



AN INTRODUCTION TO CHILD PROTECTION

Grace Lawson¹

1. This paper provides a broad overview of child protection laws in Queensland, with a focus on the following areas:
 - the National Framework;
 - notifying and reporting;
 - children and young person's rights;
 - parent's rights; and
 - the role of the Department of Child Safety.
2. This paper will also briefly discuss the *Child Protection Reform Amendment Bill 2014* ("the Bill") and the proposed changes to the current child protection laws.

Are child protection laws necessary?

3. Parents have the primary responsibility for the safety and welfare of their children. They have statutory responsibilities which include maintaining their children, providing them with necessities of life such as food, clothing and medical treatment, and ensuring that they attend school.² When parents refuse, neglect, or fail to maintain their children, the government will intervene under relevant child protection laws.³ Child protection is, in these circumstances, the responsibility of the State.

¹ Grace Lawson is a Barrister and Mediator at the private bar in Brisbane; www.romamitchellchambers.com.au/barristers/glaw/glaw.html
Liability limited by a scheme approved under professional standards legislation.
©Grace Lawson, 2014.

² See for example s 66C of the *Family Law Act 1975* (Cth), ss 285 and 286 of the *Criminal Code Act 1899* (Qld), and s 176 of the *Education (General Provisions) Act 2006* (Qld), in *The Queensland Law Handbook*, 12th ed. 2013/2014, Caxton Legal Centre, p. 255.

³ *The Queensland Law Handbook*, 12th ed. 2013/2014, Caxton Legal Centre, p. 255.

4. Media reports of children being abused or dying as a result of abuse, whether in their homes, at school, or while in the care of other adults, are not uncommon in Australia. They continue to shock our community. People react strongly to such reports, with some forming opinions and judgments about who was to blame and who failed to protect these children. Most frequently the blame falls on the parents or the Child Safety Department (“the Department”) for failing to identify or adequately protect children at risk.⁴

5. In 1990 the Australian Institute of Health and Welfare has commenced gathering and compiling annual national figures relating to child protection. The most recent figures indicate that, in Australia, in the years 2011-2012:
 - 252,962 notifications of suspected child abuse and neglect were made;
 - this is a rate of 34 notifications per 1,000 children;
 - it is an increase of 6.6% from the previous year;
 - 116,528 reports were investigated;
 - 106,754 investigations were finalised;
 - 48,420 notifications were substantiated;
 - 40,962 children were subject to court orders;
 - 39,621 children were placed in out of home care; and
 - the number of children placed doubled in last decade.⁵

6. During that year, and of the 48,420 notifications which were substantiated, the abuse constituted:
 - 17,629 emotional abuse cases;
 - 14,984 neglect cases;
 - 9,927 physical abuse cases; and
 - 5,828 sexual abuse cases.⁶

⁴ See for example Petersen, F. “*Rates of abused and neglected children on the rise in Australia: report*”, ABC News, Updated Fri 25 Oct 2013. Accessed 18 April 2014. www.abc.net.au/news/2013-09-19/child-abuse-children-safety-neglect-video/4968066

⁵ *Child abuse and neglect statistics*, Australian Institute of Family Studies, May 2013. Accessed 18 April 2014. www.aifs.gov.au/cfca/pubs/factsheets/a142086/index.html, p. 2. See also Appendix A on page 19, Appendix B on page 20, and Appendix C on page 22 of this paper.

⁶ *Child abuse and neglect statistics*, *ibid*, pp. 2-3.

7. Evidently, substantial numbers of children and their families come to the attention of child safety departments. There is, it is anticipated, a greater number of children either abused or neglected, or at risk of abuse or neglect, that is not reported. These statistics do not, therefore, tell us exactly how many children in the community are affected.⁷ Although majority of those incidents that were reported were unsubstantiated, the number of children who were found to have been abused and placed in out of home care is alarming.
8. In response to the statistics compiled by the Australian Institute of Family Studies the Commonwealth Government determined that changes needed to be made to protect Australia's children. As a result, the National Framework for Protecting Australia's Children 2009-2020 was issued in 2009 ("the National Framework").⁸

The National Framework

9. The National Framework is a long term approach to ensuring the safety and wellbeing of children, and aims to deliver a substantial and sustained reduction in the levels of child abuse and neglect.
10. It aims to address and resolve the differences across state and territory jurisdictions, and to provide a national agenda for managing child protection issues in Australia. Although no nationally consistent legislation has been, or is intended to be introduced, the National Framework aims to implement policies and practices which are to be applied at a state and territory level over three year action plans.
11. There are six supporting outcomes of the National Framework. They are:
 - that children live in safe and supportive families and communities;
 - that children and families access adequate support to promote safety;
 - that risk factors for child abuse and neglect be addressed;
 - that children who have been abused or neglected receive the support and care they need for their safety and wellbeing;

⁷ Ibid, p. 8.

