

MANDATORY REPORTING BY AUSTRALIAN TEACHERS OF SUSPECTED CHILD ABUSE AND NEGLECT: LEGISLATIVE REQUIREMENTS AND QUESTIONS FOR FUTURE DIRECTION

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Most Australian States and Territories have legislation compelling teachers to report suspicions that a child has been or is likely to be abused or neglected. However, these 'mandatory reporting' laws have significant differences, so teachers in different States and Territories may have quite different legislative duties to report suspected child abuse and neglect. It is important that teachers have an accurate understanding of what they are and are not required to report under the relevant legislation. Legislators and policymakers should also be aware of the differences between laws in Australian jurisdictions to inform ongoing evaluation of their jurisdiction's legal framework; the current contrast between jurisdictions, and particularly the absence in Western Australia of mandatory reporting legislation, recently prompted the Commonwealth Attorney-General to endorse substantial equality in legislation concerning child protection. The purpose of this article is first to introduce the broad context of mandatory reporting laws before detailing the legislative reporting obligations of Australian teachers. This synthesis reveals some significant differences in the laws between jurisdictions, thus raising questions for legislators and policymakers. Policy-based reporting obligations, which operate in two States instead of legislative reporting duties, are noted. Questions about future legislative directions are raised, based on current legislative differences, the issue of whether legislative reporting duties are more appropriate and effective in practice than policy-based reporting duties, and the absence of research into teacher knowledge of law and policy and into teacher reporting practice. It is recommended that research be undertaken to help answer these pressing questions.

I INTRODUCTION

The exact incidence of child abuse and neglect (CAN) in Australia is impossible to ascertain, but the best evidence suggests that a significant number of cases occur every year. The Australian Institute of Health and Welfare, which collects statistics recorded by the States and Territories, reported in 2006 that during the period of 12 months between 2004 and 2005, there were 34 046 children who were the subjects of 46 154 substantiated investigations into reports of CAN. Of these, there were 3574 substantiated cases of sexual abuse; 8016 of physical abuse; 12 870 of psychological or emotional abuse; and 9586 of neglect.² These statistics only approximate the true prevalence. They overestimate true prevalence because multiple substantiations can involve one child, some laws require protection of children from 'harm' rather than from known acts or omissions committed by adults, and because the statistics include some children who are deemed to be at risk of future abuse who have not yet been abused.³ However, they underestimate true prevalence because some laws deem a child to be harmed only if he or she is not in the care

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of a parent who is willing and able to protect the child, and, more importantly, because CAN occurs largely in private with many, and perhaps most, cases never coming to the attention of authorities.⁴

An appreciation of the costs of CAN is also necessary to contextualise mandatory reporting laws. As with its incidence, it is also impossible to calculate the precise costs of CAN, but it is generally accepted that the costs to the individual's health and life chances of the varied forms of CAN can be both numerous and serious, in the short term and in the long term.⁵ Connected with these costs to affected individuals are the attendant economic costs incurred by the community and social, health, welfare and criminal justice systems. In 2003, the annual national cost of CAN was estimated as \$A4.9 billion, a figure which tallies with an estimate of national cost undertaken in the USA in 2001.⁶

These costs and the incidence of CAN, among other rationales, are used to justify government-sanctioned methods of early intervention. Early intervention in cases of CAN promises several benefits, including enhancement of child protection, assisting families to break cycles of abuse and neglect, and facilitating responses and interventions that minimise ensuing cost. While it is not supported universally either by governments or by commentators,⁷ mandatory reporting legislation has been enacted in a number of countries including most Australian States and Territories as a governmental strategy to facilitate early intervention in cases of CAN. Typically, mandatory reporting statutes compel members of selected professional groups having regular contact with children to report to authorities their knowledge or suspicion that a child in their professional care has been subjected to abuse or neglect. Members of the teaching profession are recognised as individuals who are particularly well trained and well placed to be able to detect and report CAN, and Australian statistics show that teachers as a professional group are the second highest source of reports that are the subject of finalised investigations.⁸ Usually, the reporting duty extends beyond suspicions of past CAN to also be enlivened in cases where the professional suspects that a child is likely in future to be abused or neglected. Once reports are made, the intention is that government agencies will assess the report, and make appropriate investigations where necessary. Where a report is substantiated, the agency should then determine what, if any, assistance should be delivered to the child and his or her family, and should arrange the delivery of that assistance. Where it exists, mandatory reporting is therefore one important element of a child protection and early intervention apparatus that also depends on effective government agency action and effective service delivery.

II LEGISLATIVE OBLIGATIONS OF AUSTRALIAN TEACHERS TO REPORT SUSPECTED CHILD ABUSE AND NEGLECT

A Generally

In seven of Australia's eight States and Territories, mandatory reporting laws have been enacted, although with large differences in scope.⁹ Western Australia has no legislative mandatory reporting duties, and Queensland has such extremely limited legislative reporting requirements that it could be argued that there is no statutory scheme of mandatory reporting in that State either. These two States do have policy-based reporting obligations though, as do other States and Territories, and these policies will be discussed later in this article.

