Queensland Family and Child Commission
Submission

To: Queensland Law Reform Commission **Date:** 25 September 2015

Topic: Review of Child Protection Mandatory Reporting Laws for Early Childhood Education and Care (ECEC) Sector

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Submission summary:

This submission outlines the Queensland Family and Child Commission's considerations and proposed approach to potential expansion of the mandatory reporting function under the *Child Protection Act* 1999.

Submission recommendations:

- The acknowledgement of the quality and frequency of contact with children aged 0-5 years by Early Childhood Education and Care providers and the unique opportunity, from a protective perspective, this situation offers.
- Noting the current Early Childhood Education and Care regulations and their relevance to establishing and supporting a more formal mandatory reporting framework.
- Noting the Carmody Inquiry findings that a risk averse approach to child protection results in unsustainable increases in notifications and unnecessary burden on the tertiary child protection provider.
- Early Childhood Education and Care sector be included as mandatory reporters ONLY with specific qualifying factors (relating to the National Quality Framework and specific roles).
- An appropriately designed and implemented change to mandatory reporting categories, complimented by Early Childhood Education and Care specific actions may mitigate a number of concerns related to the expansion of mandatory reporting categories.

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The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Queensland Law Reform Commission (QLRC) outlining our position and considerations following the review of the QLRC discussion paper, "*Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector".*

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

Recommendation
The QFCC recommends:

- The acknowledgement of the quality and frequency of contact with children aged 0-5 years by Early Childhood Education and Care providers and the unique opportunity, from a protective perspective, this situation offers.
- Noting the current Early Childhood Education and Care regulations and their relevance to establishing and supporting a more formal mandatory reporting framework.
- Noting the Carmody Inquiry findings that a risk averse approach to child protection results in unsustainable increases in notifications and unnecessary burden on the tertiary child protection provider.
- Early Childhood Education and Care sector be included as mandatory reporters ONLY with specific qualifying factors (relating to the National Quality Framework and specific roles).
- An appropriately designed and implemented change to mandatory reporting categories, complimented by Early Childhood Education and Care specific actions may mitigate a number of concerns related to the expansion of mandatory reporting categories.
- Reserving any formal proceedings until the completion of the review of the *Child Protection Act* 1999 (currently being undertaken).

The role of ECEC

The experiences of children in their early, formative years can have consequences right through the course of their lives.[1] Research shows that rich, nourishing and stimulating caretaking environments which meet the health and developmental needs of young children is the most direct way of improving outcomes in childhood.[2]

When care is provided outside of the family by the ECEC services sector, child care workers become an important part of the broader environmental influences on the family and regular observers of child development and wellbeing, family functioning and protective parenting behaviours. This observer role is even more important following the dilution of the traditional model of families and their broader social networks (extended family, neighbourhood and community connections) in recent history.[3] This places the ECEC sector in a unique position to be able to identify circumstances,

[1] Royal Children's Hospital, Policy Brief: Translating research evidence to inform policy and practice (2006), *Early childhood and the life course*, Melbourne, Victoria

[2] Royal Children's Hospital, Policy Brief: Translating research evidence to inform policy and practice (2006), *Early childhood and the life course,* Melbourne Victoria

[3] Moore, T.G. (2008), *Supporting young children and their families: Why we need to rethink services and policies*, *CCCH Working Paper 1 (revised November 2008).* Parkville, Victoria: Centre for Community Child Health.

through frequent, regular and intimate contact, where children may be at risk of significant harm or to identify vulnerable families who may benefit from specialised intervention or support.

In recent history, ECEC regulations have supported the improved education and qualification levels of child care workers and supervisors employed within the sector. This further learning, including tertiary level qualifications, broadens ECEC employees understanding of key concepts relating to the environmental factors which can impact ideal family functioning, childhood development, wellbeing and health indicators and promotes the acknowledgement of cultural perspectives to child rearing and family life.

ECEC approach to child protection law

Currently across Australia, most long day care, family day care, outside hours care, kindergarten and pre-schooling programs operate under the legislated requirements of the National Quality Framework (NQF). The NQF is comprised of the *Education and Care Services National Regulations* and the *Education and Care Services National Law*. National Regulation 84, *Awareness of child protection law* requires:

> *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—*
>
> *(a) the existence and application of the current child protection law; and*
>
> *(b) any obligations that they may have under that law.*[4]

The *Operational Policy Manual for Regulatory Authorities* elaborates further to direct that…

- *The approved provider must ensure 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 in the relevant jurisdiction and understand their obligations under that law.*
- *The approved provider must ensure that policies and procedures are in place in relation to providing a child safe environment (regulation 168 – Education and care services must have policies and procedures).*[5]

The existence of these regulations implies a formal and practical understanding of child protection principles, the importance of the ECEC provider's role in protecting and caring for children and the legislated role of mandatory reporters.

