

ROYAL COMMISSION CASE STUDY 51
COMMONWEALTH AND THE STATE AND TERRITORY
GOVERNMENTS

DAY 258, 8 MARCH 2017, SYDNEY

QUESTIONS ON NOTICE RE: REPORTABLE CONDUCT AND
MANDATORY REPORTING

**Mr Michael Hogan, Director-General, Department of Communities,
Child Safety and Disability Services (Child Safety).**

1. ***Are Youth Justice workers subject to mandatory reporting?*** -
[T26408: 32-38]

Response

- While there is no mandatory reporting obligation for youth justice workers to report to child safety under the Queensland *Child Protection Act 1999*, there are reporting obligations under the Queensland *Youth Justice Act 1992*.

Obligation to report under the *Youth Justice Act 1992*

- Under section 268 of Queensland's *Youth Justice Act 1992*, if a detention centre employee becomes aware, or reasonably suspects, that a child has suffered harm while detained in a detention centre, the employee must (unless they have a reasonable excuse) report the harm or suspected harm to the chief executive of the Department of Justice and Attorney-General.
- "Harm" is defined to be any detrimental effect of a significant nature on the child's physical, psychological or emotional well-being.

- Section 37 of the *Youth Justice Regulation 2016* prescribes the details required to be reported.
- The Department of Justice and Attorney General supports this legislative obligation by providing guidance to staff about how to report a suspicion of harm; and what actions to take following a report of harm, for example to refer the matter to the Queensland Police Service (QPS).
- Section 39 of the *Youth Justice Regulation 2016* also stipulates Youth Justice reporting obligations with the Public Guardian each quarter.

Provisions about disclosing information (including confidential information) under the *Youth Justice Act 1992*

- Section 292 of the *Youth Justice 1992* provides that the chief executive of the Department of Justice and Attorney-General may give written authority to a person to disclose confidential information if the chief executive is satisfied the disclosure is necessary to ensure a person's safety.
- Section 297A of the *Youth Justice Act 1992* and section 189A of the *Child Protection Act 1999* allows the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services to make arrangements to share information (including confidential information) relating to a child or young person gained in the administration of the *Youth Justice Act 1992* or *Child Protection Act 1999*.
- These provisions support Youth Justice and Child Safety to share child protection information to maximise outcomes in the best interests of young people.

2. Are you able to help us whether that guide contains simple words as to what actually is needed before a mandated reporter satisfies their obligations?

[T26411: 21-23]

Response:

- Deciding whether to report a child protection concern about a child to Child Safety can be a difficult decision, even for experienced professionals and practitioners. Challenges include identifying whether a concern is in fact a child protection concern, including whether the child has suffered significant harm, or is at risk of suffering significant harm, and whether they may have a parent who is able and willing to protect them from the harm.
- In response to increasing numbers of reports to Child Safety which did not meet the threshold for statutory investigation and intervention, the Department of Communities, Child Safety and Disability Services (DCCSDS) developed the Queensland Child Protection Guide (the guide) which is an online interactive tool that guides decision making.
- The purpose of the guide is to assist people with a concern about a child, including professionals and mandatory reporters, to identify and consider the things they have observed that have led to their concerns about a child and to decide whether a report to Child Safety should be made. The guide may also suggest other action that should be considered, such as a report being made to police, or a referral of a vulnerable family to an appropriate non-government support service. The guide also recognises that many professionals may have ongoing contact with the child and their family.

- The use of the guide is not mandatory. For example, a person with a serious concern about a child can contact Child Safety immediately. There are no impediments to mandatory reporters, or any other person in Queensland, making a report to Child Safety about any concern at any time. For example, where a principal of a school has identified concerns about suspected sexual abuse of a child within a family, the principal is not required to first use the guide before making an immediate report to Child Safety and police.
- Using the guide does not itself discharge a mandatory reporter of their legislative obligations. That obligation is met when a report is made to Child Safety according to the provisions in the *Child Protection Act 1999*. Individual agencies, that is the Queensland Police Service, the Department of Education and Training and the non-state school sector, and the Department of Health have policies and procedures in place which guide mandatory reporting to Child Safety.
- The guide is the product of collaborative work with government and non-government sector partners over a 12 month period. It was developed with principals, teachers, nurses and doctors. The design process included facilitated workshops with potential users to ensure it was user-friendly and effective. The aim of the guide was to support improved understanding and skills about the role of Child Safety and the identification of child protection concerns over time and was implemented to support the operation of child protection reporting requirements in the *Child Protection Act 1999*. The guide has been reviewed and updated several times.
- The guide also aligns with other legislative and policy requirements in Queensland. For example, it includes guidance

when suspected sexual abuse of a child should be reported to police by school personnel under the Education (General Provisions) Act 2006.