In the six jurisdictions having a scheme of mandatory reporting laws, a child is generally deemed to have been abused or neglected when he or she has suffered physical abuse, psychological

or emotional abuse, sexual abuse, or neglect.¹⁰ Reporting duties are generally imposed regarding suspected abuse or neglect falling within any of these four categories, although as will be seen, this is not always the case and differences in the extent of the reporting duty between jurisdictions are notable. Table 1 summarises the major parameters of the legislation in each jurisdiction; the details of the differences are discussed below. It can be observed at this point that whenever legislation either does not exist, or does not compel a teacher to report a suspicion of child abuse or neglect, a teacher is still *enabled* by legislation to make a report in good faith of their suspicion and the teacher will receive confidentiality and immunity under the legislation.¹¹

In most jurisdictions a ‘child’ is defined as an individual who is under 18;¹² but in New South Wales a ‘child’ is defined as an individual under 16 years of age, and in Victoria a ‘child’ is defined as an individual under 17 years of age.¹³ Statutes explicitly impose the reporting duty on teachers.¹⁴ All statutes stipulate financial penalties for failure to report, but the amount differs, ranging from \$1000 to \$22 000.¹⁵ The Australian Capital Territory penalty provision includes the possibility of imprisonment.¹⁶ As well, the statutes contain provisions to protect a notifier’s confidentiality.¹⁷ The statutes also confer immunity on mandatory reporters from legal liability in proceedings brought concerning the report, provided the report is made in good faith.¹⁸

B Significant Differences Between the Statutory Duties

While the reporting duty is broadly similar across Australian jurisdictions, there are a number of significant differences which pose questions for legislators. In particular, there are differences in the type and extent of the harm caused to the child which compel a report; and there are differences in the extent of the duty, in the sense of whether it applies to cases of past CAN, perceived likely future CAN, or both.

1 Differences in the Type and Extent of Harm Compelling a Report

There are a number of differences in the scope of the reporting duty regarding the type and extent of harm that compels a report.

(a) Legislative duty to report sexual abuse

Seven jurisdictions have legislative provisions compelling teachers to report suspicions of child sexual abuse. However, differences exist about the extent of the harm caused by suspected sexual abuse that is required to compel the report of such a suspicion. Five jurisdictions—New South Wales, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory—impose no qualification on the extent of reportable sexual abuse, meaning that any perceived sexual abuse must be reported, no matter what the suspected resulting degree of harm.¹⁹ In contrast, Victoria’s legislation only enlivens the reporting duty if the teacher believes that the child has suffered or is likely to suffer ‘significant harm’ as a result of the sexual abuse, *and* that the child’s parents have not protected or are unlikely to protect the child from that harm.²⁰ Queensland’s unique provision activates the reporting duty irrespective of the extent of harm suspected to have been caused, but limits the scope of the duty dramatically by compelling reports only if the suspected perpetrator is a school employee.²¹

(b) Legislative duty to report physical abuse

Western Australia and Queensland have no legislative provisions requiring teachers to report suspected physical abuse of children. The other six jurisdictions do have legislative provisions compelling teachers to report suspicions of physical abuse of children. In these six jurisdictions,

there again are differences in the extent of harm caused by physical abuse required to compel reports. New South Wales and the Australian Capital Territory impose no harm-based qualification, so that any suspected physical abuse must be reported no matter how trivial the suspected harm.²² Theoretically, this produces a very wide reporting duty extending to any and all physical injury perceived by the individual teacher as ‘physical abuse’. In contrast, several jurisdictions qualify the class of physical abuse that must be reported. South Australia and Tasmania require that to fall within the mandatory reporting provision, physical abuse must cause physical or psychological injury detrimental to the child’s wellbeing, or which jeopardises the child’s physical or psychological development.²³ Along similar lines, Victoria requires the harm to be ‘significant’.²⁴ The Northern Territory provision appears to impose an even higher restriction; there, the provision qualifies physical injury as requiring a report if it causes temporary or permanent disfigurement or ‘serious’ pain, or impairment of a normal bodily function.²⁵ The Northern Territory is the only jurisdiction to expressly include female genital mutilation as reportable abuse.²⁶

(c) Legislative duty to report psychological or emotional abuse

The first significant observation concerning this class of abuse is that, while legislative provisions in both the Australian Capital Territory and Victoria *enable* suspicions of psychological or emotional abuse of a child to be made by teachers,²⁷ the provisions do not *compel* reports of abuse of this type.²⁸ Therefore, with Western Australia and Queensland, these two jurisdictions do not compel teachers to report suspicions of psychological or emotional abuse of a child.

The other four jurisdictions have legislative provisions requiring reports of psychological or emotional abuse. All impose qualifications concerning the extent of harm suspected to have been caused by the psychological or emotional abuse which must be satisfied to activate the reporting duty. In New South Wales, the relevant provision describes reportable harm as including situations where a parent or other caregiver has caused or has put a child at risk of suffering ‘serious’ psychological harm.²⁹ South Australia and Tasmania appear to have equivalent provisions requiring harm of a serious nature; here, the abuse must cause the child to suffer or be likely to suffer physical or psychological injury detrimental to the child’s wellbeing, or to jeopardise the child’s physical or psychological development.³⁰ The Northern Territory appears to impose a higher threshold, with a requirement of ‘serious’ emotional or intellectual impairment evidenced by ‘severe’ psychological or social malfunctioning measured by the standards of the child’s community, whether due to the child’s physical surroundings, nutritional or other deprivation, or the emotional or social environment.³¹ Where the report is enabled but not compelled, Victoria’s provision requires the harm to cause or be likely to cause significant damage to the child’s emotional or intellectual development, and is therefore in line with the definitions in the other jurisdictions,³² and the Australian Capital Territory provision is almost identical to this.³³

