to Ethical Standards.

#### **Prohibited harmful conduct by employees of State schools**

**School staff members** by necessity have close contact with students. Subsequently, there is a need for them to make sure their conduct stays within acceptable professional boundaries. **School staff members** are not to impose corporal punishment on a student in the course of their professional duties or engage with a student in a way that is physically, verbally or emotionally harmful to students. Sexual harassment, victimisation and racial and religious vilification, for example, are illegal under the *Anti-Discrimination Act 1991* and would be a breach of the duty of care that a school staff member owes to school students. An employee must not engage in sexual misconduct (new window) <sup>35k</sup> <sup>17k</sup> with a student, or behave in a way that would raise a reasonable suspicion that sexual misconduct has occurred or may occur.

#### **Sexual misconduct by an employee towards a student of a State school under the age of 18 years**


If a State school staff member (new window) <sup>35k</sup> <sup>17k</sup> becomes aware or reasonably suspects that any State school student **under the age of 18 years** has been the subject of sexual misconduct by a school employee (new window) <sup>35k</sup> <sup>17k</sup> they are required to immediately make a written report about the matter which the principal is required to immediately forward to Ethical Standards. If the sexual misconduct involves the principal



the Executive Director (Schools) is required to immediately forward the written report to Ethical Standards. Staff members may discuss the matter with the principal, or the Executive Director (Schools) if the sexual misconduct involves the principal, prior to making such a report. Reports of sexual abuse of a student by a school employee will become criminal complaints to be dealt with by the police. Such reports will also be investigated by the department in relation to possible breaches of the department's Code of Conduct and for consideration of disciplinary action.

School staff members who fail to immediately report sexual misconduct or suspected sexual misconduct by an employee with a student under the age of 18 years may be in breach of *section 365(2)(a) of the Education (General Provisions) Act 2006* (maximum penalty of 20 penalty units) and the department's [Code of Conduct](#) and may be liable to disciplinary action.

#### **Sexual conduct between an employee employed under the Teachers' Award - State and a student aged 18 years or older**

If a State school [staff member](#) (new window) 35k  becomes aware or reasonably suspects that any State school student **aged 18 years or older** is engaged in sexual conduct with an employee employed under the Teachers' Award - State, where the relationship could reasonably be regarded as **creating an apparent or actual conflict of interest between the employee's private interests and his/her professional duties**, they are required to immediately make a written report about the matter which the principal is required to immediately forward to Ethical Standards. If the sexual conduct involves the principal the Executive Director (Schools) is required to immediately forward the written report to Ethical Standards. Staff members may discuss the matter with the principal, or the Executive Director (Schools) if the sexual conduct involves the principal, prior to making such a report. Such behaviour, while not justifying a criminal complaint, will be investigated for possible breaches of the department's [Code of Conduct](#) and may result in disciplinary action being taken. In all cases, when in doubt, the principal or Executive Director (Schools) should seek advice from Ethical Standards.

#### **Sexual conduct between an employee not employed under the Teachers' Award - State and a student aged 18 years or older**


Such behaviour, while not justifying a criminal complaint, will be investigated for possible breaches of the department's [Code of Conduct](#) and may result in disciplinary action being taken. In all cases, when in doubt, the principal or Executive Director (Schools) should seek advice from Ethical Standards.

#### **Sexual misconduct by an employee of an intellectually impaired student of any age**

If a State school staff member becomes aware or reasonably suspects that an **intellectually impaired** State school student of **any age** has been the subject of sexual misconduct by a school employee, they are required to immediately make a written report about the matter which the principal is required to immediately forward to Ethical Standards. If the sexual misconduct involves the principal the Executive Director (Schools) is required to immediately forward the written report to Ethical Standards. Staff members may discuss the matter with the principal, or the Executive Director (Schools) if the sexual misconduct involves the principal, prior to making such a report.

#### **Reporting of harm caused by an employee**

Allegations of an employee causing harm to a student require a response from the principal, or Executive Director (Schools) if the allegation is against the principal. The nature of the response depends upon the seriousness and nature of the incident.

Incidents are considered to be either [minor](#) (new window) 35k  or serious.

When reporting allegations of harm by an employee, criteria for determining whether the incident is categorised as a **minor incident** are:

- alleged improper conduct or decision making which is harmful to a student
- no physical injury was sustained but the incident involved low-level physical contact by the employee on the student
- incident does not relate to suspected sexual misconduct.

Minor incidents are reported to Ethical Standards on SP-1: Report of a Minor Incident.

All other incidents, which do not meet the above criteria, are reported to Ethical Standards on SP-2: Report of Allegation of Harm to a Student by an Employee or SP-3: Report of Suspected Sexual Abuse of a Student by an Employee.

#### **Contacts**

For information on Student Protection, please contact:

Principal Advisor, Student Services  
Student Services Division  
Phone:

(07) 3237 0342

Fax:

(07) 3237 0432

For information on Student Protection, please contact: No results from phone include!

#### **Document information**

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- SMS-PR-012: Student Protection - Version: Doem pdf version

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## Doc 5

### Extracts from the website of the Department of Education August 2012

#### Student Protection

The [Student Protection procedure](#)  outlines the responsibilities and commitment of Education Queensland to providing a safe, supportive and disciplined learning environment, to preventing reasonably foreseeable harm to students and to responding when an Education Queensland employee or an employee of a state school reasonably suspects harm or risk of harm to students.

The procedure applies to all Education Queensland employees including school staff members and regional and central office personnel. It also includes other employees of state schools (e.g. Youth Support Coordinators, School-Based Youth Health Nurses and Chaplains), volunteers and on-going visitors that have regular contact with students.






#### Harm is:

Harm, to a student, is any detrimental effect of a **significant nature** on a student's physical, psychological or emotional wellbeing. Harm can be caused by physical abuse, psychological or emotional abuse, neglect or sexual abuse or exploitation.

If a school employee suspects that a student has been harmed or is at risk of harm, they must report their concerns to the school principal.


When the principal receives information and is satisfied that grounds exist to reasonably suspect that a student has been harmed or is at risk of harm (including harm or risk of harm to an unborn child), the principal follows specific reporting procedures detailed in the Student Protection policy.

#### What happens when:


- [a student harms another student?](#)  74k
- [a student is harmed by someone not employed at the school?](#)  73k
- [a student is harmed by a school employee \(not sexual abuse\)](#)  89k
- [a student is sexually abused by a school employee?](#)  82k
- [a student self-harms?](#)  71k


If you are concerned that a student has been harmed or is at risk of harm, you can discuss your concerns with the principal. Alternatively, you can make a report directly to the Department of Communities (Child Safety Services) or the Queensland Police Service.

In situations where you are unhappy about the actions taken by the school you are able to use Education Queensland's complaints process.


Education Queensland is committed to ensuring that all complaints are dealt with in a fair and equitable manner. There are processes and support structures in place to enable students and parents/carers to work through any issues they may have with Education Queensland policies and procedures in schools. A [Making a complaint](#)  67k fact sheet is available on the department's website.

#### Reports of Harm








- [Queensland Police Service \(QPS\) Contacts](#)  (DET employees only)

- [Department of Communities \(Child Safety Services\) Regional Intake Contacts](#)  (DET employees only)


#### The Forms

- [SP-4: Report of Suspected Harm or Risk of Harm](#)
- [Interviews conducted by Child Safety Services or Queensland Police on school site with children in need of protection](#) 

#### Fact Sheets



- [Abuse Prevention Education](#)  29k
- [Child Safety Services: Systems and Practice Review](#)  109k
- [Principals' Checklist: Managing Students' Sexual Behaviour](#) 
- [Protecting Culturally and Linguistically Diverse Students from Harm](#)  31k
- [Protecting Indigenous Students from Harm](#)  30k
- [Student Protection Fact Sheet](#)  70k
- [Students' sexual behaviour - a guide for schools](#) 


#### Student Protection Training

Online [Student Protection Training](#) is accessible through Education Queensland's [Learning Place](#). As outlined in [Student Protection](#) , teachers, principals and members of the administration team, specialist and support staff complete the online course and discussion module (if not previously completed by the employee) upon commencement of work at a state school.

All other school-based employees complete either the online course and discussion module (if not previously completed by the employee) or school-based Student Protection training, including clarification of responsibilities and obligations of employees, upon commencement of work at a state school.

To access the online course, employees should visit the [Student Protection Training](#) registration page. Once staff have registered they will need to logon to the [Learning Place](#) to complete the course. Initial queries about logon should be referred to ICT support in your school.

Resources to support principals with the delivery of school-based training and annual training updates include a [Student Protection Training PowerPoint](#)  presentation and [Discussion Module Handout](#) .