⁸ An initiative of the Council of Australian Governments (2009) *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020*, Commonwealth of Australia. Accessed 15 April 2014. http://www.dss.gov.au/sites/default/files/documents/child_protection_framework.pdf

- that Indigenous children are supported and safe in their families and communities; and
- that child sexual abuse and exploitation is prevented and survivors receive adequate support.

12. The primary objective of the National Framework is to prevent child abuse and neglect from occurring in the first place.⁹ It recognises that the governments must move from seeing child protection as a response mechanism to one of prevention of child abuse, and promotion of safety and wellbeing of children. It therefore sets out strategies to address the support that families in need may require, recognising that some parents simply lack the capacity to meet their obligation to care for their children. Providing them with the necessary support to meet their obligation is a better alternative to the intervention of the Department.¹⁰

13. Further, under the National Framework, “protecting children is everyone’s responsibility”.¹¹ Parents, families, communities, non government organisations, the business and corporate sector, local governments, state and territory governments, and the Australian Government all have a role to play in protecting Australia’s children.

For example, it is suggested that:

- parents and families care for and protect their children and engage in decision making that has an impact on them and their children;
- children and young people participate in decisions affecting them;
- communities support and protect all their members, and support families to raise their children, particularly vulnerable families;
- non government organisations deliver services, contribute to the development of policy, and actively promote child safety, protection, rights and wellbeing;
- the business and corporate sector support parents to raise their children through family friendly policies, support programs and initiatives including direct financial assistance and pro bono activities;
- local governments deliver a range of services to vulnerable families, including youth and family centres and local infrastructure;

⁹ Ibid, p. 6.

¹⁰ Ibid.

¹¹ Ibid, p. 12.

- state and territory governments deliver a range of universal services and early intervention initiatives to prevent child abuse and neglect, fund and coordinate services by the non government sector, and continue to be responsible for the statutory child protection systems, including the support provided to children and young people in out of home care; and
- the Australian Government deliver universal support and services to help families raise their children, along with a range of targeted early intervention services.¹²

14. The first three year action plan of the National Framework was completed in 2012. The second action plan is now in place, to be evaluated at the end of 2015. Some of the most recent achievements under the National Framework include the appointment of Australia’s first National Children’s Commissioner, and the launch of the Family Support Program, Medicare Locals, and the Australian Government’s Grow Up Smiling program.¹³ The Annual Reports and Progress Reports provided to the Council of Australian Governments outline other achievements and future initiatives under the National Framework.

15. As the National Framework continues to be implemented nationwide, child protection legislation at the state and territory level remains a significant part of addressing child protection issues.

Child protection legislation

16. The primary legislative instrument addressing child protection in Queensland is the *Child Protection Act 1999* (Qld) (“CPA”). The other related Acts include:

- *Commission for Children and Young People and Child Guardian Act 2000* (Qld);
- *Education (General Provisions) Act 2006* (Qld);
- *Public Health Act 2005* (Qld);
- *Adoption of Children Act 1964* (Qld); and
- *Family Law Act 1975* (Cth).

¹² Ibid.

¹³ National Framework for Protecting Australia’s Children Newsletter, August 2013 – Issue 5, pp 2-3. Accessed 18 April 2014. <http://us2.campaign-archive2.com/?u=fd899ebe99e7a7ab04a1b1231&id=a05d086be5>

17. The purpose of the CPA is to ensure the protection of children.¹⁴ The main principle for administering the CPA is that the safety, wellbeing and best interests of a child are paramount.

18. Section 5A of the CPA reads:

5A Paramount principle

The main principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.

Example—

If the chief executive is making a decision under this Act about a child where there is a conflict between the child's safety, wellbeing and best interests, and the interests of an adult caring for the child, the conflict must be resolved in favour of the child's safety, wellbeing and best interests.

19. Other general principles for ensuring the safety, wellbeing and best interests of a child are contained in s 5B of the CPA. These include:

- (a) *a child has a right to be protected from harm or risk of harm;*
- (b) *a child's family has the primary responsibility for the child's upbringing, protection and development;*
- (c) *the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family;*
- (d) *if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child;*
- (e) *in protecting a child, the State should only take action that is warranted in the circumstances;*
- (f) *if a child is removed from the child's family, support should be given to the child and the child's family for the purpose of allowing the child to return to the child's family if the return is in the child's best interests;*
- (g) *if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care;*
- (h) *if a child is removed from the child's family, consideration should be given to placing the child, as a first option, in the care of kin;*
- (i) *if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible;*
- (j) *a child should only be placed in the care of a parent or other person who has the capacity and is willing to care for the child (including a parent or other person with capacity to care for the child with assistance or support);*
- (k) *a child should have stable living arrangements, including arrangements that provide (i) for a stable connection with the child's family and community, to the extent that is in the child's best interests; and (ii) for the child's developmental, educational, emotional, health, intellectual and physical needs to be met;*

¹⁴ s 4.