(d) Legislative duty to report neglect

Here again, while the legislation in both the Australian Capital Territory and Victoria enables suspicions of neglect of a child to be reported by teachers,³⁴ the provisions do not compel reports of neglect.³⁵ Therefore, again with Western Australia and Queensland, legislation in these two jurisdictions does not require teachers to report suspicions of neglect of a child—another notable difference between jurisdictions.

The other four jurisdictions have legislative provisions requiring reports of suspected neglect. However, there are differences in the extent of harm required as a result of neglect to activate the duty. Because of definitional ambiguities, it is difficult to determine the different strengths

of the qualifying conditions. It appears that the New South Wales provision may be broader than those in other jurisdictions. There, neglect must be reported when it has the effect that the child's 'basic physical or psychological needs' are not being met; or the child is not being provided with 'necessary' medical care.³⁶ Depending on what is considered to constitute a child's 'basic physical or psychological needs', this could be a very broad qualifying factor. South Australia and Tasmania have similar provisions requiring reports of neglect when it produces suffering or likely suffering of physical or psychological injury detrimental to the child's wellbeing, or which jeopardises the child's physical or psychological development.³⁷ The neglect provisions in the Northern Territory appear to be narrower than those in New South Wales, South Australia and Tasmania. There, reportable neglect will exist where the child has 'serious' emotional or intellectual impairment evidenced by 'severe' psychological or social malfunctioning measured by the standards of the child's community, whether due to the physical surroundings, nutritional or other deprivation, or the emotional or social environment. It will also exist where the child has 'serious' physical impairment evidenced by severe bodily malfunctioning, whether due to the physical surroundings, nutritional or other deprivation, or the emotional or social environment.³⁸

Victoria's provision (which only enables a report) requires that the child's physical development or health has been, or is likely to be, 'significantly harmed' and the child's parents have not provided or arranged the provision of 'basic care'.³⁹ The Australian Capital Territory provision, also only enabling a report, requires present or likely 'significant harm' to wellbeing or development through a failure to provide a necessity of life.⁴⁰

2 *Differences Concerning Whether the Reporting Duty Applies to Suspected Past Can, Future Can, or Both*

Another difference between the statutes concerns whether the reporting duty applies to abuse presently being suffered by a child (or which has been suffered in the past), or to abuse that is suspected to be likely to be suffered by a child in future, or both.

All jurisdictions with legislative reporting provisions apply the obligation to cases of suspected past abuse and abuse presently being inflicted. However, in three jurisdictions—New South Wales and the Northern Territory (for all four types of CAN), and Victoria (for sexual and physical abuse only)—the obligation to report extends beyond a suspicion of abuse or neglect that has already happened, to cases where the teacher has a reasonable suspicion that a child is 'likely' to suffer abuse or is at risk of being abused in future, without limiting the class of suspected future perpetrators.⁴¹ Another two States—South Australia and Tasmania—extend the duty to report beyond suspected abuse or neglect that has already happened, to future likely abuse or neglect where the suspected future perpetrator is a person who lives with the child.⁴² The Australian Capital Territory reporting duty only applies to cases where the teacher reasonably suspects that a child 'has suffered, or is suffering' sexual abuse or non-accidental physical injury, thus not including suspicions of likely future abuse.⁴³

This summary of the detail and scope of the legislative mandatory reporting duties for teachers throughout Australia discloses many points of similarity, but also numerous significant differences, between jurisdictions. These areas of difference will be returned to when discussing issues posed for legislators.

C Policy-Based Reporting Duties

The previous synthesis has shown that one jurisdiction has no mandatory reporting legislation (Western Australia), another has a dramatically restricted legislative provision (Queensland), and

legislation in both Victoria and the Australian Capital Territory does not compel reports of two of the four categories of CAN (psychological or emotional abuse, and neglect). It has also shown other points of difference: for example, the provision in Victoria regarding suspected child sexual abuse only compels a report if the teacher thinks the child has suffered or is likely to suffer 'significant' harm.

These differences appear to create substantial inequalities in reporting requirements between jurisdictions. However, broad policy directives in Queensland and Western Australia for teachers about the reporting of all forms of suspected CAN may, at least nominally, enlarge actual reporting duties in those jurisdictions and thus place Australian jurisdictions on a more even footing.⁴⁴

1 *Queensland and Western Australia*

While not having legislative schemes compelling the reporting of CAN, Western Australia and Queensland do have a range of broad policy directives regarding the reporting of all forms of suspected CAN that apply to most teachers. In Queensland, the *HS-17 Student Protection* policy governs all State school teachers and requires the reporting of suspicions of all four forms of CAN.⁴⁵ Non-State schools are required by the *Education (Accreditation of Non-State School) Act 2001* (Qld) and *Education (Accreditation of Non-State School) Regulation 2001* r 10(5)(b) to have policies for teacher reporting of all forms of CAN.