- The guide includes a comprehensive explanation instructing people to select a decision tree which most closely matches the concerns they have, starting with the most serious concern. A professional selects "yes" or "no" to a series of questions until a final recommendation is reached. The decision summary is generated, supported by an explanation of the outcome.
- The guide has very clear explanations throughout each decision tree (positioned to the side of the screen) to assist people to make appropriate choices.
- The guide contains simple explanations of types of neglect (for example, supervision, nutrition, medical care, hygiene), sexual harm, and types of physical harm.
- Most professional reporters have child protection professionals within their organisations who are able to assist them use the guide and make a decision about whether to report a concern about a child to Child Safety. For example, Queensland Health has Child Protection Liaison Officers within hospitals who assist other professionals working within a hospital. The role of these officers includes frequently liaising with Child Safety and seeking clarification as required. Similarly, the Department of Education and Training and Catholic Education have Student Liaison Officers.
- Since the guide was developed in 2012, the Queensland Government has invested in enhanced secondary Family and Child Connect services across the state to better respond to the early

needs of families. The guide may direct professionals to Family and Child Connect on 13FAMILY (133264) in addition to Child Safety for further advice on using the guide, particularly if they are first time users.

- Child Safety also encourages professionals who have a concern about a child to always seek advice in the event they are unable to make an adequate decision after using the Child Protection Reporting Guide.

The Child Protection Reporting Guide can be found at:

<https://www.communities.qld.gov.au/childsafety/partners/our-government-partners/queensland-child-protection-guide>

3. Was Queensland represented on the 2009 committee or subcommittee that was overseeing the development of the minimum data set by the Australian institution of Health and Welfare?

[T26449: 11-24]

Response:

- Yes, Queensland was represented in 2009 on the National Minimum Data Set Unit Record File National Working Party.

4. Is it the case that before 2009 Queensland didn't report on sexual abuse in out-of-home care?

[T26449: 39-46]

Response:

- Queensland commenced regular public reporting of abuse in care data post the 2003 Crime and Misconduct Commission Inquiry into the abuse of children in foster care.
- Annual public reporting on abuse in care commenced in Queensland in 2004. This included reporting on individual harm types including sexual abuse.
- Quarterly public reporting on abuse in care commenced in Queensland in 2007 with the launch of the *Our Performance* website. The Our Performance website can be found at: <https://www.communities.qld.gov.au/childsafety/about-us/our-performance>

5. What has Queensland done since 2009 to date?

[T26450: 1-4]

Response:

Since 2009

- In November 2011, Queensland, as part of the national Protection and Support Services Working Group (PSSWG), agreed to revise the counting rules for the safety in out-of-home care indicator so that it measures the number of children in out-of-home care who were the subject of a substantiation (as distinct from the number of children who were in out-of-home care who were the subject of a substantiation *and the person believed responsible was living in the household*).
- The PSSWG agreed that the proposed amendment to the counting rules was conceptually more straightforward than the current approach and might therefore improve the quality and comparability of these data.
- In 2012, Queensland participated in a trial to pilot this revised national counting rule for abuse in out-of-home care. This pilot eventually led to the two national measures currently reported.
- In January 2013, the Report of Government Services (RoGS) was released which reported the pilot measure for the first time, in addition to the current measure. This was the first time that two measures were used to report the safety of children in out-of-home care. Queensland reported on both measures in this RoGS, and has done so each year since. Queensland's data is the same in both tables due to Queensland's standards of care policy framework, whereby a carer can be held responsible for harm to a child even if they were not the direct perpetrator.

- In March 2016, the CPYJWG including Queensland, identified issues with the comparability and completeness of data for the safety in OOHC measures. This indicator remains an item for review as part of improving the data comparability and completeness of RoGS data.