- (l) *a child should be able to maintain relationships with the child's parents and kin, if it is appropriate for the child;*
- (m) *a child should be able to know, explore and maintain the child's identity and values, including their cultural, ethnic and religious identity and values; and*
- (n) *a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.*

20. Additional principles for Aboriginal and Torres Strait Islander children are contained in s 5C of the CPA, which reads:

5C Additional principles for Aboriginal or Torres Strait Islander children

The following additional principles apply in relation to an Aboriginal or Torres Strait Islander child—

- (a) *the child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language and community;*
- (b) *the long-term effect of a decision on the child's identity and connection with their family and community should be taken into account.*

21. Section 9 of the CPA specifies that:

- (1) **Harm**, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.
- (2) It is immaterial how the harm is caused.
- (3) Harm can be caused by—
 - (a) physical, psychological or emotional abuse or neglect; or
 - (b) sexual abuse or exploitation.
- (4) Harm can be caused by—
 - (a) a single act, omission or circumstance; or
 - (b) a series or combination of acts, omissions or circumstances.

22. Section 10 of the CPA currently states that:¹⁵

A child in need of protection is a child who—

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

23. Pursuant to s 14 of the CPA, if the chief executive becomes aware of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need of protection, an authorised officer is to investigate the allegation immediately and assess the child's need of protection.

24. Some of the action that may be taken by the chief executive under the CPA includes:

¹⁵ Changes to s 10 have been proposed by the Bill and will be discussed in the latter part of this paper.

- taking a child that is at immediate risk into custody (ss 18-20);
- moving the child to a safe place (s 21);
- applying for a temporary assessment order (ss 25-36);
- applying for a court assessment order (ss 39-51);
- applying for a temporary custody order (ss 51AC-51AM);
- developing a case plan and holding family group meetings (Part 3A);
- intervening with the parent's consent (Part 3B); and
- applying for a child protection order (ss 54-65).

25. The CPA also makes provisions about notifying and reporting child abuse, and the rights of the child and the parents when the Department becomes involved after a notification or report is made. These will be briefly discussed next.

Notifying and reporting

26. The current provisions of the CPA state that any person who acts honestly may notify the Department that they suspect that a child has been, is being, or is likely to be, harmed, including an unborn child.

27. There are, however, some occupations that have a statutory obligation to make a notification or report. This is referred to as mandatory reporting. In Queensland, the following relevant groups are subject to mandatory reporting:

- a medical practitioner or a registered nurse must report an awareness or reasonable suspicion of harm or risk of harm during the practice of their profession;¹⁶
- school staff must report an awareness or reasonable suspicion that a child has been or is likely to be sexually abused, if the suspicion is formed in the course of the person's employment;¹⁷
- an authorised officer or employee of the Department, or a person employed in a departmental care service or licensed care service must report an awareness or reasonable suspicion of harm caused to a child who is placed in the care of a

¹⁶ ss 191-192 and 158 of the *Public Health Act 2005* (Qld).

¹⁷ ss 364, 365, 365A, 366 and 366A of the *Education (General Provisions) Act 2006* (Qld).

service or a licensee, whether it includes physical abuse, sexual abuse or exploitation, emotional/psychological abuse, or neglect;¹⁸ and

- all personnel from the Family Court and the Federal Circuit Court of Australia, including registrars, family counsellors, and independent children lawyers, when in the course of performing duties or functions, or exercising powers, have reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.¹⁹

28. The *Queensland Child Protection Commission of Inquiry* (“the Commission”) established by the Queensland Government in 2012 provided its final report, *Taking Responsibility; A Roadmap for Queensland Child Protection*. The Commission noted the inconsistency in what the relevant groups must report. It also noted that mandatory reporting comprised approximately 60% of all reports to the Department. It raised concern that majority of these did not reach the threshold required for child safety officers to take action and resulted in mounting workload pressures. This potentially resulted in children who were in need of protection being missed. The Commission therefore recommended changes to the mandatory reporting system, not only with respect to creating consistency in mandatory reporting, but also clarifying the threshold for reporting.²⁰ These changes will be discussed in the latter part of this paper.