In Western Australia, the policy framework includes the *Reciprocal Child Protection Procedures* (RCPP) policy issued by the Department for Community Development⁴⁶ and the *Child Protection* policy,⁴⁷ which apply to government school teachers. Under this policy framework, teachers are responsible for reporting concerns of all four forms of CAN.⁴⁸ Non-government schools are also meant to have a policy, as the Department of Education Services policy concerning registration of these schools provides that every independent school 'must develop and implement a child protection policy as a component of its duty of care obligations to its students' which should include procedures for identifying neglect or emotional, physical or sexual abuse, and reporting situations of CAN to external agencies.⁴⁹ The RCPP states that the Catholic Education Commission has developed guidelines on child protection for use in all Catholic schools in Western Australia (*Policy Statement on Child Abuse and Child Protection Guidelines: Guidelines and Procedures for Catholic Schools in Western Australia*). However, while the Association of Independent Schools of Western Australia has sent recommended policy guidelines to all independent schools in Western Australia⁵⁰ and has recommended that they each develop their own policy, it is of concern that the RCPP states that '[i]t is not known if all independent schools currently have an appropriate policy'.⁵¹

2 *Other Jurisdictions*

We have seen that even in those jurisdictions having mandatory reporting schemes, the legislation in some jurisdictions does not impose reporting duties concerning some types of abuse and neglect, or does so to a lesser extent than legislation in other jurisdictions. The clearest examples are of the statutes in Victoria and the Australian Capital Territory not requiring reports of psychological or emotional abuse, or neglect. Yet, where this is the case, teachers in those jurisdictions may nevertheless have a *policy*-based obligation to report those types of abuse and neglect that are not legislatively prescribed as being reportable. It is difficult to isolate the parameters of policy-based obligations because schools in the non-government sector often have their own policies (even in situations where in a broad sense they are parties to reporting protocols, such as in Victoria), and even government schools can make their own policy to supplement

directions from central authorities. In Victoria, the policy framework does appear to remove any possible limit on reporting behaviour of the statutory qualifier of ‘significant’ harm occasioned by sexual abuse, and thus seems to expand the duty to report suspected sexual abuse.⁵² However, two major policy documents do not appear to enlarge the legislative requirements as there is no clear statement requiring teachers to make reports concerning suspected psychological or emotional abuse, or neglect.⁵³ Similarly, in the Australian Capital Territory, the central government policy document applying to government schools does not appear to require reports of psychological or emotional abuse, or neglect,⁵⁴ but individual schools, especially in the nongovernment sector, may have policies doing so.

3 Impact of Reporting Duties When in Legislation as Opposed to Policy

The presence of reporting duties in two States in policy and not in legislation raises important questions about the impact on reporting behaviour, if any, of the optimal placement of reporting duties. Is the quality of reporting behaviour best assured by enshrining reporting duties in legislation or policy? An appropriately open-minded approach would have to accept that it may be possible that the presence of a reporting obligation in policy, with all else being equal (such as the extent of the reporting duty, and the presence and effectiveness of training for reporters), produces equally sound reporting behaviour as would be the case if the reporting duty was placed in legislation. Such an approach would have to accept that if the reporting duty was in policy and was accompanied by superior training for reporters, then reporting behaviour may even be better than if the reporting duty was in legislation but was accompanied by inferior training. Placing the duty in policy (which does not name financial penalty for failure to report) rather than legislation (which does, even if they are not enforced in reality) may avoid the potential for hypersensitive reporting out of fear of penalty.

However, an appropriately open-minded approach would also have to accept that the obverse of these two situations is possible. That is, it may be that the presence of a reporting obligation in policy and not in law may produce less sound reporting behaviour, especially if this was accompanied by inferior training. Enacting reporting duties in law makes a strong statement to the community and to the professions concerned about how seriously the government takes the issues of CAN and child protection, and this may enhance reporting behaviour. The placement of reporting duties in policy could be argued not to make such a statement and thus not to impress on the community nor the professionals concerned (individually and as a group) the gravity of the issues and the imperative to report when necessary. It may be that placing a reporting duty in policy waters down its strength, lacking the persuasive force of law. Opponents of policy-based duties may also argue that a significant proportion of teachers may never even read or become aware of the policy, much less comply with it.

It could be argued that the policy-based obligations in Queensland and Western Australia combine with the legislative reporting duties in the other six jurisdictions to largely unify mandatory reporting obligations for teachers throughout Australia. However, there is no evidence that teacher knowledge and reporting practice in circumstances where policy exists instead of legislation is inferior, equal to, or superior to, teacher knowledge and reporting practice in circumstances governed by legislation. The question of whether it is as or more effective to place reporting obligations in legislation or in policy has not yet been answered. Questions in this context are beyond the scope of this article, but need to be researched and debated. In the absence of such evidence, pressing questions exist for legislators.

III QUESTIONS FOR LEGISLATORS

Legislative differences between jurisdictions in both the types of harm requiring reports, and the extent of the reporting duty, define the practical operation of the laws and therefore raise legal, theoretical and practical questions for legislators. If, in comparison to another jurisdiction, provisions in one jurisdiction restrict or broaden the class of cases enlivening the duty to report, a government must be aware of this and must be prepared to justify the content and practical effect of its laws. Narrower provisions need to be justified, because they may have the effect of producing failure to report cases that arguably require intervention. Some broader provisions also require justification, because they may produce an inflated number of reports. Several examples can be offered of such differences and their potential effects.