Other non-departmental employees (including short-term contractors working on the school site), volunteers and on-going visitors that have regular contact with students receive some form of student protection training, as determined by the principal, including provision of the [Student Protection Fact Sheet](#)  within a reasonable period of first attending the school.

Principals need to check that all employees and volunteers have received appropriate Student Protection training and provide opportunities for training when needed.

#### Further information

If school personnel have any questions or concerns about Student Protection matters they should contact their Regional Office.

<sup>^</sup> [Top of page](#)

This page was last reviewed on 01 Aug 2012

# Student Protection Fact Sheet

July 2012

The Department of Education, Training and Employment is committed to providing safe, supportive and disciplined learning environments, to preventing reasonably foreseeable harm to students and to responding when an employee reasonably suspects harm or risk of harm to students.

## Student Protection involves:

- Working to make all state educational institutions safe, supportive and disciplined places for all students
- Taking action to prevent students being harmed at a state educational institution, and
- Reporting any suspicion you have that a student has been harmed or is likely to be harmed

## All students have a right to be protected from harm.

### Harm is:

Any detrimental effect of a **significant nature** on a student's physical, psychological or emotional wellbeing. This could also include harm to an unborn child. Harm can be caused by physical abuse, psychological or emotional abuse, neglect or sexual abuse or exploitation.

Any behaviour that harms a student is not acceptable. The Department will not condone behaviours (e.g. a student witnessing domestic or family violence) or cultural customs (e.g. caning children or female genital mutilation) that fall into the definition of harm. In other words, claiming culture or custom is **no** excuse for harming a student.

## Everyone who works in a state educational institution must look after the best interests of students.

### Managing your own behaviour is the first step in student protection.

- **NEVER** harm a student, either physically, psychologically or emotionally
- **NEVER** make fun of, put down or unlawfully discriminate against a student
- **NEVER** touch a student in a sexual way, or engage in any other inappropriate sexual activity (for example: sending a suggestive text message, showing a student inappropriate images, engaging in unfamiliar and unprofessional conduct with a student without sound educational reason)
- **NEVER** do or say anything that would make people think you are doing or intending to do something sexual to a student.



Queensland Government

You must report to the Principal/Manager/Supervisor, any harm to a student that is caused by:

- someone working at the educational institution
- another student
- someone from the student's family, a friend or a stranger
- the student self-harming

### If you see harm occurring at a state educational institution:

1. Help the student who has been harmed, for example:
  - by telling other students to move away
  - get another employee involved as soon as possible
2. Tell the Principal/Manager/Supervisor straight away about what you have seen
3. Write down what you saw and give the information to the Principal/Manager/Supervisor.

### If you suspect a student has been harmed at a state educational institution or outside of a state educational institution:

1. Tell the Principal/Manager/Supervisor straight away about what you suspect
2. Write down what you saw and give the information to the Principal/Manager/Supervisor.

### If a student tells you that they have been harmed at a state educational institution or outside of a state educational institution:

1. Listen carefully
2. Reassure the student that they have done the right thing by telling you
3. Tell the student that you must advise the Principal/Manager/Supervisor about what they have told you
4. Tell the Principal/Manager/Supervisor straight away about what the student told you
5. Write down what the student told you and give the information to the Principal/Manager.

If you suspect that the Principal/Manager is responsible for causing harm to a student, report this to the Regional Director at the local regional office and the Ethical Standards Unit on (07) 3234 1514 or email at: [ethicalstandards@dete.qld.gov.au](mailto:ethicalstandards@dete.qld.gov.au).

## The main thing to remember is:

**If you suspect that a student might have been harmed or might be at risk of harm,**

**Report it!**





## Mandatory reporting of child abuse and neglect

June 2012

This paper examines legal provisions requiring specified people to report suspected child maltreatment to statutory child protection services in Australia.

This document is provided as a guide only. Individuals are encouraged to contact the relevant department or organisation to clarify requirements in their states or territories, or in relation to legislation.

### What is mandatory reporting?

The legal requirement to report suspected cases of child abuse and neglect is known as mandatory reporting. All jurisdictions possess mandatory reporting requirements of some description. However, the people mandated to report and the abuse types for which it is mandatory to report vary across Australian states and territories.

### Who is mandated to make a notification?

The groups of people mandated to notify their concerns, suspicions or beliefs to the appropriate statutory child protection authority range from a limited number of specified persons in specified contexts (Queensland) through to every adult (Northern Territory).

The relevant Acts and Regulations in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia contain lists of particular occupations that are mandated to report. Some states have a limited number of occupations listed, such as Queensland (doctors, departmental officers, and employees of licensed residential care services) and Victoria (police, doctors, nurses and teachers). Other jurisdictions have more extensive lists (Australian Capital Territory, South Australia, Tasmania) or use generic descriptions such as "professionals working with children".

Table 1 provides an overview of who is legally mandated to report suspected child maltreatment to statutory child protection services in each state and territory.

In addition to state and territory law, there are provisions within Commonwealth legislation that relate to mandatory reporting. Under the *Family Law Act 1975* (Cth), personnel from the Family Court of Australia, the Federal Magistrates Court and the Family Court of Western Australia also have mandatory reporting obligations. This includes registrars, family counsellors, family dispute resolution practitioners or arbitrators, and lawyers independently representing children's interests. Section 67ZA states that when in the course of performing duties or functions, or exercising powers, the above court personnel have reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion (see Section 67ZA of the *Family Law Act 1975* <[www.austlii.edu.au/au/legis/cth/consol\\_act/fla1975114/s67za.html](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s67za.html)>).

Table 1: Mandatory reporting requirements across Australia\*

	Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
ACT	A person who is: a doctor; a dentist; a nurse; an enrolled nurse; a midwife; a teacher at a school; a person providing education to a child or young person who is registered, or provisionally registered, for home education under the <i>Education Act 2004</i> ; a police officer; a person employed to counsel children or young people at a school; a person caring for a child at a child care centre; a person coordinating or monitoring home-based care for a family day care scheme proprietor; a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families; the public advocate; an official visitor; a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation	A belief, on reasonable grounds, that a child or young person has experienced or is experiencing sexual abuse or non-accidental physical injury; and the belief arises from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid)	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> </ul>	Section 355 of the <i>Children and Young People Act 2008</i> (ACT)
NSW	A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children; and a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children	Reasonable grounds to suspect that a child is at risk of significant harm; and those grounds arise during the course of or from the person's work	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> <li>Exposure to family violence</li> </ul>	Sections 23 and 27 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)
NT	Any person with reasonable grounds	A belief on reasonable grounds that a	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> </ul>	Sections 15 and 26 of the <i>Care and Protection of</i>

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
	child has been or is likely to be a victim of a sexual offence; or otherwise has suffered or is likely to suffer harm or exploitation	<ul style="list-style-type: none"> <li>■ Emotional / psychological abuse</li> <li>■ Neglect</li> <li>■ Exposure to physical violence (e.g., a child witnessing violence between parents at home)</li> </ul>	<i>Children Act 2007</i> (NT)
Registered health professionals	Reasonable grounds to believe a child aged 14 or 15 years has been or is likely to be a victim of a sexual offence and the age difference between the child and offender is greater than 2 years.	<ul style="list-style-type: none"> <li>■ Sexual abuse</li> </ul>	Section 26 of the <i>Care and Protection of Children Act 2007</i> (NT)
OLD An authorised officer, employee of the Department of Child Safety, a person employed in a departmental care service or licensed care service	Awareness or reasonable suspicion of harm caused to a child placed in the care of an entity conducting a departmental care service or a licensee	<ul style="list-style-type: none"> <li>■ Physical abuse</li> <li>■ Sexual abuse or exploitation</li> <li>■ Emotional / psychological abuse</li> <li>■ Neglect</li> </ul>	Section 148 of the <i>Child Protection Act 1999</i> (Qld)
A doctor or registered nurse	Awareness or reasonable suspicion during the practice of his or her profession of harm or risk of harm	<ul style="list-style-type: none"> <li>■ Physical abuse</li> <li>■ Sexual abuse or exploitation</li> <li>■ Emotional / psychological abuse</li> <li>■ Neglect</li> </ul>	Sections 191-192 and 158 of the <i>Public Health Act 2005</i> (Qld)
The staff of the Commission for Children and Young People and Child Guardian	A child who is in need of protection under s10 of the <i>Child Protection Act</i> (i.e., has suffered or is at unacceptable risk	<ul style="list-style-type: none"> <li>■ Physical abuse</li> <li>■ Sexual abuse or exploitation</li> <li>■ Emotional / psychological abuse</li> </ul>	Section 20 of the <i>Commission for Children Young People and Child Guardian Act 2000</i> (Qld)