29. Persons notifying or providing information about alleged harm or risk of harm to a child is protected from liability civilly, criminally or under an administrative process, by virtue of s 22 of the CPA. The person cannot be held to have breached any code of professional etiquette or ethics, or departed from accepted standards of professional conduct for making the notification or providing the information. In a proceeding for defamation the person has a defence of absolute privilege for publishing the

¹⁸ ss 9 and 148 of the *Child Protection Act 1999* (Qld).

¹⁹ s 67ZA of the *Family Law Act 1975* (Cth).

²⁰ Queensland Child Protection Commission of Inquiry (2013) *Taking Responsibility: A Roadmap for Queensland Child Protection*, Queensland Government, pp. 83-108. Accessed 18 April 2014.

http://www.childprotectioninquiry.qld.gov.au/data/assets/pdf_file/0017/202625/QCPCI-FINAL-REPORT-web-version.pdf

information.²¹ Note, however, the prohibition of publication of information leading to the identity of the children.²²

30. The CPA, as in all other jurisdictions, protects the person making the report from liability, and protects their identity from disclosure. Penalties apply for any person who inappropriately discloses the identity of the notifier.²³

Children's and young person's rights

31. Australia is a signatory to the United Nations Convention on the Rights of the Child (“the Convention”), and therefore has a responsibility to protect children, to provide them with the necessary services for them to develop and achieve positive outcomes, and to recognise the child's or young person's right to participate in decision making about their own life.

32. The principles of the Convention are embodied in 54 articles. The relevant principles have been adopted in the Charter of rights for a child in care, in Schedule 1 of the CPA. The Charter reads as follows:

Because—

The Parliament recognises the State has responsibilities for a child in need of protection who is in the custody or under the guardianship of the chief executive under this Act,

this Act establishes the following rights for the child—

- (a) *to be provided with a safe and stable living environment;*
- (b) *to be placed in care that best meets the child's needs and is most culturally appropriate;*
- (c) *to maintain relationships with the child's family and community;*
- (d) *to be consulted about, and to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about where the child is living, contact with the child's family and the child's health and schooling;*
- (e) *to be given information about decisions and plans concerning the child's future and personal history, having regard to the child's age or ability to understand;*
- (f) *to privacy, including, for example, in relation to the child's personal information;*
- (g) *if the child is under the long-term guardianship of the chief executive, to regular review of the child's care arrangements;*
- (h) *to have access to dental, medical and therapeutic services, necessary to meet the child's needs;*

²¹ See also s 159Q with respect to protection from liability for giving information in compliance with chapter 5A of the CPA.

²² CPA, s 189.

²³ CPA, s 186.

- (i) to have access to education appropriate to the child's age and development;
- (j) to have access to job training opportunities and help in finding appropriate employment;
- (k) to receive appropriate help with the transition from being a child in care to independence, including, for example, help about housing, access to income support and training and education.

33. Section 74 of the CPA provides that:

Charter of rights for a child in care

- (1) This section applies if the chief executive—
 - (a) has custody or guardianship of a child under a child protection order; or
 - (b) has custody of a child under a care agreement.
- (2) As far as reasonably practicable, the chief executive must ensure the charter of rights for a child in care in schedule 1 is complied with in relation to the child.
- (3) Subsection (2) does not limit another provision of this Act.
- (4) The chief executive must ensure the child—
 - (a) is told about the charter of rights and its effect; and
 - (b) is given written information about the charter of rights unless, having regard to the child's age or ability to understand, the chief executive reasonably believes the child would not be able to understand the information; and
 - (c) is told about the Commission for Children and Young People and Child Guardian and other entities known to the chief executive that can help the child if the child considers that the charter of rights is not being complied with in relation to the child.

34. Other rights of the child under the CPA include:

- the chief executive is to exercise its power under the CPA in a way that is open, fair and respectful of the rights of the child;²⁴
- the views of the child should be sought and taken into account before a decision is made to the extent that it is appropriate;²⁵
- help is to be provided if necessary to help the child participate or understand the decision making process;²⁶
- the child has a right to independent legal advice, separate legal representation, or support of another person;²⁷
- the sharing of information by officers should only be to the extent necessary and in a way that protects the child's privacy;²⁸

²⁴ s 5D(1)(a).

²⁵ s 5D(1)(b); see also ss 5E, 59(1)(d), and 83A(4) with respect to taking into account the child's wishes when being placed in out of home care.

²⁶ s 5D(1)(c).

²⁷ s 5D(1)(d); see also s 108.

²⁸ s 5D(1)(e).