Concerning sexual abuse, does Queensland's limited approach, compelling only the reporting of suspected cases of sexual abuse by school employees, reduce the reporting of suspected child sexual abuse by other perpetrators? Does Victoria's approach, requiring reports only where the child is thought to have suffered or be likely to suffer significant harm, produce failure to report cases of suspected 'lesser' child sexual abuse (such as, for example, being exposed to adult sexual activity)? In all jurisdictions having legislation, does the lack of definition of what can constitute sexual abuse (for example, does it include such activities as exhibitionism and exposure to pornography) affect what cases are reported? Do the age limits of childhood in New South Wales and Victoria mean that cases in those States are not reported when they would be in the other jurisdictions?

Regarding physical abuse, does the absence of a legislative reporting obligation in Queensland and Western Australia mean that cases of physical abuse are going unreported in those States which would be reported elsewhere? Does the lack of a qualification about the extent of harm in New South Wales and the Australian Capital Territory mean that many trivial cases (such as isolated and or very minor physical discipline, for example) are being unnecessarily reported in those two jurisdictions? Do the qualifications about the extent of harm in the other jurisdictions work to exclude deserving cases from being reported?

With psychological or emotional abuse, and neglect, does the absence of legislative reporting duties in the Australian Capital Territory, Queensland, Victoria and Western Australia mean that in practice, cases of severe abuse and neglect are going unreported in these jurisdictions whereas those same cases would be reported elsewhere?

There is a paucity of research about Australian teachers' knowledge of the legal and/or policy reporting duty, actual compliance with the duty, and about the factors influencing effective teacher reporting.⁵⁵ It is not known if teachers are accurate detectors and reporters of different types of CAN, or if teachers are receiving sufficient training to prepare them to fulfil their reporting obligations. Combined with the lack of evidence about the success or otherwise of having reporting duties in policy and not legislation, and with the questions raised about the legislative differences, it is clear that there is much work to be done before legislators and policymakers can state with any confidence that the mandatory reporting laws and/or policies for teachers in Australian jurisdictions are producing desired or undesirable results.

IV CONCLUSION

Mandatory reporting laws are intended to play a vital role in the early detection of CAN to facilitate necessary intervention and assistance, with the primary aim being the advancement of child protection. These laws are also important because the flow-on effects of successful early

intervention are significant to individuals, society and the government. However, the lack of evidence about the impact of the legislative differences between jurisdictions, the unresolved question of whether policy-based duties are as (or more) effective as legislative duties, and the general lack of empirical research into the effectiveness of the reporting schemes for teachers needs to be addressed. It is important to know the extent to which the current reporting laws and policies are effective in practice, and the reasons for their success or failure. This broader question can only be answered by gaining empirical evidence about teachers' knowledge of their legal or policy-based reporting duties, their actual reporting practice, and factors influencing effective reporting behaviour. Such attempts at measurement of 'effectiveness' are complicated by the fact that mandatory reporting is only one component of the whole child protection system, which then depends on appropriate and effective investigation and service delivery. A truly holistic estimate of the success of mandatory reporting would, therefore, require much broader and deeper investigation. Nevertheless, it should be possible to identify those schemes and aspects of mandatory reporting that appear to be most effective at playing their role in this system. Research into these questions would inform assessments of the adequacy of the current provisions and policies, and can help to ensure that training systems are sound and relevant to the matters they seek to address.

ENDNOTES

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1. 'Abuse report sees call for national laws', *Sydney Morning Herald*, 1 September 2006. Mr Ruddock reportedly stated that '[i]t is very desirable that [child protection] laws across Australia ... are both, in legal terms and in terms of administration, harmoniously dealt with ... That is, it is undesirable to have substantial differences in treatment depending on where you live in Australia'.
2. Australian Institute of Health and Welfare, *Child Protection Australia 2004-05* (2006) 18 (Table 2.4), 55 (Table A1.2).
3. See L Bromfield and D Higgins, 'The Limitations of Using Statutory Child Protection Data for Research into Child Maltreatment' (2004) 57(1) *Australian Social Work* 19.
4. To use child sexual abuse as an example, it is generally accepted by experts in the field that it is under-reported: see eg J Fleming, 'Prevalence of Childhood Sexual Abuse in a Community Sample of Australian Women' (1997) 166(2) *MJA* 65. Australian prevalence studies arguably give a more accurate picture. Fleming's 1997 retrospective study of 710 randomly selected women found that 144 (20%) had experienced child sexual abuse involving at least genital contact before the age of 16; and in a population-based survey of 1,784 people conducted in 2003, it was found that at least 12% of women and 4% of men experienced unwanted penetrative abuse before the age of 16: M Dunne, D Purdie, M Cook, F Boyle and J Najman, 'Is Child Sexual Abuse Declining?' (2003) 27 *Child Abuse and Neglect* 141.
5. There is a large body of evidence about the common psychological and psychiatric consequences of childhood abuse and neglect: see generally J Spataro, P Mullen, P Burgess, D Wells and S Moss, 'Impact of Child Sexual Abuse on Mental Health: Prospective Study in Males and Females' (2004) 184 *British Journal of Psychiatry* 416; J Briere and D Elliott, 'Prevalence and Psychological Sequelae of Self-reported Childhood Physical and Sexual Abuse in a General Population Sample of Men and Women' (2003) 27 *Child Abuse and Neglect* 1205; K Hildyard and D Wolfe, 'Child Neglect: Developmental Issues and Outcomes' (2002) 26 *Child Abuse & Neglect* 679; D Kolko, 'Child Physical Abuse' in J Myers, L Berliner, J Briere, C Hendrix, T Reid and C Jenny (eds), *The APSAC Handbook on Child Maltreatment* (2nd ed, 2002) 21; E Nelson, A Heath, P Madden, M Cooper, S Dinwiddie, K Bucholz, A Glowinski, T McLaughlin, M Dunne, D Statham and N Martin, 'Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study' (2002) 59