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
	of suffering harm and does not have a parent able and willing to protect them)	<ul style="list-style-type: none"> <li>■ Neglect</li> </ul>	
SA Doctors; pharmacists; registered or enrolled nurses; dentists; psychologists; police officers; community corrections officers; social workers; teachers; family day care providers; employees/volunteers in a government department, agency or instrumentality, or a local government or non-government agency that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children; ministers of religion (with the exception of disclosures made in the confessional); employees or volunteers in a religious or spiritual organisations	Reasonable grounds that a child has been or is being abused or neglected; and the suspicion is formed in the course of the person's work (whether paid or voluntary) or carrying out official duties	<ul style="list-style-type: none"> <li>■ Physical abuse</li> <li>■ Sexual abuse</li> <li>■ Emotional / psychological abuse</li> <li>■ Neglect</li> </ul>	Section 11 of the <i>Children's Protection Act 1993</i> (SA)
TAS Registered medical practitioners; nurses; dentists, dental therapists or dental hygienists; registered psychologists; police officers; probation officers; principals and teachers in any educational institution; persons who provide child care or a child care service for fee or reward; persons concerned in the management of a child care service licensed under the <i>Child Care Act 2001</i> ; any other person who is employed or engaged as an employee for, of, or in, or who is a volunteer in, a government agency that provides health, welfare, education, child care or residential services wholly or partly for children, and an organisation that receives any funding from the Crown for the provision of such services; and any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons	A belief, suspicion, reasonable grounds or knowledge that: a child has been or is being abused or neglected or is an affected child within the meaning of the <i>Family Violence Act 2004</i> ; or there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides	<ul style="list-style-type: none"> <li>■ Physical abuse</li> <li>■ Sexual abuse</li> <li>■ Emotional / psychological abuse</li> <li>■ Neglect</li> <li>■ Exposure to family violence</li> </ul>	Sections 13 and 14 of the <i>Children, Young Persons and Their Families Act 1997</i> (Tas.)
VIC Registered medical practitioners, registered nurses, a person registered as a teacher under the	Belief on reasonable grounds that a	<ul style="list-style-type: none"> <li>■ Physical abuse</li> </ul>	Sections 102(1) a-o, 184 and 162 c-d of the <i>Children,</i>



	Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
	<i>Education, Training and Reform Act 2006</i> or teachers granted permission to teach under that Act, principals of government or non-government schools, and members of the police force	child is in need of protection on a ground referred to in Section 162 (c) or 162(d), formed in the course of practising his or her office, position or employment	<ul style="list-style-type: none"> <li>■ Sexual abuse</li> </ul>	<i>Youth and Families Act 2005</i> (Vic.)
WA	Court personnel; family counsellors; family dispute resolution practitioners, arbitrators or legal practitioners representing the child's interests	Reasonable grounds for suspecting that a child has been: abused; or is at risk of being abused; ill treated; or is at risk of being ill treated; or exposed or subjected to behaviour that psychologically harms the child.	<ul style="list-style-type: none"> <li>■ Physical abuse</li> <li>■ Sexual abuse</li> <li>■ Emotional / psychological abuse</li> <li>■ Neglect</li> </ul>	Section 160 of the <i>Western Australia Family Court Act 1997</i> (WA)
	Licensed providers of child care or outside-school-hours care services	Allegations of abuse, neglect or assault, including sexual assault, of an enrolled child during a care session	<ul style="list-style-type: none"> <li>■ Physical abuse</li> <li>■ Sexual abuse</li> <li>■ Neglect</li> </ul>	Regulation 20 of the Child Care Services Regulations 2006  Regulation 19 of the Child Care Services (Family Day Care) Regulations 2006  Regulation 20 of the Child Care Services (Outside School Hours Family Day Care) Regulations 2006  Regulation 21 of the Child Care Services (Outside School Hours Care)

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
Doctors; nurses and midwives; teachers; and police officers	Belief on reasonable grounds that child sexual abuse has occurred or is occurring	<ul style="list-style-type: none"> <li>■ Sexual abuse</li> </ul>	Regulations 2005  Section 124B of the <i>Children and Community Services Act 2004</i>

Notes: \* Section 67ZA of the *Family Law Act 1975* (Cth) applies to all states and territories.

## What types of abuse are mandated reporters required to report?

In addition to differences across jurisdictions in the people who are mandated to report abuse concerns, there are also differences across jurisdictions in the abuse types for which it is mandatory to report. In some jurisdictions it is mandatory to report suspicions of each of the recognised abuse types (i.e., physical abuse, emotional abuse, sexual abuse and neglect), while in other jurisdictions it is mandatory to report only some of the abuse types.

## Is the identity of notifiers protected?

In most jurisdictions (Australian Capital Territory, New South Wales, Northern Territory, South Australia, Victoria, Western Australia, Tasmania), the identity of notifiers - whether mandated or not - is explicitly protected. However, in some jurisdictions there are limits to this protection. For example, in the Northern Territory, the identity of reporters is not disclosed to families, but may be disclosed to the Family Court upon request.

## About whom can notifications be made?

Legislation in all jurisdictions except New South Wales requires mandatory reporting in relation to all young people up to the age of 18 (whether they use the terms "children" or "children and young people"). In New South Wales, the legislative grounds for intervention cover young people up to 18 years of age, but it is not mandatory to report suspicions of risk of harm in relation to young people aged 16 and 17.

Although particular professional groups (such as psychologists) or government agencies (such as education departments in some states) may have protocols outlining the moral, ethical or professional responsibility or indeed the organisational requirement to report, they may not be officially mandated under their jurisdiction's child protection legislation. For example, in Queensland, school principals and teachers are required to report suspected abuse and neglect as per Education Queensland policy, but teachers and principals are not mandated to report under the relevant legislation. Further, in some jurisdictions, agreements between authorities can establish reporting requirements. For example, in Western Australia, there is an agreement between the Department of Health, the Department for Community Development and the Western Australia Police that requires the reporting of all children under 14 years of age with

sexually transmitted infections (STI) and the reporting of children 14 and 15 years of age with a STI acquired through abuse.

## What type of concerns must be reported and to what must child protection respond?

Mandatory reporting laws specify those conditions under which an individual is legally required to make a report to the statutory child protection service in their jurisdiction. This does not preclude an individual from making a report to the statutory child protection service if they have concerns for the safety and wellbeing of a child that do not fall within mandatory reporting requirements.

A common assumption is that mandatory reporting requirements, the legislative grounds for intervention, and research classifications of abusive and neglectful behaviour are the same. In fact, mandatory reporting laws define the types of situations that *must* be reported to statutory child protection services. Legislative grounds for intervention define the circumstances and, importantly, the threshold at which the statutory child protection service is legally able to intervene to protect a child. Researchers typically focus on defining behaviours and circumstances that can be categorised as abuse and neglect. These differences arise because each description serves a different purpose; the lack of commonality does not mean that the system is failing to work as policy makers had intended.

## What are the benefits of mandatory reporting requirements?

Mandatory reporting is considered to be a symbolic acknowledgement of the seriousness of child abuse. Mandatory reporting requirements reinforce the moral responsibility of community members to report suspected cases of child abuse and neglect. The introduction of mandatory reporting aims to overcome the reluctance of some professionals to become involved in suspected cases of child abuse by imposing a public duty to do so.

Mandatory reporting, and the publicity associated with its introduction, has been found to increase public awareness of child abuse, both within mandated professional groups and within the community at large.

## Are there problems with the introduction of mandatory reporting?

As the introduction of mandatory reporting requirements within a jurisdiction tends to increase the community's awareness of child abuse, in many instances it also results in a substantial increase in the number of reports being made to child protection departments. If there are inadequate resources available to the responsible department to respond to the increased demand, then the increasing number of reports may result in services being overwhelmed with cases to investigate, and lacking sufficient staffing to do so.

In order to cope with this influx of reports, some child protection departments have increased the threshold or level of seriousness of reports that give rise to an investigation. For example, in 2010 in New South Wales the threshold for child maltreatment changed from risk of harm to risk of significant harm. When mandated people report suspected cases of child abuse or neglect, they expect the child protection department to investigate and take action regarding

their report. If this does not occur, there is a risk that such people may cease to make reports in the future.

Further details and information about mandatory reporting can be obtained from the relevant statutory child protection authority in each jurisdiction (see Table 2).