- the child must be told about any order made, to the extent appropriate;²⁹
- specific information is to be provided to the child, to the extent appropriate, before the child is placed in out of home care;³⁰
- the child must not be compelled to give evidence in tribunal proceedings, but may if they are willing;³¹
- if the child is giving evidence before a tribunal they are not to be cross-examined and there is a limit on who may ask the child questions;³²
- the child cannot be compelled to give evidence before the Children’s Court without leave of the Court;³³
- specific provisions have been enacted to protect the child’s confidentiality;³⁴ and
- when a child is placed in out of home care the Statement of Standards of care must be met.³⁵

Parent’s rights

35. Parents have the primary responsibility for the safety and wellbeing of their children. They have autonomy in making short term and long term decisions that affect their children’s lives, as long as those decisions do not cause or pose a risk of harm to the child. To an extent, therefore, the law allows parents to bring up their children according to their own values and beliefs. Subject to this qualification, it is therefore a right for a parent to bring up their children as they see fit.

36. When the Department substantiates a notification and takes action pursuant to the CPA, parent’s rights to bring up their children as they see fit are affected. This is particularly when the children are placed in custody or in out of home care.

37. Under these circumstances parents are afforded with other rights provided for in the CPA. The Department advises parents of the following rights:

²⁹ ss 32(1)(b) and 51AK(2)(b).

³⁰ s 83A(1)(b) and (c).

³¹ s 99T.

³² s 99W.

³³ s 112. Leave will be granted if the child is at least 12 years old, represented by a lawyer, and agrees to give the evidence.

³⁴ ss 99ZD-99ZG.

³⁵ s 122.

- the right to seek independent legal advice at any stage of the Department's intervention;
- the right to be told about allegations of harm and the outcome of assessments;
- the right to participate in decision making;
- the right to privacy and confidentiality; and
- the right to access documents the Department holds about them through the Right to Information.³⁶

38. These rights are further articulated in the CPA as follows:

- the chief executive is to exercise its power under the CPA in a way that is open, fair and respectful of the rights of the parent;³⁷
- the views of the parent should be sought and taken into account before a decision is made to the extent that it is appropriate;³⁸
- help is to be provided if necessary to help the parent participate or understand the decision making process;³⁹
- a right to independent legal advice, separate legal representation, or support of another person;⁴⁰
- a right to be told about allegations of harm and the outcome of investigations;⁴¹
- reasonable steps must be taken to obtain the parent's consent prior to the seeking of a temporary assessment order,⁴² and, if made, an explanation of the order must be given to the parents, including information about appealing the order;⁴³
- parents must be provided with a copy of any order made, and a written notice explaining the terms and effect of the order, that it may be appealed, how much time they have to appeal, and how to appeal;⁴⁴ and
- specific information is to be provided to the parents when an assessment order is made and the child is taken into the custody of the chief executive.⁴⁵

The role of the Department

³⁶ Located on the Department's website. Accessed 18 April 2014. <http://www.communities.qld.gov.au/childsafety>.

³⁷ s 5D(1)(a).

³⁸ s 5D(1)(b).

³⁹ s 5D(1)(c).

⁴⁰ s 5D(1)(d); see also s 108.

⁴¹ s 15.

⁴² s 27.

⁴³ s 32.

⁴⁴ ss 48 and 51AK.

⁴⁵ s 85.

39. The Department of Child Safety, under the umbrella of the Department of Communities, Child Safety and Disability Services, provides information to the public about reporting child abuse, protecting children from harm, and prevention and early intervention.
40. When a person contacts the Department the child safety officers determine whether a report or a notification should be made. If the information provided does not reach the threshold for a notification, a Child Concern Report is made, and the notifier is provided with advice or a referral to another agency to assist the child and the family. If, however, the information provided suggests that a child has been harmed, or is at risk of harm, and does not have a parent willing and able to protect the child from harm, a Child Protection Notification is made. An investigation and assessment are then conducted by interviewing the child, the family, and if necessary the significant others such as teachers, doctors, or relatives. The Police Department may be contacted. Once the investigation and assessment are completed, the child safety officers determine what action to take, pursuant to the CPA provisions.⁴⁶
41. Where the child is under the age of 12, and a parent or other member of the child's family is not present and cannot be located, but the circumstances are such that the child does not need to be taken into custody for protection, the child is moved to a safe place where they can remain until they return to the care of the parents or a family member.⁴⁷
- A safe place can be:
- the home of a neighbour who knows the child and parents;
 - the home of a relative or friend;
 - the child's family day care provider;
 - a hospital;
 - an approved foster placement;
 - a child safety service centre; or
 - a police station.⁴⁸
42. The Department may also take any of the action described in Paragraph 24 above. As part of their ongoing intervention the Department provides support services, which

⁴⁶ See the Department's website at <http://www.communities.qld.gov.au/childsafety>. See also paragraph 24 of this paper which outlines some of the action that the Department may take.