- Arch Gen Psychiatry* 139; B Perry, 'Childhood Experience and the Expression of Genetic Potential: What Childhood Neglect Tells Us About Nature and Nurture' (2002) 3(1) *Brain and Mind* 79; H MacMillan, J Fleming, D Streiner, E Lin, M Boyle, E Jamieson, E Duku, C Walsh, M Wong and W Beardslee, 'Childhood Abuse and Lifetime Psychopathology in a Community Sample' (2001) 158 *Am J Psychiatry* 1878; A Horowitz, C Widom, J McLaughlin and H White, 'The Impact of Childhood Abuse and Neglect on Adult Mental Health: A Prospective Study' (2001) 42 *Journal of Health and Social Behaviour* 184; D Fergusson and P Mullen, *Childhood Sexual Abuse: An Evidence Based Perspective* (1999) 53-66 (effects of childhood sexual abuse on children), 67-94 (effects of childhood sexual abuse on adults); A Silverman, H Reinherz and R Giaconia, 'The Long-term Sequelae of Child and Adolescent Abuse: A Longitudinal Community Study' (1996) 20 *Child Abuse and Neglect* 709; K Kendall-Tackett, L Williams and D Finkelhor, 'Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies' (1993) 113 *Psychological Bulletin* 164; P Mullen, 'Childhood Sexual Abuse and Mental Health in Adult Life' (1993) 163 *British Journal of Psychiatry* 721.
6. KidsFirst Foundation, *Report into the Cost of Child Abuse and Neglect in Australia* (2003) <http://www.kidsfirst.com.au/uploads/files/1069451734264_0.3701907869736339.pdf> at 18 October 2006; S Fromm, *Total Estimated Cost of Child Abuse and Neglect in the United States: Statistical Evidence* (2001) Prevent Child Abuse America <http://www.preventchildabuse.org/learn_more/research_docs/cost_analysis.pdf> at 18 October 2006.
 7. Debate continues about whether mandatory reporting is a necessary and effective mechanism to enhance child protection, or whether it is an inappropriate tool due to its tendency to inflate the number of reports that turn out to be unsubstantiated, diverting scarce resources from the most deserving cases and inflicting heavy economic waste (see eg F Ainsworth, 'Mandatory reporting of child abuse and neglect: Does it really make a difference?' (2002) 7(1) *Child and Family Social Work* 57; F Ainsworth and P Hansen, 'Five Tumultuous Years in Australian Child Protection: Little Progress' (2006) 11(1) *Child & Family Social Work* 33 and departing from the original context and intention of the first mandatory reporting laws (see eg G Melton, 'Mandated reporting: a policy without reason' (2005) 29 *Child Abuse and Neglect* 9).
 8. Australian Institute of Health and Welfare, above n 2, 25 (Table 2.11).
 9. *Children and Young People Act 1999* (ACT) s 159(2); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27(2); *Community Welfare Act 1983* (NT) s 14; *Education (General Provisions) Act 2006* (Qld) ss 365, 366; *Children's Protection Act 1993* (SA) s 11(1); *Children, Young Persons and Their Families Act 1997* (Tas) s 14(2); *Children and Young Persons Act 1989* (Vic) s 64(1A). Hereafter, references to legislation by jurisdiction are to these statutes unless otherwise specified. It should be noted that provisions in the *Children, Youth and Families Act 2005* (Vic), which replace and replicate the current provisions including those relevant to this context, were anticipated to commence on 1 October 2006: see Victoria, *Parliamentary Debates*, Legislative Assembly, 6 October 2005, p 1369, Second Reading Speech (Sheryl Garbutt, Minister for Children) 6. However, these provisions have not yet commenced. Under s 2(5) if they are not proclaimed to commence earlier they will commence automatically on 1 October 2007.
 10. NSW: s 23; SA: ss 6(2), 10; Tas: s 3(1); Vic: s 63; ACT: s 151; NT: s 4(3). Note that even at this broad level there are some differences in the deemed classes of abuse and neglect that require reports: New South Wales, for example, includes exposure to domestic violence with risk of serious physical or psychological harm as a situation compelling reports by mandated reporters: s 23(d).
 11. ACT: s 158; Qld: *Child Protection Act 1999* (Qld) s 22; Vic: s 64(1); WA: *Children and Community Services Act 2004* (WA) s 129(1)(a).
 12. ACT: ss 7-8; NT: s 4(1); SA: s 6(1); Tas: s 3(1).
 13. NSW: s 3; Vic: s 3.
 14. ACT: s 159(1)(a); NSW: s 27(1)(a); NT: s 14; SA: s 11(2)(h); Tas: s 14(1)(h); Vic: s 64(1C)(d).
 15. NSW: s 27(2) (maximum penalty of 200 penalty units, hence \$22 000 – a penalty unit being \$110: *Crimes (Sentencing Procedure) Act 1999* (NSW) s 17); NT: s 14(1) (maximum penalty of 200 penalty units, hence \$22 000 – a penalty unit being \$110: *Penalty Units Act* (NT) s 3(1)); Qld: s 365(2), s 366(2): (maximum penalty of 20 penalty units, hence \$1500 – a penalty unit being \$75: *Penalties and*

