

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

known 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.¹ 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.² 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

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'.³

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'.⁴ 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'.⁵ 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]'.⁶

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

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.⁷

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

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.

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 Australia⁸ 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.⁹

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

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

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.¹⁰ 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.¹¹

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'.¹² 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.¹³

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.

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.¹⁴ 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

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

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

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).¹⁵

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

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>, 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.

References

- Ainsworth, F. (2002) Mandatory reporting of child abuse and neglect. Why would you want it? *Developing Practice*, Winter: 5.
- Anthony, L. (2003) Media Release, 20 February. <<http://www.facs.gov.au/internet/minister2.nsf/content/earlychildhood.htm>>.
- Australian Institute of Health and Welfare, *Child protection Australia 2001-02*, Canberra, Australian Institute of Health and Welfare, 2002.
- Australian Institute of Health and Welfare, *Child protection Australia 2002-03*, Canberra, Australian Institute of Health and Welfare, 2003.
- Australian Medical Association (2003). <http://www.ama.com.au/web.nsf/doc/WEEN-5W999M>.
- Best, R. (2001) Where Child Protection Systems and Schools Meet. *Australia & New Zealand Journal of Law & Education*, 6: 3-13.
- Bolger, K. & Patterson, C. (2001) Developmental pathways from child maltreatment to peer rejection. *Child Development*, 72: 549-568.
- Bradley, A., & Wood, J. (1996). How do children tell? The disclosure process in child sexual abuse. *Child Abuse and Neglect*, 20(9): 881-891.
- Briggs, F. (1997). The importance of schools and early childhood centres in child protection. *Journal of Child Centred Practice*, 4(1): 11-23.
- Briggs, F., & Hawkins, R. (1997). *Child protection: a guide for teachers and child care professionals*. St Leonards, NSW: Allen & Unwin.
- Briggs, F., & Heinrich, P. (1985). Student teachers view of child abuse. *Pivot*, 12(4): 41-44.
- 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.
- Cashmore, J. (2002) Mandatory reporting: Is it the culprit? Where is the evidence? *Developing Practice*, Winter: 9.
- 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 & D. Cohen (eds), *Developmental Psychopathology - Volume 2: Risk, Disorder, and Adaptation*. New York: John Wiley & Sons.
- Commonwealth Government (2003). *Consultation Paper: Towards the Development of a National Agenda for Early Childhood*. <[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)>.
- CREATE Foundation (2001) *Australian children and young people in care – education report card*.
- CREATE Foundation (2003) *Australian children and young people in care – education report card*.
- Crenshaw, W., Crenshaw, L. & Lichtenberg, J. (1995) When educators confront child abuse: An analysis of the decision to report. *Child Abuse and Neglect*, 19(9): 1095-1113.
- Criminal Justice Commission. (2000) *Safeguarding students: Minimising the risk of sexual misconduct by Education Queensland staff*. Brisbane: Criminal Justice Commission.
- David, T. (1993). *Child protection and early years teachers: Coping with child abuse*. Buckingham: Open University Press.
- David, T. (1994). *Working together for young children: Multiprofessionalism in action*. London: Routledge.
- Department of Education. (1989) Information Statement No.128: Suspected child abuse.

Education Office Gazette, 91(5).