⁴⁷ CPA, s 21.

⁴⁸ Ibid.

includes preventative support to children, young people and their families to reduce the likelihood of harm to a child, unborn child or young person.

The Child Protection Reform Amendment Bill 2014

43. On 20 March 2014, the *Child Protection Reform Amendment Bill 2014* was introduced into the Legislative Assembly. The Bill, along with other related bills⁴⁹ is part of the Queensland Government's response to recommendations of the Queensland Child Protection Commission of Inquiry ("the Commission"). The Commission was tasked with reviewing the entire child protection system in the State and to chart a new roadmap for child protection for the next decade. The Commission issued its final report, *Taking Responsibility: A Roadmap for Queensland Child Protection*,⁵⁰ referred to earlier, in July 2013.

44. The Government accepted 115 of the 121 recommendations of the Commission, and the remaining 6 in principle. The primary recommendations relate to the review and improvement of:

- (a) the child death review process;
- (b) the child protection system;
- (c) mandatory reporting requirements into the *Child Protection Act 1999*;
- (d) the administration of working with children checks; and
- (e) the administration of the Children's Court.

45. The proposed changes will amend parts of the CPA and other related Acts.⁵¹ The changes may be summarised as follows:

- the definition of a child in need of protection is to be clarified to meet the threshold for child protection intervention;

⁴⁹ The other related bills include the *Public Guardian Bill 2014* and the *Family and Child Commission Bill 2014*.

⁵⁰ Accessed 15 April 2014. http://www.childprotectioninquiry.qld.gov.au/data/assets/pdf_file/0017/202625/QCPCI-FINAL-REPORT-web-version.pdf

⁵¹ The Bill also amends parts of the *Childrens Court Act 1992*, the *Commission for Children and Young People and Child Guardian Act 2000* (including changing the name of the Act), the *Magistrates Act 1991*, the *Ombudsman Act 2001*, and the *Public Health Act 2005*.

- mandatory reporting requirements are to be consolidated and the amendments are to clarify when a report must be made to the Department;
- a new child death case review process is to be implemented;
- changes to information sharing are to be introduced to allow other prescribed entities to share relevant information about children and families, to help prevent problems from escalating to a point that requires intervention;
- changes to the administration of blue cards are to be made;
- amendments whereby child protection system complaints are investigated by the relevant department with oversight by the Ombudsman are to be implemented;
- and
- the Childrens Court processes are to be improved.

46. The more significant changes include the amendment to the definition of a child in need of protection and to the mandatory reporting requirements.

47. It is proposed that s 10 of the CPA be amended to read:

*A **child in need of protection** is a child who—*

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

48. It is proposed that inserting the word “significant” will address the current problems of the child protection system being under pressure from a significant number of reports which do not meet the threshold for intervention. This is also in line with the principle that parents are responsible for their children’s safety and wellbeing and the Department should become involved as a last resort.

49. It is also proposed that a new part 1AA be inserted clarifying and consolidating mandatory reporting. It is proposed that the following sections be inserted into the CPA:

13A Action by persons generally

(1) Any person may inform the chief executive if the person reasonably suspects—

- (a) a child may be in need of protection; or*
- (b) an unborn child may be in need of protection after he or she is born.*

(2) The information given may include anything the person considers relevant to the person’s suspicion.

13B Action by relevant persons under other provisions

- (1) Under division 2, if a relevant person has a reportable suspicion about a child, the person is required to report the matter to the chief executive.
- (2) If a relevant person does not have a reportable suspicion about a child but considers the child is likely to become a child in need of protection if no preventative support is given, the person may take other appropriate action under this Act.
- (3) For example, if the relevant person is a prescribed entity to which section 159M applies, the person may give information under that section to a service provider so the service provider can offer help and support to the child or child's family to stop the child becoming a child in need of protection.

13C Considerations when forming a reasonable suspicion about harm to a child

- (1) This section applies to a person in forming a reasonable suspicion, for section 13A(1) or division 2, about whether a child has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm.
- (2) The matters that the person may consider include—
 - (a) whether there are detrimental effects on the child's body or the child's psychological or emotional state—
 - (i) that are evident to the person; or
 - (ii) that the person considers are likely to become evident in the future; and
 - (b) in relation to any detrimental effects mentioned in paragraph (a)—
 - (i) their nature and severity; and
 - (ii) the likelihood that they will continue; and
 - (c) the child's age.
- (3) The person's consideration may be informed by an observation of the child, other knowledge about the child or any other relevant knowledge, training or experience that the person may have.