Sentences Act 1992 (Qld) s 5(1)(b); SA: s 11(1) (maximum penalty \$2500); Tas: s 14(2)(b) (maximum penalty of 20 penalty units, hence \$2000 – a penalty unit being \$100: *Penalty Units and Other Penalties Act 1987* (Tas) s 4); Vic: s 64(1A) (maximum penalty of 10 penalty units, hence \$1000 – a penalty unit being \$100: *Sentencing Act 1991* (Vic) s 110).

16. ACT: s 159(2) (maximum penalty of both \$5000 and six months imprisonment).
17. ACT: ss 404-5; NSW: s 29(1)(f); NT: s 97; Qld: *Child Protection Act 1999* (Qld) s 186; SA: s 13; Tas: s 16; Vic: s 64(4); WA: *Children and Community Services Act 2004* (WA) s 240.
18. ACT: s 163; NSW: s 29(1); NT: s 14(2); Qld: ss 365(6)-(7), 366(5)-(6); SA: s 12; Tas: s 15; Vic: s 64(3); see too the judgment of the High Court of Australia in *Sullivan v Moody*; *Thompson v Connors* (2001) 207 CLR 562, which held that mandated reporters owe no duty of care to persons who may, pursuant to a report made under a statutory reporting duty, be wrongly suspected of perpetrating abuse.
19. ACT: s 159(2)(a); NSW: s 23(c); NT: s 4(3)(d); SA: s 6; Tas: s 3(1).
20. Vic: s 63(d).
21. Qld: ss 365(1), 366(1).
22. NSW: s 23(c); ACT: s 159(2)(a).
23. SA: s 6; Tas: s 3(1).
24. Vic: s 63(c); and see *Re J* (1993) 6 VAR 174.
25. NT: s 4(3)(a).
26. NT: s 4(3)(e). This is expressed in a separate provision rather than being included as a species of physical or sexual abuse.
27. ACT: s 158; Vic: s 64(1).
28. ACT: s 159(2); Vic: s 64(1A).
29. NSW: s 23(e).
30. SA: s 6; Tas: s 3(1).
31. NT: s 4(3)(d).
32. Vic: s 63(e).
33. ACT: ss 156, 151(c)(i).
34. ACT: s 158; Vic: s 64(1).
35. ACT: s 159(2); Vic: s 64(1A).
36. NSW: s 23(a), (b).
37. SA: s 6; Tas: s 3(1).
38. NT: s 4(3)(b) and (c) respectively.
39. Vic: s 63(f).
40. ACT: s 151(2).
41. NSW: s 23(c); Vic: s 63(c)-(d); NT: ss 14(1) and s 4(3)(d).
42. SA: s 10; Tas: s 14(2)(b).
43. ACT: s 159(2)(a).
44. All jurisdictions having more developed legislative schemes also have accompanying policy directives: see New South Wales Department of Education and Training, PD/2002/0072/V001: *Protecting and Supporting Children and Young People* <<http://www.det.nsw.gov.au/policies>> at 18 October 2006; Northern Territory Department of Employment, Education and Training, *Schools Policy Handbook: LL-02.1 Child Maltreatment Responsibility to Report* <<http://www.deet.nt.gov.au/corporate/policies/>> at 18 October 2006; South Australia Department of Education and Children's Services, *Child Protection Policy*, <<http://www.decs.sa.gov.au/policy/>> at 18 October 2006; Tasmania Department of Education/ Department of Health and Human Services Intake and Assessment Protocol, *Sharing Responsibility in the Protection of Children from Abuse and Neglect* (2001), not available to authors.
45. Department of Education, Training and the Arts, *HS-17 Student Protection*, Principle 7 <<http://education.qld.gov.au/strategic/eppr/students/smspr012/hs-17.pdf>> at 18 October 2006. This policy is also named as *SMS-PR-012 Student Protection*.
46. Department for Community Development, *Reciprocal Child Protection Procedures* (2002) <<http://www.community.wa.gov.au/Publications/PoliciesAndStrategicPlans/Reciprocal+Child+Protection+Procedures+2002.htm>> at 18 October 2006.