- Department of Education. (1993) Departmental instructions: Suspected child abuse; Procedures for responding to allegations of physical/sexual abuse of students made against school staff; Sexual harassment policy and grievance procedures. *Education Office Gazette*, 95(8): 1-5.
- Education Queensland. (1998a) *Health and Safety HS – 17: Child protection*. Brisbane: Queensland Government.
- Education Queensland. (1998b) *Child Protection Training Package*. Brisbane: Queensland Government.
- Education Queensland. (1999) Dean Wells, Media statement. Copy on file with author.
- Finzi, R., Ram, A., Shnit, D., Har-Even, D., Tyano, S. & Weizman, A. (2001) Depressive symptoms and suicidality in physically abused children. *American Journal of Orthopsychiatry*, 71: 98-107.
- 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.
- Gross, A. & Keller, H. (1992) Long-term consequences of childhood physical and psychological maltreatment. *Aggressive Behaviour*, 18: 171-185.
- Hildyard, K. & Wolfe, D. (2002) Child neglect: developmental issues and outcomes. *Child Abuse and Neglect*, 26:679-695.
- Johnson, R., Kotch, J., Catellier, D., Winsor, J., Dufort, V., Hunter, W. & Amaya-Jackson, L. (2002) Adverse behavioural and emotional outcomes from child abuse and witnessed violence. *Child Maltreatment*, 7: 179-186.
- Kids First Foundation. (2003) *Report Into The Cost Of Child Abuse And Neglect In Australia*. http://www.kidsfirst.com.au/uploads/files/1069451734264_0.3701907869736339.pdf.
- Kinard, E. (1980) Mental health needs of abused children. *Child Welfare*, 59: 451-462.
- Kinard, E. (2001) Perceived and actual academic competence in maltreated children. *Child Abuse and Neglect*, 25: 33-45.
- Layton, R. (2003) *Child Protection Review Report: Our Best Investment: A State Plan to Protect and Advance the Interests of Children*. Adelaide, South Australian Government.
- Lowenthal, B. (2001) *Abuse and neglect: The educator's guide to the identification and prevention of child maltreatment*. Baltimore: Brookes.
- de Mause, L. (1974) The Evolution Of Childhood. In de Mause, L. (ed), *The History Of Childhood*. London: Bellew.
- Moeller, T., Bachmann, G. & Moeller, L. (1993) The combined effects of physical, sexual and emotional abuse during childhood: Long-term health consequences for women. *Child Abuse and Neglect*, 17: 623-640.
- Mullen, P., Martin, J., Anderson, J., Romans, S & Herbison, G. (1996) The long term impact of the physical, emotional, and sexual abuse of children: A community study. *Child Abuse and Neglect*, 20: 7-21.
- Mullen, P (1993) Childhood Sexual Abuse and Mental Health in Adult Life. *British Journal of Psychiatry*, 163: 721.
- National Crime Prevention. (1999) *Pathways to prevention: Developmental and early intervention approaches to crime in Australia*. Attorney-General's Department, Canberra.
- Newberger, J. (1997) Brain development research: A wonderful window of opportunity to build public support for early childhood education. *Young Children* 52: 4-9.
- New South Wales Commission for Children and Young People (2000). *New South Wales Interagency Guidelines for Child Protection Intervention* (3rd edition). Sydney: NSW

Government.

- Nurcombe, B., Wooding, S., Marrington, P., Bickman, L. & Roberts, G. (2000). Sexual Abuse II: Treatment. *Australian and New Zealand Journal of Psychiatry*, 34(1):92-7.
- O'Callaghan, P. & Briggs, F. (2003) *Report Of The Board Of Inquiry Into Past Handling Of Complaints Of Sexual Abuse In The Anglican Church Diocese Of Brisbane*.
- Odgers, R. (2003) 'School checks reveal growth in child abuse', *Courier-Mail*, 18 September.
- Romano, N., Casey, K., & Daro, D. (1990). *Schools and child abuse: A national survey of principals' attitudes, beliefs and practices*. Chicago: National Center on Child Abuse Prevention Research.
- Roy, A. (1999) Childhood trauma and depression in alcoholics: Relationship to hostility. *Journal of Affective Disorders*, 56: 215-218.
- Scott, D. & Swain, S. (2002) *Confronting Cruelty: Historical Perspectives on Child Protection in Australia*. Melbourne University Press, Melbourne.
- Shields, A. & Cicchetti, D. (1998) Reactive aggression among maltreated children: the contributions of attention and emotional dysregulation. *Journal of Clinical Child Psychology*, 27: 381-395.
- Stewart, A., Dennison, S. & Waterson, E. (2002) Pathways from child maltreatment to juvenile offending. *Trends and Issues in Crime and Criminal Justice*, No 85, Australian Institute of Criminology, Canberra.
- Summit, R (1983) The Child Sexual Abuse Accommodation Syndrome. *Child Abuse and Neglect*, 7: 177.
- Tite, R. (1993) How teachers define and respond to child abuse: The distinction between theoretical and reportable cases. *Child Abuse & Neglect*, 17(5): 591-603.
- Tomison, A. (2002) Mandatory reporting: a question of theory versus practice. *Developing Practice*, Winter: 13.
- Weatherburn, D. & Lind, B. (1998) Poverty, Parenting, Peers and Crime-Prone Neighbourhoods. *Trends and Issues in Crime and Criminal Justice*, No 85, Australian Institute of Criminology, Canberra.
- Welch, D. (2003) 'Teachers fear abuse witch-hunt', *The Australian*, 17 November.