Queensland Child Protection Commission of Inquiry

Following the 2013 release of the Queensland Child Protection Commission of Inquiry (the Carmody Inquiry) report, *Taking responsibility: A roadmap for child protection in Queensland,* the Queensland Government responded with the establishment of the "*Stronger Families*" reform program for the broader (government and non-government) Queensland child protection sector. Stronger Families details a long term plan that aims to ensure *'Queensland children and young people are cared for, protected, safe and able to reach their full potential'.*[6]

Of the many recommendations and subjects discussed in the Carmody Inquiry report, mandatory reporting and reducing the demand on the statutory system were discussed at length. The Carmody Inquiry found that the substantial increase of inappropriate reports (which did not meet the threshold of harm) made to Child Safety was unsustainable. While there are a number of factors

[4] Education and Care Services National Regulations, 2014, Chapter 4, Part 4.2, Division 1 – *Children's Health and Safety*
[5] Education and Care Services National Regulations, 2014, Chapter 4, Part 4.7, Division 2 – *Children's Health and Safety*
[6] Queensland Government, 2014, *Stronger Families Program Management Plan,* pviii

which may be seen to negatively impact the increase in reports, a key identified factor was the unclear nature of mandatory reporting legislated guidelines and existing confusion regarding definitions and thresholds of harm.

Concerns were also raised regarding the seemingly risk averse decision-making approach taken by mandatory reporters when notifying Child Safety of their concerns. This culture of semi-automatic decision-making based on fear and lack of understanding of the legislated responsibilities of a mandatory reporter can result in unwarranted reports being directed to the tertiary system, families who feel they have been victimized without due cause and importantly in the case of ECEC, impact the child's inclusion in the service and continued access to developmental and learning environment.

In response to these concerns, the Carmody Inquiry report (Chapter Four) presented a number of alternative pathways and responses to reduce the burden on the tertiary system and to simplify and strengthen Queensland's mandatory reporting function. These recommendations include:

- **Recommendation 4.1** Strengthening the legislated definition contained in Section 10a, *Child Protection Act, 1999*, to explicitly state '*a child in need of protection is a child who has suffered significant harm, is suffering significant hard, or is at unacceptable risk of suffering significant harm*'.[7]
- **Recommendation 4.2** A coordinated, whole-of-government process to:
    - Review and consolidate existing legislation regarding reporting obligations to establish a single legislation provision in the *Child Protection Act*, 1999 clearly outlining the mandatory reporting requirements.
    - Establish a single governing 'standard' for reporting policies across (core) Queensland Government agencies.
    - Provide support, through joint training, to develop understanding of key threshold definitions and decision-making regarding significant harm for professionals and to encourage a shared understanding across government.[8]
- **Recommendation 4.6** Proposed amendment to the *Child Protection Act 1999* to:
    - Allow mandatory reporters to discharge their legal reporting obligations by referring a family to the community-based intake gateway, and afford them the same legal and confidentiality protections currently afforded to mandatory reporters.
    - If reporters make a report honestly and with a level of reasonableness that they be given protection from civil and criminal liability. [9]

While a number of these recommendations have been actioned or are in the process of being actioned, it is too early in the life cycle of the change process to adequately and comprehensively determine either the success of the change in securing the intended outcome or to identify ways and means for expanding the mandatory reporting function.

The QFCC does however recommend that any potential extension of the mandatory reporting functions be undertaken in a manner that is consistent with the recommendations of the Carmody Inquiry. For example, any changes should not complicate or confuse the clarity and transparency of the legislated requirements associated with mandatory reporting.

[7] Queensland Child Protection Commission of Inquiry, (2013), *Taking Responsibility: A Roadmap for child protection,* p90
[8] Queensland Child Protection Commission of Inquiry, (2013), *Taking Responsibility: A Roadmap for child protection,* p90
[9] Queensland Child Protection Commission of Inquiry, (2013), *Taking Responsibility: A Roadmap for child protection,* p95

Should mandatory reporting apply to the ECEC sector?

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

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

In consideration of the frequency and quality of ECEC workers contact with children, the QFCC *would* support (conditionally) the inclusion of the ECEC sector to the legislated list of mandatory reporters. We would however suggest the inclusion of specific qualifying factors and limiting roles with responsibility for mandatory reporting functions (within the ECEC sector). We propose that any expansion of *Child Protection Act 1999,* Division 2, Section 13E, (1) expressly include the following ECEC qualifying provisions:

- ECEC services regulated under the National Quality Framework; and
- ECEC qualified early childhood teachers, Directors or Family Day Care (FDC) coordinators.

Further, should ECEC be formally included as mandatory reporters under the *Child Protection Act* 1999 (the Act), the following actions would need to be expedited by all regulated ECEC providers to mitigate any potential negative outcomes following legislation amendments:

- Review and amendment of all internal policies and procedures relating to child protection or the reporting of concerns regarding significant harm to a child. This should include relevant Child Safety and early intervention services contact details.
- Staff training and development:
    - To understand the requirements of a mandatory reporter, including the recent amendment to the definition of significant harm under the Act.
    - Build professional skills related to child development and the identification of possible signs of abuse or neglect.
    - A practical and theoretical introduction to the Queensland Child Protection Guide and how to consider decision-making processes under the model.

Should the expansion of the mandatory reporter functions be appropriately designed and implemented across Queensland, families may be directed to support services at an earlier point and ensure, with support of the Queensland Child Protection Guide processes, Child Safety receives notification of cases which meet the threshold of significant abuse and neglect. The extension of mandatory reporting to include ECEC would not change or diminish Child Safety's ability to professionally investigate and assess a report to determine whether a substantiation was required.

For further noting:

While the QFCC agrees that ECEC may be a valuable mandatory reporter, prior to progressing any formal change, we would also draw the QLRC's attention to the current public consultation process for the review of the *Child Protection Act* 1999 and in particular, the questions (and future responses) included within the 'shared community responsibility'.

We hope the information provided will be beneficial to the QLRC in its deliberations regarding any further progress in this matter.