13D Protection from liability

Section 197A provides for protection from liability for information given under this part.⁵²

13E Mandatory reporting by persons engaged in particular work

- (1) This section applies to a person (a **relevant person**) who is any of the following —
 - (a) a doctor;
 - (b) a registered nurse;
 - (c) a teacher;
 - (d) a police officer who, under a direction given by the commissioner of the police service under the Police Service Administration Act 1990, is responsible for reporting under this section;
 - (e) a person engaged to perform a child advocate function under the Public Guardian Act 2014.
- (2) For this section, a **reportable suspicion** about a child is a reasonable suspicion that the child—
 - (a) has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and

⁵² Section 197A is essentially the same as s 22, expanding the requirement that a person act “honestly” to also include “reasonably”.

(b) may not have a parent able and willing to protect the child from the harm.

(3) If a relevant person forms a reportable suspicion about a child in the course of the person's engagement as a relevant person, the person must give a written report to the chief executive under section 13G.

50. Section 13F of the Bill refers to mandatory reporting relating to children in departmental or licensed care services. Section 13G proposes that when a report is made by a relevant person under ss 13E or 13F, the report must state the basis on which the person has formed the reportable suspicion. Section 13H provides that a relevant person may confer with colleagues for the purpose of forming a suspicion and an example is provided. The remainder of part 1AA makes further provisions with respect to reporting obligations when a reportable suspicion is formed, and refers to particular reports which must be provided to the Public Guardian.

Conclusion

51. The National Framework and the recommendations made by the Commission address the significant problems the Queensland Government has experienced with respect to protecting children. The Commission found that the Department was inundated with reports of children who may be in need of protection and has not been able to adequately address each report. The changes recommended to the CPA will allow the Department to adequately screen all reports and to intervene in those cases where children need to be protected. In other cases parents will be provided with the necessary support and services they need to meet their obligation of bearing the primary responsibility for their children's safety and welfare.

52. Interested parties and stakeholders will eagerly await progress reports on the further implementation of the National Framework and the recommendations made by the Commission, all aimed at preserving the right of Australian children to be safe.

Grace Lawson
Barrister
20 April 2014

APPENDIX A

Table 1: Total number of notifications, investigations and substantiations across Australia from 2000-01 to 2011-12, and total number of children on orders and in out-of-home care at 30 June 2000 to 2012

Year	Total notifications	Total finalised investigations	Total substantiations	Children on orders	Children in OOHC
2000-01	115,471	66,265	27,367	19,917	18,241
2001-02	137,938	80,371	30,473	20,557	18,880
2002-03	198,355	95,382	40,416	22,130	20,297
2003-04	219,384	(a)	(a)	(a)	21,795
2004-05	252,831	121,292	46,154	24,075 ^(c)	23,695
2005-06	266,745	137,829	55,921	26,215 ^(c)	25,454
2006-07	309,448	(b)	60,230	28,854 ^(c)	28,379
2007-08	317,526	148,824	55,120	32,642 ^(c)	31,166
2008-09	339,454	162,259	54,621	35,409 ^(c)	34,069
2009-10	286,437	131,689	46,187	37,730 ^(c)	35,895
2010-11	237,273	99,649	40,466	39,058	37,648
2011-12	252,962	106,754	48,420	40,962	39,621

^(a) Due to the implementation of a new information management system, New South Wales could not provide data for investigations, substantiations or children on orders in 2003-04. ^(b) Due to the implementation of a new information management system, Queensland was unable to provide investigation data in 2006-07 ^(c) The data from Victoria for previous years were updated in 2009. This data may not be matched to data published in previous publications of *Child Protection Australia*.

The figures show that the notification of cases to child protection services has increased through to 2008–09 and despite a decline in numbers over the 2 years to 2010-11, the overall trend of notifications has risen since 2000-01.

A child may be the subject of more than one notification - in 2011-12, the 252,962 notifications recorded during the financial year concerned 173,502 children. In the last 6 years, the number of children subject to a notification has decreased by 8%, from 188,666 to 173,502, and the number of children who were the subject of a substantiation increased by 9% from 34,028 to 37,781.

