



Early Childhood Australia
A voice for young children

**OUR
VISION:
EVERY
YOUNG
CHILD IS
THRIVING
AND
LEARNING**

A review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector

Queensland Law Reform Commission

Early Childhood Australia

About us:

Early Childhood Australia (ECA) is the national peak early childhood advocacy organisation, acting in the interests of young children, their families and those in the early childhood sector. ECA advocates for quality in education and care as well as social justice and equity for children from birth to eight years. We have a federated structure with branches in each state and territory. In 2013, ECA celebrated 75 years of continuous service to the Australian community.



Introduction

Early Childhood Australia (ECA) welcomes the opportunity to provide input into the *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*.

Early childhood education and care (ECEC) is one of the largest universal service systems working with families with young children. In June 2014, over 185 000 families in Queensland used approved childcare services alone and this number is growing every year (DSS, 2015).

Early childhood services, including approved kindergartens, preschools, long day care services, outside school hours care services, occasional care services, family day care services, in-home care services, mobiles and Budget Based Funded services are an important source of support to families and may often be the 'first to know' agency when problems arise. Early childhood educators also often have a relationship of trust with one or both parents with the potential to provide effective referrals to family support services.

Young children are particularly vulnerable to child abuse and neglect as their capacity to communicate and understand their world is still developing. It is therefore extraordinary that in Queensland, the profession that works with young children including vulnerable children more than any other profession, is currently not included as a class of mandatory reporters.

Extending reporting

ECA is very supportive of extending mandatory reporting to some early childhood education and care professionals.

We have concerns about the inclusion of all educators in the requirements to report and instead suggest that specific professionals working in early childhood services, with experience, should be covered. In particular we think the mandatory reporting should be extended to approved providers and supervisors. This will help improve the quality and reliability of reporting while also limiting the risk of over-reporting from inexperienced educators.

Persons with a Supervisor Certificate must be 'a fit and proper person to be a supervisor of an education and care service' and 'meet the prescribed minimum requirements for qualifications, experience and management capability' (s108, *Education and Care Services National Law*, 2010). This includes adequate knowledge and understanding of the provision of education and care to children; the ability to effectively supervise and manage an education and care service; at least three years' experience working as an educator in an education and care service or a children's service or school, or in a service regulated under a former education and care services law; an approved diploma level education and care qualification; an approved early childhood teaching qualification (Reg 47, *Education and Care Services National Regulations*, 2011).



We recommend that all approved providers, nominated supervisors and certified supervisors working in ECEC services in Queensland are included as mandatory reporters.

ECA recognises the sensitivity and gravity of reporting child abuse and neglect as well as arguments around over-reporting. Under *Education and Care Services National Regulations*, Reg 84, the approved provider of an education and care service must ensure that the nominated supervisor and staff members at the service who work with children are advised of 'the existence and application of the current child protection law' and 'any obligations that they may have under that law', including mandatory reporting. However, ECA believes that training on mandatory reporting should be supported to help reduce the risk of over-reporting from the early childhood sector, while also helping to increase awareness and identification of genuine cases where children have or are suffering, or at risk of child abuse and neglect.

We recommend that together with expanding the scope of mandatory reporting to ECEC services, there should be a complementary training program.

Reporting neglect

As a national peak body we are also concerned that Queensland's mandatory reporting policies remain out of step with some other jurisdictions in protecting the safety and wellbeing of young children. We are particularly concerned that the Queensland Government does not currently recognise neglect for mandatory reporting purposes.

ECA understands that the current Queensland law does not require mandatory reporting of child neglect under the *Child Protection Act 1999* (Qld) and the *Education (General Provisions) Act 2006* (Qld) (AIFS, 2014).

This exclusion is out of date with the research as well as society's and the early childhood profession's expectation of responses to child protection. Hildyard and Wolfe (2002, p. 679) have found that 'relative to physically abused children, neglected children have more severe cognitive and academic deficits, social withdrawal and limited peer interactions, and internalising (as opposed to externalising) problems'. It is therefore critical for children's development and wellbeing that neglect is reported to Child Safety Services on a mandatory basis.