Table 2: Statutory child protection authorities

Jurisdiction	Responsible authority
ACT	Office for Children, Youth and Family Support - Department of Disability, Housing and Community Services
NSW	Community Services - Department of Family and Community Services
NT	Children, Youth and Families - Department of Health and Families
QLD	Department of Communities (Child safety services)
SA	Families SA - Department of Families and Communities
TAS	Child Protection - Department of Health and Human Services
VIC	Child Protection and Family Services - Department of Human Services
WA	Department for Child Protection

## Further reading and references

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See topics - Child abuse and neglect, Responding to children at risk, Child Protection legislation, Child-safe organisations, National Framework for Protecting Australia's Children

Pre-employment screening: Working With Children Checks and Police Checks

Doc 7

**EDUCATION (GENERAL PROVISIONS) ACT 2006**

**SECTION 364: Definition for pt 11**

In this part—

employee, of a non-State school or State school, means a person engaged to carry out work at the school for financial reward.

**SECTION 365: Obligation to report sexual abuse of person under 18 years at State school**

(1) Subsection (2) applies if a staff member of a State school (the first person) becomes aware, or reasonably suspects, that any of the following have been sexually abused by another person who is an employee of the school—

- (a) a student under 18 years attending the school;
- (b) a pre-preparatory age child registered in a pre-preparatory learning program at the school;
- (c) a person with a disability who—

- (i) under section 420(2), is being provided with special education at the school; and
- (ii) is not enrolled in the preparatory year at the school.

(2) The first person must give a written report about the **abuse**, or suspected **abuse** to the school's principal or the principal's supervisor—

- (a) immediately; and
- (b) if a regulation is in force under subsection (3), as provided under the regulation.

Maximum penalty—20 penalty units.

(3) A regulation may prescribe the particulars the report must include.

(4) A State school's principal or a principal's supervisor must immediately give a copy of a report given to the principal or supervisor under subsection (2) to a person nominated by the chief executive for the purpose (the chief executive's nominee).

Maximum penalty—20 penalty units.

(5) The chief executive's nominee must immediately give a copy of a report given to the nominee under subsection (4) to a police officer.

Maximum penalty—20 penalty units.

(6) A person who makes a report under subsection (2), or gives a copy of a report under subsection (4) or (5), is not liable, civilly, criminally or under an administrative process, for giving the information contained in the report to someone else.

(7) Without limiting subsection (6)—

- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and

(b) if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice—the person does not contravene the requirement by giving the information.

**SECTION 366: Obligation to report sexual abuse of person under 18 years at non-State school**

(1) Subsection (2) applies if a staff member of a non-State school (the first person) becomes aware, or reasonably suspects, that any of the following have been sexually abused by another person who is an employee of the school—

- (a) a student under 18 years attending the school;
- (b) a pre-preparatory age child registered in a pre-preparatory learning program at the school;
- (c) a person with a disability who—

- (i) under section 420(2), is being provided with special education at the school; and
- (ii) is not enrolled in the preparatory year at the school.

(2) The first person must give a written report about the **abuse**, or suspected **abuse**, to the school's principal or a director of the school's governing body—

- (a) immediately; and
- (b) if a regulation is in force under subsection (3), as provided under the regulation.

Maximum penalty—20 penalty units.

(3) A regulation may prescribe the particulars the report must include.

(4) A non-State school's principal or a director of a non-State school's governing body must immediately give a copy of a report given to the principal or director under subsection (2) to a police officer.

Maximum penalty—20 penalty units.

(5) A person who makes a report under subsection (2), or gives a copy of a report under subsection (4), is not liable, civilly, criminally or under an administrative process, for giving the information contained in the report to someone else.

(6) Without limiting subsection (5)—

- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
- (b) if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice—the person does not contravene the requirement by giving the information.

(7) In this section—

director, of a non-State school's governing body, means—

- (a) if the governing body is a company under the Corporations Act—a person appointed as a director of the governing body; or
- (b) otherwise—a person who is, or is a member of, the executive or management entity, by whatever name called, of the governing body.



## **Doc 8**

### **CHILD PROTECTION ACT 1999 (Qld)**

#### **SECTION 9: What is harm**

(1) Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by—

- (a) physical, psychological or emotional abuse or neglect; or
- (b) sexual abuse or exploitation.

(4) Harm can be caused by—

- (a) a single act, omission or circumstance; or
- (b) a series or combination of acts, omissions or circumstances.

#### **SECTION 10: Who is a child in need of protection**

A child in need of protection is a child who—

- (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
- (b) does not have a parent able and willing to protect the child from the harm.

#### **SECTION 14: Investigation of alleged harm**

(1) If the chief executive becomes aware (whether because of notification given to the chief executive or otherwise) of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need of protection, the chief executive must immediately—

- (a) have an authorised officer investigate the allegation and assess the child's need of protection; or
- (b) take other action the chief executive considers appropriate.

*Editor's note—*

*Section 22 provides for protection from civil liability for persons who, acting honestly, notify or give information about suspected harm to a child.*

(2) If the chief executive reasonably believes alleged harm to a child may involve the commission of a criminal offence relating to the child, the chief executive must immediately give details of the alleged harm to the police commissioner.

(3) Subsection (2) applies whether or not the chief executive suspects the child is in need of protection.

#### **SECTION 16: Contact with child at immediate risk of harm**

(1) This section applies if—

- (a) an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child; and
- (b) the officer has been denied contact with the child or can not reasonably gain entry to the place where the officer reasonably believes the child is; and
- (c) the officer reasonably suspects the child—
  - (i) is at immediate risk of harm; or
  - (ii) is likely to leave or be taken from a place and suffer harm if the officer does not take immediate action.

(2) The officer may exercise the following powers—

- (a) enter the place;
- (b) search the place to find the child;
- (c) remain in the place, and have contact with the child for as long as the officer reasonably considers necessary for investigating the allegation.

(3) The officer may exercise a power under subsection (2) with the help, and using the force, that is reasonable in the circumstances.

(4) At the first reasonable opportunity, the officer must record, in a register kept for the purpose by the department or the Queensland Police Service, full details about the exercise of the powers and other actions taken by the officer.

#### **SECTION 20: Officer's obligations on taking child into custody**

(1) This section applies if an authorised officer or police officer takes a child into the chief executive's custody.

(2) If the child does not have long-term guardians, the officer must, as soon as practicable—

- (a) take reasonable steps to tell at least 1 of the child's parents—
  - (i) that the child has been taken into custody and the reasons for the action; and
  - (ii) when the chief executive's custody ends under section 18(8); and
- (b) tell the child about their being taken into the chief executive's custody; and

*Editor's note—*

*Section 195 deals with compliance with provisions about giving information.*

- (c) tell the chief executive the child has been taken into the chief executive's custody, the reasons for the action and where the child has been taken.

(3) If the child has long-term guardians, the officer must, as soon as practicable—

- (a) comply with subsection (2)(a) to (c) as if the reference in subsection (2)(a) to parents were a reference to long-term guardians; and
- (b) comply, or make a reasonable attempt to comply, with subsection (2)(a).

(4) Subsections (2) and (3) do not require the officer to tell the child's parents or long-term guardians in whose care the child has been placed.

(5) The officer's obligation under subsection (2)(a)(i) or (3) to give reasons for taking the child into custody is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes—

- (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the provision may jeopardise an investigation into the offence; or
- (b) compliance with the provision may expose the child to harm.

(6) If, under subsection (3)(b), the officer does not comply with subsection (2)(a) but makes a reasonable attempt to comply, the officer must document full details about the actions taken by the officer in making the attempt.

#### SECTION 25: Making of application for order

(1) An authorised officer or police officer may apply to a magistrate for a temporary assessment order for a child.

(2) The officer must prepare a written application that states the following—

- (a) the grounds on which it is made;
- (b) the nature of the order sought;
- (c) if taking the child into, or keeping the child in, the chief executive's custody is sought—the proposed arrangements for the child's care.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the applicant gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

*The magistrate may require additional information supporting the application be given by statutory declaration.*

#### SECTION 51AC: Making of application for order

(1) An authorised officer may apply to a magistrate for a temporary custody order for a child.

(2) The officer must prepare a written application that states the following—

- (a) the grounds on which it is made;
- (b) the nature of the order sought;
- (c) the proposed arrangements for the child's care.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

*The magistrate may require additional information supporting the application be given by statutory declaration.*

#### SECTION 54: Application for child protection order

(1) An authorised officer may apply to the Children's Court for a child protection order for a child.

(2) The application must—

- (a) state the grounds on which it is made; and
- (b) state the nature of the order sought; and
- (c) comply with applicable rules of court; and
- (d) be filed in the court.

#### SECTION 62: Duration of child protection orders

(1) A child protection order for a child must state the time when it ends.

(2) The stated time for the order—

- (a) if it does not grant custody or guardianship of the child—must not be more than 1 year after the day it is made; or
- (b) if it grants custody or short-term guardianship of the child—must not be more than 2 years after the day it is made; or
- (c) if it grants long-term guardianship of the child—must be the end of the day before the child turns 18 years.