Current reporting

- Queensland has been an active participant in working with other jurisdictions and the Productivity Commission to improve reporting in this area.
- Queensland continues to participate in two key national working groups:
 - the Children and Families Data Network and
 - the Child Protection and Youth Justice Working Group (CPYJWG).
- Currently Queensland reports quarterly, on the Our Performance website, on the full spectrum of standards for children in care. This includes total number of standard of care reviews (this is, where there is a potential breach of the standards of care, but no indication the child has been harmed), standard of care notifications (that is, where there is potential harm of a child which requires a full investigation) and standard of care substantiations (that is, where the harm has been substantiated).
- In recognition that current reporting is limited to those children in custody/guardianship and in an out of home care placement, Queensland is exploring the extension of reporting to all children in contact with Child Safety (that is, not just those in custody/guardianship) and across all living arrangements including youth detention, boarding schools, supported independent living, and hospitals. Work currently being undertaken is focused on the technical feasibility of expanding reporting with the existing information system.

- Queensland will also look for opportunities with any new information system to enhance our future reporting regarding the safety of children in care.
- Queensland continues to advocate that safety in OOHC measures is and should remain a priority, particularly in regards to improving data comparability.

6. Have the eight elements around risk management strategy been amended since 2005?

[T26464: 28-31]

Response

- The eight standards are unchanged since their legislative introduction in 2005.

7. Do you know whether anyone in the [Queensland] government or the departments you know has published the results of the monitoring [of risk management strategies]?

[T26465: 8-13]

Response

Monitoring of child and youth risk management strategy

- Blue Card Services (BCS) does not publish the results of the monitoring of risk management strategies.
- However, BCS has a legislative function to audit and monitor the compliance of individuals and organisations with their blue card system obligations. This includes ensuring that organisations regulated by the blue card system have developed and implemented a child and youth risk management strategy that meets the eight minimum requirements.
- BCS takes an educative approach to compliance activities in this area, working with organisations to provide information regarding their obligations. For example, one of the risk management requirements is that an organisation maintains a register of its blue card holders. So the compliance approach in this example is to request the organisation provide a copy of their risk management strategy or a copy of their employee register.
- BCS has no legislative power to compel organisations to provide documents. Enhanced compliance powers are being considered as part of the Queensland Family and Child Commission's (QFCC) broader review of the blue card system.
- If an organisation supplies its risk management strategy to BCS, BCS will review it and provide feedback to the organisation to strengthen their strategy. BCS does not endorse, ratify or approve

risk management strategies. The onus remains on the organisation to ensure its risk management is appropriate and compliant.

- If BCS identifies that a breach of the blue card legislation has occurred, then this information may be referred to QPS for investigation and possible prosecution.
- Since 2011, BCS has referred approximately 26 individuals to QPS for the possible breach of the requirement to have a risk management strategy in place.
- The statistics relating to compliance activities undertaken by BCS below relate to the last two full financial years.

	2014-2015	2015-2016
Number of organisations' risk management strategies assessed and feedback provided	84	81
Number of organisations' employee registers checked	108	238
Number of individuals employed by organisations checked for blue card status	17,154	35,554

- In deciding which organisations to audit, BCS targets high risk organisations such as family day care centres and private teaching or tutoring businesses and organisations which have been the subject of a complaint.

Whether results of monitoring are published

- Information regarding BCS's compliance activities is published through BCS's annual reports and other government reporting as required.

- BCS does not publish specific details of particular organisations and their compliance with blue card system obligations.
- The Queensland Family & Child Commission's *Recommendation 28 Supplementary Review: a report on information sharing to enhance the safety of children in regulated home-based services*, released on 20 February 2017 and available on their website made a range of recommendations to government, including that BCS better classify and share blue card data and report publicly about trends and patterns identified. The Government accepted all of the recommendations made in the report and is considering how best to implement this particular recommendation.
- One of the mandatory requirements of a child and youth risk management strategy is for an organisation to develop and implement strategies for communication and support so that all their stakeholders (e.g. staff, volunteers, parents and children participating in the services) are aware of their policies and procedures.
- As part of this strategy, organisations may publish their policies and procedures on their websites.