This may include the following types of neglect (AIFS, 2012):

- *physical neglect*: characterised by the caregiver's failure to provide basic physical necessities, such as safe, clean and adequate clothing, housing, food and health care
- *emotional (or psychological) neglect*: characterised by a lack of caregiver warmth, nurturance, encouragement and support (note that emotional neglect is sometimes considered a form of emotional maltreatment)
- *educational neglect*: characterised by a caregiver's failure to provide appropriate educational



opportunities for the child

- *environmental neglect*: characterised by the caregiver's failure to ensure environmental safety, opportunities and resources.

We are concerned that children are often subject to neglect in the form of family violence, which is a form of neglect recognised for mandatory reporting in jurisdictions like New South Wales. Children are often the 'forgotten victims' of family violence and may display similar psychological trauma as those children that have been physically abused (UNICEF, 2006). There is little focus by some governments on family violence affecting children, despite the fact that families with young children are a cohort the research suggests is at higher risk of family violence (Campo, Kaspiew, Moore & Tayton, 2014, p. ix).

Children's rights

Early childhood professionals and ECA take our commitment to children's rights very seriously.

Early Childhood Australia and the National Children's Commissioner—*Supporting young children's rights: Statement of intent (2015–2018)*

The key priority areas for action identified by ECA and the National Children's Commissioner specific to young children for 2015–2018 include:

Action 2.1: supporting children's services to consider and build their organisational capacity to become child safe and child friendly organisations.

Action 2.2: advocating that children's services settings be free from harm.

Action 2.3: promoting a better understanding within children's services of child protection issues, including the identification and support of vulnerable children, children at risk and linking at-risk children and families to appropriate supports, early intervention and other services and responses.

Action 2.4: improving interdisciplinary responses across education, health and social services to support vulnerable children and children at risk of violence, abuse **and neglect**.

Action 2.5: supporting professionals working with young children to build strong partnerships with families to provide a safe environment for their children. (ECA and the Australian Human Rights Commission, 2015.)



Ensuring that mandatory reporting is in place—including reporting neglect—is consistent with the sector’s commitment and requirements on maintaining children’s rights.

The *United Nations Convention on the rights of the child* (CROC) establishes the universally agreed set of non-negotiable standards and obligations. One of these fundamental rights is found in Article 19 (UN, 1989):

United Nations Convention on the rights of the child—Article 19

1. States Parties shall take **all appropriate legislative**, administrative, social and educational **measures to protect the child from** all forms of physical or mental violence, injury or abuse, **neglect or negligent treatment**, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for **identification, reporting, referral**, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

All approved ECEC services are required to implement the *Education and Care Services National Law*. The Law establishes the guiding principles of the national education and care services quality framework including ‘that the rights and best interests of the child are paramount’ (*Education and Care Services National Law*, Cl 3[a]). This is an explicit reference to the CROC.

The *National Quality Standard* (NQS) established under the *National Law* also embeds children’s rights as provided under the CROC in Element 5.2.3—‘The dignity and rights of every child are maintained at all times’. Regulation 155(c) also states that ‘An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that ... maintains at all times the dignity and rights of each child’.

ECA believes that the Queensland Government’s current approach to mandatory reporting and exclusion of the ECEC sector and the reporting of neglect is inconsistent with the sector’s commitment to children’s rights and ensuring that these are ‘maintained at all times’ under the NQS.

The Queensland Government’s commitment under Article 19 would also be improved by expanding the scope of mandatory reporting to ECEC services. This would have the effect of harmonising educator’s obligations across the *Education and Care Services National Law* and *National Regulations* including the NQS, and also other jurisdiction’s mandatory reporting requirements.

We also suggest that the Queensland Government is currently not meeting its obligations under Article 19 (1) by excluding child neglect from mandatory reporting requirements.

We recommend that the type of harm that can be reported is expressly extended to child neglect, in addition to physical and sexual abuse, as in other jurisdictions.



Summary of recommendations

We recommend that all approved providers, nominated supervisors and certified supervisors working in ECEC services in Queensland are included as mandatory reporters.

We recommend that together with expanding the scope of mandatory reporting to ECEC services, there should be a complementary training program.

We recommend that the type of harm that can be reported is expressly extended to child neglect, in addition to physical and sexual abuse, as in other jurisdictions.



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