(3) The order ends at the stated time unless it is extended or earlier revoked.

(4) Regardless of subsections (1) to (3), the order ends when the child turns 18.

#### SECTION 82: Placing child in care

(1) The chief executive may place the child in the care of—

- (a) an approved kinship carer for the child; or
- (b) an approved foster carer; or
- (c) an entity conducting a departmental care service; or
- (d) a licensee; or
- (e) if it is not possible, or not in the child's best interests, for the child to be placed in the care of an entity mentioned in paragraphs (a) to (d)—a provisionally approved carer for the child; or
- (f) if the chief executive is satisfied another entity would be the most appropriate for meeting the child's particular protection and care needs—that entity.

*Example for paragraph (f)—*

*A particular medical or residential facility may be the most appropriate entity for a child with a disability.*

(2) Also, if the child is in the chief executive's custody or guardianship under a child protection order, the chief executive may place the child in the care of a parent of the child.



## Doc 9

### **CRIMINAL CODE 1899 (Qld)**

#### **SECTION 280: Domestic Discipline**

"It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances".

#### **SECTION 286: Duty of person who has care of child**

(1) It is the duty of every person who has care of a child **under 16 years** to—

- (a) provide the necessities of life for the child; and
- (b) take the precautions that are reasonable in all the circumstances to avoid danger to the child's life, health or safety; and
- (c) take the action that is reasonable in all the circumstances to remove the child from any such danger;

and he or she is held to have caused any consequences that result to the life and health of the child because of any omission to perform that duty, whether the child is helpless or not.

(2) In this section—

person who has care of a child includes a parent, foster parent, step parent, guardian or other adult in charge of the child, whether or not the person has lawful custody of the child.

#### **SECTION 210: Indecent treatment of children under 16**

(1) Any person who—

- (a) unlawfully and indecently deals with a child under the age of 16 years; or
- (b) unlawfully procures a child under the age of 16 years to commit an indecent act; or
- (c) unlawfully permits himself or herself to be indecently dealt with by a child under the age of 16 years; or
- (d) wilfully and unlawfully exposes a child under the age of 16 years to an indecent act by the offender or any other person; or
- (e) without legitimate reason, wilfully exposes a child under the age of 16 years to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or
- (f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a child under the age of 16 years;

is guilty of an indictable offence.

(2) If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

(3) If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 20 years.

(4) If the child is, to the knowledge of the offender, his or her lineal descendant or if the offender is the guardian of the child or, for the time being, has the child under his or her care, the offender is guilty of a crime, and is liable to imprisonment for 20 years.

(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.

(6) In this section—

deals with includes doing any act which, if done without consent, would constitute an assault as defined in this Code."

#### **SECTION 364: Cruelty to children under 16**

"(1) A person who, having the lawful care or charge of a child under 16 years, causes harm to the child by any prescribed conduct that the person knew or ought reasonably to have known would be likely to cause harm to the child commits a crime.

Maximum penalty—7 years imprisonment.

(2) In this section—

harm, to a child, means any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing, whether temporary or permanent.

prescribed conduct means—

- (a) failing to provide the child with adequate food, clothing, medical treatment, accommodation or care when it is available to the person from his or her own resources; or
- (b) failing to take all lawful steps to obtain adequate food, clothing, medical treatment, accommodation or care when it is not available to the person from his or her own resources; or
- (c) deserting the child; or
- (d) leaving the child without means of support".

#### **SECTION 340: Serious Assaults**

(1) Any person who—

- (a) **assaults** another with intent to commit a crime, or with intent to resist or prevent the lawful arrest or detention of himself or herself or of any other person; or
- (b) **assaults**, resists, or wilfully obstructs, a police officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting; or

- (c) unlawfully **assaults** any person while the person is performing a duty imposed on the person by law; or
- (d) **assaults** any person because the person has performed a duty imposed on the person by law; or
- (f) **assaults** any person in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons; or
- (g) unlawfully **assaults** any person who is 60 years or more; or
- (h) unlawfully **assaults** any person who relies on a guide, hearing or assistance dog, wheelchair or other remedial device;

is guilty of a crime, and is liable to imprisonment for 7 years.

*Examples of remedial device for paragraph (h)—  
walking frame, caliper, walking stick and artificial limb*

(2) A prisoner who unlawfully **assaults** a working corrective services officer is guilty of a crime, and is liable to imprisonment for 7 years.

(2AA) A person who—

- (a) unlawfully **assaults**, or resists or wilfully obstructs, a public officer while the officer is performing a function of the officer's office; or

*Example—  
A person unlawfully **assaults** an authorised officer under the Child Protection Act 1999 while the officer is investigating an allegation of harm to a child under that Act.*

- (b) **assaults** a public officer because the officer has performed a function of the officer's office;

commits a crime.

Maximum penalty—7 years imprisonment.

(2A) For subsection (1)(b), the circumstances in which a person **assaults** a police officer include, but are not limited to, circumstances in which the person bites, spits on or throws a bodily fluid or faeces at a police officer.

(3) In this section—

corrective services facility see the Corrective Services Act 2006, schedule 4.

corrective services officer see the Corrective Services Act 2006, schedule 4.

office includes appointment and employment.

prisoner see the Corrective Services Act 2006, schedule 4.

public officer includes—

(a) a member, officer or employee of a service established for a public purpose under an Act; and

*Example of a service—*

*Queensland Ambulance Service established under the Ambulance Service Act 1991*

(b) a health service employee under the Health Services Act 1991; and

(c) an authorised officer under the Child Protection Act 1999; and

(d) a transit officer under the Transport Operations (Passenger Transport) Act 1994.

working corrective services officer means a corrective services officer present at a corrective services facility in his or her capacity as a corrective services officer.

## SECTION 215: Carnal knowledge with or of children under 16

(1) Any person who has or attempts to have unlawful carnal knowledge with or of a child under the age of 16 years is guilty of an indictable offence.

(2) If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

(3) If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for 14 years.

(4) If the child is not the lineal descendant of the offender but the offender is the child's guardian or, for the time being, has the child under the offender's care, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for 14 years.

(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.

(6) In this section—

carnal knowledge does not include sodomy.



Doc 10

**FAMILY LAW ACT 1975 (Cth)**

**SECTION 4**

**"abuse"**, in relation to a child, means:

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the **first person**) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- (c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- (d) serious neglect of the child.

**SECTION 4AB: Definition of family violence etc**

(1) For the purposes of this Act, **family violence** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the **family member**), or causes the family member to be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):

- (a) an assault; or
- (b) a sexual assault or other sexually abusive behaviour; or
- (c) stalking; or
- (d) repeated derogatory taunts; or
- (e) intentionally damaging or destroying property; or
- (f) intentionally causing death or injury to an animal; or
- (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when

the family member is entirely or predominantly dependent on the person for financial support; or

(i) preventing the family member from making or keeping connections with his or her family, friends or culture; or

(j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

(3) For the purposes of this Act, a child is **exposed** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:

(a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or

(b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or

(c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or

(d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or

(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and

(c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and

(d) parents should agree about the future parenting of their children; and

(e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

(3) For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

(a) to maintain a connection with that culture; and

(b) to have the support, opportunity and encouragement necessary:

(i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and

(ii) to develop a positive appreciation of that culture.

(4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

#### **SECTION 60B: Objects of Part and principles underlying it**

(1) The objects of this Part are to ensure that the best interests of children are met by:

(a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and

(b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and

(c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and

(d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

(2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):

(a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and

(b) children have a right to spend time on a regular basis with, and

#### **SECTION 60CA: Child's best interests paramount consideration in making a parenting order**

In deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

#### **SECTION 60CC: How a court determines what is in a child's best interests**

Determining child's best interests

(1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

Primary considerations

(2) The primary considerations are:

(a) the benefit to the child of having a meaningful relationship with both of the child's parents; and

(b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

(2A) In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).

Additional considerations

(3) Additional considerations are:

(a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;

(b) the nature of the relationship of the child with:

(i) each of the child's parents; and

(ii) other persons (including any grandparent or other relative of the child);

(c) the extent to which each of the child's parents has taken, or failed to take, the opportunity:

(i) to participate in making decisions about major long-term issues in relation to the child; and

(ii) to spend time with the child; and

(iii) to communicate with the child;

(ca) the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child;

(d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:

(i) either of his or her parents; or

(ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;

(e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially



affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

(f) the capacity of:

(i) each of the child's parents; and

(ii) any other person (including any grandparent or other relative of the child);

to provide for the needs of the child, including emotional and intellectual needs;

(g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;

(h) if the child is an Aboriginal child or a Torres Strait Islander child:

(i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and

(ii) the likely impact any proposed parenting order under this Part will have on that right;

(i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

(j) any family violence involving the child or a member of the child's family;

(k) if a family violence order applies, or has applied, to the child or a member of the child's family--any relevant inferences that can be drawn from the order, taking into account the following:

(i) the nature of the order;

(ii) the circumstances in which the order was made;

(iii) any evidence admitted in proceedings for the order;

(iv) any findings made by the court in, or in proceedings for, the order;

(v) any other relevant matter;

(l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;

(m) any other fact or circumstance that the court thinks is relevant.