Source: AIHW (2013)

APPENDIX B

Table 2: Number of substantiations, states and territories, 2000-01 to 2011-12

Year	NSW ^(a)	VIC	QLD	WA	SA	TAS ^(b)	ACT	NT	Total
2000-01	7,501	7,608	8,395	1,191	1,998	103	222	349	27,367
2001-02	8,606	7,687	10,036	1,187	2,230	158	220	349	30,473
2002-03	16,765	7,287	12,203	888 ^(c)	2,423	213	310	327	40,416
2003-04	n.a.	7,412	17,473	968	2,490	427	630 ^(d)	527	n.a.
2004-05	15,493	7,398	17,307	1,104	2,384	782	1,213	473	46,154
2005-06	29,809	7,563	13,184	960	1,855	793 ^(e)	1,277	480	55,921
2006-07	37,094	6,828 ^(f)	10,108 ^{(g)(h)}	1,233	2,242	1,252 ^(e)	852 ⁽ⁱ⁾	621	60,230
2007-08	34,135	6,365	8,028	1,464	2,331	1,214	827	756	55,120
2008-09	34,078	6,344	7,315	1,523	2,419	1,188	896	858	54,621
2009-10	26,248 ^(j)	6,603	6,922	1,652	1,815	963	741	1,243	46,187
2010-11	18,596	7,643	6,598	1,907	2,220	1,225	636	1,641	40,466
2011-12	23,175	9,075	7,681	2,759	2,139	1,025	861	1,705	48,420

^(a) The data for 2002-03 onwards should not be compared with previous years. New South Wales implemented a modification to the data system to support legislation and practice changes during 2002-03 which would make any comparison inaccurate. New South Wales was able to provide limited data for 2003-04 due to the introduction of a new client information system. ^(b) The increase in substantiations in Tasmania is considered to be in part due to increased application of the Tasmanian Risk Framework as well as greater adherence to the definition of "substantiation" published by the AIHW. ^(c) The decrease in substantiations in 2002-03 reflects the decrease in notifications in Western Australia. ^(d) The increase in substantiations in 2003-04 relates to the increase in notifications in the ACT. ^(e) Data relating to substantiations for Tasmania for 2005-06 and 2006-07 should be interpreted carefully due to the high proportion of investigations in process by 31 August. ^(f) Due to new service and data reporting arrangements, the Victorian child protection data for 2006-07 may not be fully comparable with previous years' data. ^(g) 2006-07 data for Queensland was updated in 2008. Data is different to the interim data published in *Child Protection Australia 2006-07*. ^(h) 2006-07 substantiation figures for Queensland are affected by a change in recording practice. From March 2007, any new child protection concerns received by the department that relate to an open notification or investigation and assessment are recorded as an additional concern and linked to the open notification/investigation and assessment. Previously, any new child protection concerns received by the department were recorded as an additional notification. If an investigation relating to these notifications was substantiated, each notification was recorded as a separate substantiation. Because new concerns are now recorded as additional concerns and not notifications, only the original

notification is counted as a substantiation, where the investigation outcome is substantiated. ⁽ⁱ⁾ The decrease in the number of substantiated investigations reflects a requirement of staff to substantiate emotional abuse or neglect only if there was, or is likely to be, significant harm and there was no one with parental responsibility willing and able to protect the child/young person. Recording an outcome of an appraisal as not substantiated does not exclude ongoing work with the child or young person. ⁽ⁱ⁾ NSW data are not comparable with other jurisdictions. NSW has a differential investigation response whereby an investigation may be undertaken over two stages. Only the more serious cases lead to a recorded substantiation outcome. Following the NSW Keep Them Safe Reforms, the 2010-11 data reflect the first full year of reporting under legislative changes to the NSW *Children and Young Persons (Care and Protection) Act 1998* proclaimed on 24 January 2010.

Note: Data may include unborn children

Source: AIHW (2013, p.20; 2012, p. 18; 2005, p. 18)

APPENDIX C

Table 3. Primary substantiated harm types in Australian states and territories in 2011-12

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Australia
Emotional abuse	7,264	4,936	2,702	850	584	491	319	483	17,629
Neglect	7,792	591	3,254	803	952	334	359	899	14,984
Physical abuse	4,475	2,636	1,375	508	409	151	103	270	9,927
Sexual abuse	3,644	912	350	598	189	43	39	53	5,828
Total	23,175	9,075	7,681	2,759	2,139	1,025	861	1,705	48,420

The maltreatment types most commonly substantiated across Australia were emotional abuse and child neglect (see [Figure 2](#)). Emotionally abusive behaviours included verbally abusing, terrorising, scape-goating, isolating, rejecting and ignoring. Children who witness domestic violence are also typically categorised as having experienced emotional abuse. The high proportion of substantiations of emotional abuse is a relatively new phenomenon (AIHW, 2011). The inclusion of children who have witnessed domestic violence is likely to be one of the key reasons for the high rates of substantiated emotional abuse (Holzer & Bromfield, 2008).

Neglect refers to the failure (usually by the parent) to provide for a child's basic needs, including failure to provide adequate food, shelter, clothing, supervision, hygiene or medical attention. Neglectful behaviours could be physical, emotional, educational or environmental (Child Family Community Australia, 2012).

Source: AIHW (2013, p. 59)