Consent orders

(5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).

Right to enjoy Aboriginal or Torres Strait Islander culture

(6) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

(a) to maintain a connection with that culture; and

(b) to have the support, opportunity and encouragement necessary:

(i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and

(ii) to develop a positive appreciation of that culture.

#### **SECTION 60CF: Informing court of relevant family violence orders**

(1) If a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that party must inform the court of the family violence order.

(2) If a person who is not a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that person may inform the court of the family violence order.

(3) Failure to inform the court of the family violence order does not affect the validity of any order made by the court.

#### **SECTION 60CG: Court to consider risk of family violence**

(1) In considering what order to make, the court must, to the extent that it is possible to do so consistently with the child's best interests being the paramount consideration, ensure that the order:

(a) is consistent with any family violence order; and

(b) does not expose a person to an unacceptable risk of family violence.

(2) For the purposes of paragraph (1)(b), the court may include in the order any safeguards that it considers necessary for the safety of those affected by the order.

#### **SECTION 60CI: Informing court of notifications to, and investigations by, prescribed State or Territory agencies**

(1) If:

(a) a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:

(i) a notification or report (however described) to a prescribed State or Territory agency; or

(ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory agency; and

(b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse;

that party must inform the court of the matter.

(2) If:

(a) a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:

(i) a notification or report (however described) to a prescribed State or Territory agency; or

(ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory agency; and

(b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse;

that person may inform the court of the matter.

(3) Failure to inform the court of the matter does not affect the validity of any order made by the court.

(4) In this section:

*"prescribed State or Territory agency"* means an agency that is a prescribed State or Territory agency for the purpose of section 69ZW.

#### **SECTION 61DA: Presumption of equal shared parental responsibility when making parenting orders**

(1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

Note: The presumption provided for in this subsection is a presumption that relates solely to the allocation of parental responsibility for a child as defined in section 61B. It does not provide for a presumption about the amount of time the child spends with each of the parents (this issue is dealt with in section 65DAA).

(2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:

(a) abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or

(b) family violence.

(3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.

(4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

#### **SECTION 65DAA: Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances**

##### **Equal time**

(1) Subject to subsection (6), if a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:

(a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and

(b) consider whether the child spending equal time with each of the parents is reasonably practicable; and

(c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend equal time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

##### **Substantial and significant time**

(2) Subject to subsection (6), if:

(a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and

(b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents; and



the court must:

(c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and

(d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and

(e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend substantial time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

(3) For the purposes of subsection (2), a child will be taken to spend **substantial and significant time** with a parent only if:

(a) the time the child spends with the parent includes both:

(i) days that fall on weekends and holidays; and

(ii) days that do not fall on weekends or holidays; and

(b) the time the child spends with the parent allows the parent to be involved in:

(i) the child's daily routine; and

(ii) occasions and events that are of particular significance to the child; and

(c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

(4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.

Reasonable practicality

(5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:

(a) how far apart the parents live from each other; and

(b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and

(c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

(d) the impact that an arrangement of that kind would have on the child; and

(e) such other matters as the court considers relevant.

Note: Paragraph (c) reference to future capacity--the court has power under section 13C to make orders for parties to attend family counselling or family dispute resolution or participate in courses, programs or services.

Consent orders

(6) If:

(a) the court is considering whether to make a parenting order with the consent of all the parties to the proceedings; and

(b) the order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child;

the court may, but is not required to, consider the matters referred to in paragraphs (1)(a) to (c) or (if applicable) the matters referred to in paragraphs (2)(c) to (e).

(7) To avoid doubt, subsection (6) does not affect the application of section 60CA in relation to a parenting order.

Note: Section 60CA requires the best interests of the child to be the paramount consideration in a decision whether to make a particular parenting order.

## SECTION 67Z: Where interested person makes allegation of child abuse

(1) This section applies if an interested person in proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused.

(2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(3) If a notice under subsection (2) is filed in a court, the Registry Manager must, as soon as practicable, notify a prescribed child welfare authority.

(4) In this section:

**"interested person"** in proceedings under this Act, means:

- (a) a party to the proceedings; or
- (b) an independent children's lawyer who represents the interests of a child in the proceedings; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

**"prescribed form"** means the form prescribed by the applicable Rules of Court.

**"Registry Manager"** means:

- (a) in relation to the Family Court--the Registry Manager of the Registry of the Court; and
- (b) in relation to the Family Court of Western Australia--the Principal Registrar, a Registrar or a Deputy Registrar, of the court; and
- (c) in relation to any other court--the principal officer of that court.

#### **SECTION 67ZBA: Where interested person makes allegation of family violence**

(1) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:

- (a) there has been family violence by one of the parties to the proceedings; or
- (b) there is a risk of family violence by one of the parties to the proceedings.

(2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in paragraph (1)(a) or (b).

(3) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child):

(a) the interested person making the allegation must either file and serve a notice under subsection (2) of this section or under subsection 67Z(2) (but does not have to file and serve a notice under both those subsections); and

(b) if the notice is filed under subsection (2) of this section, the Registry Manager must deal with the notice as if it had been filed under subsection 67Z(2).

Note: If an allegation of abuse of a child (or a risk of abuse of a child) relates to a person who is not a party to the proceedings, the notice must be filed in the court and served on the person in accordance with subsection 67Z(2).

(4) In this section:

**"interested person"** in proceedings for an order under this Part in relation to a child, means:

- (a) a party to the proceedings; or
- (b) an independent children's lawyer who represents the interests of the child in the proceedings; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

**"prescribed form"** means the form prescribed by the applicable Rules of Court.

**"Registry Manager"** has the same meaning as in section 67Z.

#### **SECTION 67ZBB: Court to take prompt action in relation to allegations of child abuse or family violence**

(1) This section applies if:

(a) a notice is filed under subsection 67Z(2) or 67ZBA(2) in proceedings for an order under this Part in relation to a child; and

(b) the notice alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:

- (i) there has been abuse of the child by one of the parties to the proceedings; or
- (ii) there would be a risk of abuse of the child if there were to be a delay in the proceedings; or
- (iii) there has been family violence by one of the parties to the proceedings; or
- (iv) there is a risk of family violence by one of the parties to the proceedings.

(2) The court must:

- (a) consider what interim or procedural orders (if any) should be made:
  - (i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible; and
  - (ii) to protect the child or any of the parties to the proceedings; and
- (b) make such orders of that kind as the court considers appropriate; and



(c) deal with the issues raised by the allegation as expeditiously as possible.

(3) The court must take the action required by paragraphs (2)(a) and (b):

(a) as soon as practicable after the notice is filed; and

(b) if it is appropriate having regard to the circumstances of the case--within 8 weeks after the notice is filed.

(4) Without limiting subparagraph (2)(a)(i), the court must consider whether orders should be made under section 69ZW to obtain documents or information from State and Territory agencies in relation to the allegation.

(5) Without limiting subparagraph (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 68B.

(6) A failure to comply with a provision of this section does not affect the validity of any order made in the proceedings for the order.

#### **SECTION 69ZK: Child welfare laws not affected**

(1) A court having jurisdiction under this Act must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law unless:

(a) the order is expressed to come into effect when the child ceases to be under that care; or

(b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer of the relevant State or Territory has been obtained.

(2) Nothing in this Act, and no decree under this Act, affects:

(a) the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law; or

(b) any such order made or action taken; or

(c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.

#### **SECTION 69ZQ: General duties**

(1) In giving effect to the principles in section 69ZN, the court must:

(aa) ask each party to the proceedings:

(i) whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and

(ii) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence; and

(a) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and

(b) decide the order in which the issues are to be decided; and

(c) give directions or make orders about the timing of steps that are to be taken in the proceedings; and

(d) in deciding whether a particular step is to be taken--consider whether the likely benefits of taking the step justify the costs of taking it; and

(e) make appropriate use of technology; and

(f) if the court considers it appropriate--encourage the parties to use family dispute resolution or family counselling; and

(g) deal with as many aspects of the matter as it can on a single occasion; and

(h) deal with the matter, where appropriate, without requiring the parties' physical attendance at court.

(2) Subsection (1) does not limit subsection 69ZN(1).

(3) A failure to comply with subsection (1) does not invalidate an order.

## **Doc 11**

### **DOMESTIC AND FAMILY VIOLENCE PROTECTION ACT 1989 (Qld)**

#### **DICTIONARY**

child means an individual under 18 years.

child, of an aggrieved, means a child who is—

- (a) a biological, adopted, step or foster child of the aggrieved; or
- (b) in the care or custody of the aggrieved.

child, of a respondent, means a child who is—

- (a) a biological, adopted, step or foster child of the respondent; or
- (b) in the care or custody of the respondent.

#### **SECTION 11: What is domestic violence**

(1) Domestic violence is any of the following acts that a person commits against another person if a domestic relationship exists between the 2 persons—

- (a) wilful injury;
- (b) wilful damage to the other person's property;

*Example of paragraph (b)—*  
*wilfully injuring a defacto's pet*

- (c) intimidation or harassment of the other person;

*Examples of paragraph (c)—*

- 1 following an estranged spouse when the spouse is out in public, either by car or on foot*
- 2 positioning oneself outside a relative's residence or place of work*
- 3 repeatedly telephoning an ex-boyfriend at home or work without consent (whether during the day or night)*
- 4 regularly threatening an aged parent with the withdrawal of informal care if the parent does not sign over the parent's fortnightly pension cheque*

- (d) indecent behaviour to the other person without consent;
- (e) a threat to commit an act mentioned in paragraphs (a) to (d).

(2) The person committing the domestic violence need not personally commit the act or threaten to commit it.

*Editor's note—*

*See section 20(2)—*

*(2) A person who counsels or procures someone else to commit an act that, if done by the person, would be an act of domestic violence is taken to have committed the act.*

#### **SECTION 11A: Relationships that are domestic relationships for this Act**

(1) Each of the following is a domestic relationship for this Act—

- (a) a spousal relationship;
- (b) an intimate personal relationship;
- (c) a family relationship;
- (d) an informal care relationship.

(2) Although a domestic relationship exists only between 2 persons, 1 aggrieved, or an authorised person for 1 aggrieved, may make an application for a protection order naming 1 respondent or more than 1 respondent.

#### **SECTION 12: What is a spousal relationship and who is a spouse**

(1) A spousal relationship exists between spouses.

(2) A spouse includes—

- (a) a former spouse; and
- (b) either 1 of the biological parents of a child.

(3) For subsection (2)(b), it is irrelevant whether there is or was any relationship between the biological parents of the child.

#### **SECTION 12A: What is an intimate personal relationship**

(1) An intimate personal relationship exists between 2 persons if the persons are or were engaged to be married to each other, including a betrothal under cultural or religious tradition.

(2) Also, an intimate personal relationship exists between 2 persons, whether or not the relationship involves or involved a relationship of a sexual nature, if—

- (a) the persons date or dated each other; and
- (b) their lives are or were enmeshed to the extent that the actions of 1 of them affect or affected the actions or life of the other.

(3) In deciding whether an intimate personal relationship exists under subsection (2), a court may have regard to the following—

- (a) the circumstances of the relationship, including, for example, trust and commitment;
- (b) the length of time for which the relationship has existed or did exist;
- (c) the frequency of contact between the persons;
- (d) the level of intimacy between the persons.

(4) An intimate personal relationship may exist whether the 2 persons are the same or the opposite sex.

(5) The lives of 2 persons are not enmeshed merely because the persons date or dated each other on a number of occasions.



## SECTION 12B: Meaning of family relationship and relative

- (1) A family relationship exists between 2 persons if 1 of them is the relative of the other.
- (2) A relative, of a person, is someone who is ordinarily understood to be or to have been connected to the person by blood or marriage.

### *Example of subsection (2)—*

*A person's spouse, child (including an individual 18 years or over), stepchild, parent, step-parent, sibling, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law is the person's relative.*

- (3) For deciding if someone is related by marriage, any 2 persons who are or were spouses of each other are considered to be or to have been married to each other.

- (4) A relative of a person (the relevant person) is also either of the following persons if it is or was reasonable to regard the person as a relative especially considering that for some people the concept of a relative may be wider than is ordinarily understood—

- (a) a person whom the relevant person regards or regarded as a relative;
- (b) a person who regards or regarded himself or herself as a relative of the relevant person.

### *Examples of people who may have a wider concept of a relative—*

- 1 *Aboriginal people*
- 2 *Torres Strait Islanders*
- 3 *members of certain communities with non-English speaking backgrounds*
- 4 *people with particular religious beliefs*

- (5) In deciding if a person is a relative of someone else—

- (a) a subsection of this section must not be used to limit another subsection of this section; and
- (b) each subsection is to have effect even though, as a result, a person may be considered to be a relative who would not ordinarily be understood to be a relative.

## SECTION 12C: What is an informal care relationship

- (1) An informal care relationship exists between 2 persons if a person is or was dependent on another person (a carer) who helps the person in an activity of daily living (personal care activity).

### *Examples of personal care activities a carer may perform—*

- 1 *dressings or other personal grooming of the person*
- 2 *preparing the person's meals or helping the person with eating meals*
- 3 *shopping for the person's groceries*
- 4 *telephoning a specialist to make a medical appointment for the person*

- (2) The personal care activity must be required, or have been required, because of a disability, illness or impairment relating to the person.

- (3) A relationship in which the personal care activity is or was provided under an arrangement the person entered into with someone other than the carer is not an informal care relationship, whether or not a fee is or was paid for the care.

### *Example for subsection (3)—*

*The relationship between a person and a nurse who visits the person each day to help with bathing and physiotherapy is not an informal care relationship if the nurse visits under an arrangement between the person and a community based in-home care entity.*

- (4) If the person entered into an arrangement with the carer and a fee is or was paid, or is to be paid, to or at the discretion of the carer under the arrangement for the personal care activity, the relationship existing between the persons is not an informal care relationship unless it is alleged that the circumstances relating to the arrangement or fee include an act mentioned in section 11(1)(a) to (e).

### *Example for subsection (4)—*

*The relationship that exists between a person and the person's carer is an informal care relationship if the carer demanded the proceeds of the person's pension or superannuation cheque and threatened to injure the person unless the proceeds were paid.*

- (5) However, an informal care relationship can not exist between a child and a parent of the child.

- (6) In this section—

fee does not include—

- (a) a pension or allowance in the carer's own name from the Commonwealth Government for providing care to a person; or
- (b) an amount of money paid to a carer for goods purchased for the person that does not exceed the purchase price of the goods.

### *Example of paragraph (b)—*

*A friend of a person who has had a stroke may call on the person at the person's home every second day and bring fresh milk and bread and be given the price of the items.*

parent, of a child, see Child Protection Act 1999, section 11.

### *Editor's note—*

#### *Child Protection Act 1999—*

- (1) *A parent of a child is the child's mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child.*
- (2) *However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.*
- (3) *A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.*
- (4) *A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.*
- (5) *A reference in this Act to the parents of a child or to 1 of the parents of a child is, if the child has only 1 parent, a reference to the parent.*

## SECTION 12D: Children as applicants and respondents generally

- (1) Subject to this section, a person who is a child may be named as the aggrieved or the respondent in a domestic violence order.

(2) However, the child may be named as the aggrieved or the respondent only if a spousal relationship, intimate personal relationship or informal care relationship exists between the child and the other party named in the domestic violence order.

(3) Subsection (2) does not limit the interstate orders that may be registered under part 3, division 3.

(4) If the child is under 16 years, a person responsible for giving a document to the child—

- (a) must also give a copy of the document to a parent of the child; and
- (b) must not give the document to the child at or in the vicinity of the child's school, unless there is no other place where service may be reasonably effected.

(5) If the child is at least 16 years, a person responsible for giving a document to the child—

- (a) must not give a copy of the document to a parent of the child unless the court orders it to be given to the parent; and
- (b) must give the document to the child as discreetly as practicable.

(6) To the extent that subsection (4) or (5) is inconsistent with section 85, that subsection prevails.

(7) In this section—

other party, in a domestic violence order, means—

- (a) in relation to an aggrieved—the respondent or any 1 of the respondents named in the domestic violence order; or
- (b) in relation to a respondent—the aggrieved named in the domestic violence order.

parent, of a child, see the Child Protection Act 1999, section 11.

#### **SECTION 12E: Child who is a party but is not represented**

(1) This section applies to a child who—

- (a) is named in an application for a protection order as the aggrieved; and
- (b) appears before a court and is not represented by a lawyer or helped by a police officer or authorised person.

(2) Also, this section applies to a child who—

- (a) is named in an application for a protection order as the respondent; and
- (b) appears before a court and is not represented by a lawyer.

(3) The court may adjourn the hearing of the application unless it is satisfied the child—

- (a) has had reasonable opportunity to obtain representation by a lawyer; and
- (b) has decided not to be represented by a lawyer.

#### **SECTION 25: Court may impose other conditions**

(1) If a court was to have exercised a power under section 22 and did not do so, the court is taken to have done so.

*Example—*

*If a court does not include in a domestic violence order the conditions mentioned in section 22, the order is taken to include the conditions.*

(2) When a court makes or varies a domestic violence order, it may also impose conditions on the respondent that the court considers—

- (a) necessary in the circumstances; and
- (b) desirable in the interests of the aggrieved, any named person and the respondent.

(3) The conditions the court may impose on a respondent include, for example—

- (a) prohibiting stated behaviour of the respondent that would constitute an act of domestic violence against the aggrieved or an act of associated domestic violence against a named person; and
- (b) prohibiting the respondent from doing all or any of the following in relation to stated premises even though the respondent has a legal or equitable interest in the premises—

- (i) remaining at the premises;
- (ii) entering or attempting to enter the premises;
- (iii) approaching within a stated distance of the premises; and

- (c) prohibiting the respondent from approaching, or attempting to approach, the aggrieved or a named person, including stating in the order a distance within which an approach is prohibited; and
- (d) prohibiting the respondent from contacting, attempting to contact or asking someone else to contact the aggrieved or a named person, including, for example, if the aggrieved or named person has taken shelter at a refuge; and
- (e) prohibiting the respondent from locating, attempting to locate or asking someone else to locate the aggrieved or a named person if the aggrieved's or named person's whereabouts are not known to the respondent; and
- (f) prohibiting stated conduct of the respondent towards a **child** of the aggrieved, including prohibiting the respondent's presence at or in a place associated with the **child**.

(4) In relation to property of the aggrieved, a condition may require the respondent—

- (a) to return the property to the aggrieved; or
- (b) to allow the aggrieved access to the property; or
- (c) to allow the aggrieved to recover the property; or
- (d) to do any act necessary or desirable to facilitate action mentioned in paragraphs (a) to (c).

(5) The following matters are to be of paramount importance to the court when it imposes conditions on the respondent—

- (a) the need to protect the aggrieved and any named persons;
- (b) the welfare of a **child** of the aggrieved.



(6) The court may also consider—

- (a) the accommodation needs of all persons affected by the proceedings; and
- (b) the order's effect on a **child** of the aggrieved; and
- (c) existing orders relating to guardianship or custody of, or access to, a **child** of the aggrieved.

(7) A condition in an order that prohibits a respondent from asking someone else to contact or to locate an aggrieved or a named person does not prohibit the respondent asking—

- (a) someone else who is a lawyer to contact the aggrieved or named person; or
- (b) someone else, including a lawyer, to locate the aggrieved or named person for a purpose authorised by an Act.

#### **SECTION 25A: Orders under s 25 that include ouster condition**

(1) This section applies if a court makes an order under section 25 that includes an **ouster** condition.

(2) The premises that may be stated in an **ouster** condition of the order include—

- (a) premises where the aggrieved and respondent live together or previously lived together; and
- (b) premises where the aggrieved or a named person resides, works or frequents.

(3) In imposing the **ouster** condition, the court must consider including in the order another condition allowing the respondent—

- (a) if the respondent is no longer at the premises—to return to the premises to recover stated property; or
- (b) if the respondent is at the premises—to remain at the premises to remove stated property.

(4) For another condition under subsection (3), the court must state in the order—

- (a) if the respondent is present in court when the order is made—
  - (i) the time at which, without breaching the order, the respondent may return to the premises and then must leave the premises; or
  - (ii) for how long the respondent may, without breaching the order, continue to remain at the premises; or
- (b) if the respondent is not present in court when the order is made—
  - (i) the time at which, without breaching the order, the respondent may return to the premises and must leave the premises based on the time of service of the order on the respondent; or
  - (ii) for how long the respondent may, without breaching the order, remain at the premises based on the time of service of the order on the respondent.

*Example for paragraph (b)(i)—*

*The respondent may, without breaching this order, return to the premises at noon on the day after the day this order is served on the respondent by a police officer. If the respondent chooses to return to the premises under the order, the respondent must leave the premises no later than 2p.m. on the same day.*

(5) Before the court makes an order that includes an **ouster** condition, or another condition under subsection (3), the court must consider each of the following—

- (a) the extent to which a matter mentioned in an order must be subject to the supervision of a police officer;
- (b) if a police officer is to supervise a matter, the need to include in the order a condition that the respondent must not approach within a stated distance of the stated premises.

Our services for children and young people

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## Our services for children and young people

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### Information about the law

Our legal information service is free. We give you information about the law and the legal system. You can access this service:

- by telephoning 1300 65 11 88 for the cost of a local call - a client information officer will listen to your problem and explain the legal issues involved, tell you about the law and how to access our services or refer you to other services that can help you.
- face-to-face by talking to a client information officer at one of our 14 [offices](#) in Queensland or by visiting one of our [community access points](#) located throughout the state.
- online - by searching the [legal information](#) and [publications](#) areas of our site.

### Legal advice

Our lawyers can help with free advice about most personal legal problems. To get advice, call 1300 65 11 88 and a client information officer will arrange legal advice.

- For telephone legal advice a lawyer will call you back, usually the same or next day.
- For face-to-face legal advice we will arrange for you to see a lawyer at one of our 14 [offices](#) in Queensland.
- If Legal Aid Queensland is not the best place for you to get advice about your problem, we will refer you to a more appropriate service to help you.
- When you get legal advice, a lawyer can talk to you about if you are likely to be eligible for a lawyer to help you with legal representation.

### Legal representation

- Duty lawyer representation - Legal Aid Queensland arranges [duty lawyer](#) services in criminal matters in more than 100 magistrates and childrens courts throughout Queensland.
- Representation with a grant of legal aid - Legal representation is available if you get a grant of legal aid. It is best to get legal advice before applying for a grant of legal aid.

### Can our Youth Advocate help you?

Our Youth Advocate runs a telephone legal advice clinic on Thursday afternoons with a focus on direct representation in child protection.

To get advice, call 1300 65 11 88 and a client information officer will arrange a legal advice session for you.

### What is Youth Legal Aid?

- Youth Legal Aid is a specialist team based in our Brisbane office that deals with criminal matters for young people.
- Youth Legal Aid acts for you, not your parents or anyone else.

### What is the Child Protection Unit?

Our Child Protection Unit has lawyers in our Brisbane and Woodridge offices who appear for children and young people in child protection matters in the Children's Court or Children Services Tribunal.

They appear as either separate representatives or direct representatives.

### What is the Independent Children's Lawyer's Unit?

Our Independent Children's Lawyers Unit has lawyers in our Brisbane office who specialise in representing children in family law matters. These lawyers are appointed by the court.

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## Domestic Violence Court Assistance Service

In 2000, Women's Legal Aid received funding from the Department of Families to provide court assistance to women applying for domestic violence orders in the Brisbane Magistrates Court. The Women's Domestic Violence Court Assistance Service (WDVCAS) commenced in April 2001.

In 2004, as a result of the expansion of the *Domestic and Family Violence Protection Act 1989*, funding was provided by the Department of Communities to cater for the non-spousal categories in the legislation.

The WDVCAS is free and confidential and helps clients by:

- explaining the process of applying for domestic violence protection orders
- explaining court processes and protocols
- assisting women to complete applications for protection order
- providing court support and assistance before, during and after matters are heard, in all issues related to the protection order application, including urgent applications
- explaining the process and assisting women to apply to vary/revoke a protection order
- providing crisis intervention counselling on matters related to domestic violence
- discussing with women their needs and the options available to them
- explaining and assisting women to report breaches of existing domestic violence orders to police
- providing referrals to any needed services, eg counselling, housing services, refuge accommodation, Centrelink services, children's services, etc
- providing referrals for legal advice and representation on domestic violence and related legal issues such as family law, immigration, tenancy, care and protection, etc
- providing referrals to the police prosecutor for assistance in the court process
- providing referrals to court staff when relevant.

Other functions of the court assistance workers include advocacy, community education and maintaining a support network for women coming into contact with the service.

### WDVCAS contacts

- **Legal Aid Queensland**  
44 Herschel Street  
Brisbane Qld 4000  
  
Ph: (07) 3238 3562  
Fax: (07) 3238 3927  
Email: [caw@legalaid.qld.gov.au](mailto:caw@legalaid.qld.gov.au)
- **Brisbane Magistrates Court**  
Level 6, 363 George Street

Brisbane Qld 4000

Ph: (07) 3247 5437

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