47. Department of Education and Training, *Child Protection* (2005) 5-8, <<http://www3.eddept.wa.edu.au/regframe/>> at 18 October 2006.
48. Department for Community Development, above n 46, 36; Department of Education and Training, above n 47, 5-8.
49. Department of Education Services, *Registration And Renewal Of Non-Government Schools In Western Australia: Standards And Other Requirements* (2005) 25.
50. Association of Independent Schools of Western Australia, *Child Protection* <<http://www.ais.wa.edu.au/PolicyProceduresGovernanceFile/Child%20Protection%20-%20Policy%20and%20Procedures%2012760.DOC>> at 18 October 2006.
51. Department for Community Development, above n 46, 40.
52. Department of Education and Training, *Victorian Government Schools Reference Guide*, Part 4.6.2 <http://www.eduweb.vic.gov.au/referenceguide/enviro/4_6.htm> at 18 October 2006.
53. Department of Education and Training, *Victorian Government Schools Reference Guide*, *ibid*; Department of Human Services, *Protecting Children—Protocol between Child Protection, Department of Human Services and Victorian Schools, Department of Human Services 2001* <<http://www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/ProtectingChildrenProtocol.pdf>> at 18 October 2006.
54. Department of Education and Training, *Child Abuse And Neglect: Guidelines for Schools and Preschools – Protocol between Family Services, Schools and Preschools* <<http://www.decs.act.gov.au/policies/pdf/CHILDABG.pdf>> at 18 October 2006.
55. But see R Hawkins and C McCallum, ‘Mandatory notification training for suspected child abuse and neglect in South Australian schools’ (2001) 25 *Child Abuse & Neglect* 1603; D Lamond, ‘The Impact of Mandatory Reporting Legislation on Reporting Behaviour’ (1989) 13 *Child Abuse & Neglect* 471; K Walsh, A Farrell et al., *Critical factors in teachers’ detecting and reporting child abuse and neglect* (2005) QUT, Brisbane.

Table 1: Existence of legislative mandatory reporting duties for teachers: All jurisdictions, by type of child abuse and neglect

Jurisdiction	Legislation	Sexual abuse; extent of harm required to activate reporting duty	Physical abuse; extent of harm required to activate reporting duty	Psychological or emotional abuse; extent of harm required to activate reporting duty	Neglect; extent of harm required to activate reporting duty
Australian Capital Territory	<i>Children and Young People Act 1999</i> Section 151 defines 'abuse and neglect'; s 156 defines when a child is 'in need of protection'. Section 159 imposes a reporting obligation on a teacher who 'reasonably suspects that a child or young person has suffered, or is suffering, sexual abuse or non-accidental physical injury'. Does not extend beyond suspicions of past/present abuse to suspicions of a child being at risk of abuse.	Duty to report; Unqualified	Duty to report; Unqualified	No duty to report	No duty to report
New South Wales	Children and Young Persons (Care and Protection) Act 1998 Section 23 defines when a child or young person is 'at risk of harm'. Section 27 imposes a reporting obligation on teachers who have 'reasonable grounds to suspect that a child is at risk of harm'. Extends beyond suspicions of past/present abuse to suspicions of a child being at risk of abuse.	Duty to report; Unqualified	Duty to report; Unqualified	Duty to report; Qualified	Duty to report; Qualified

Jurisdiction	Legislation	Sexual abuse; extent of harm required to activate reporting duty	Physical abuse; extent of harm required to activate reporting duty	Psychological or emotional abuse; extent of harm required to activate reporting duty	Neglect; extent of harm required to activate reporting duty
Northern Territory	<i>Community Welfare Act 1983</i> Section 4(3) defines when 'a child shall be taken to have suffered maltreatment'. Section 14 imposes a reporting obligation on 'A person... who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment'. Extends beyond suspicions of actual maltreatment to belief of child being at 'substantial risk' of suffering maltreatment.	Duty to report; Unqualified	Duty to report; Qualified	Duty to report; Qualified	Duty to report; Qualified
Queensland	<i>Education (General Provisions) Act 2006</i> Sections 365 and 366 (applying to State schools and non-State schools respectively) impose a reporting obligation on a school staff member who 'becomes aware, or reasonably suspects, that a student under 18 years attending the school has been sexually abused by someone else who is an employee of the school'. Note broader policy-based reporting obligations	Duty to report; Extremely qualified	No duty to report	No duty to report	No duty to report

Jurisdiction	Legislation	Sexual abuse; extent of harm required to activate reporting duty	Physical abuse; extent of harm required to activate reporting duty	Psychological or emotional abuse; extent of harm required to activate reporting duty	Neglect; extent of harm required to activate reporting duty
South Australia	<i>Children's Protection Act 1993</i> Sections 6(1) and 10 define 'abuse or neglect'; s 6(2) defines when a child is 'at risk'. Section 11(1) imposes a reporting obligation on a teacher who 'suspects on reasonable grounds that a child has been or is being abused or neglected'. Extends beyond suspicions of past/present abuse to suspicions of a child being at risk of abuse, but limited to cases where suspected likely wrongdoer resides with child.	Duty to report; Unqualified	Duty to report; Qualified	Duty to report; Qualified	Duty to report; Qualified
Tasmania	<i>Children, Young Persons and Their Families Act 1997</i> Section 3(1) defines 'abuse or neglect'; s 4 defines when a child is 'at risk' of being abused or neglected. Section 14 imposes a reporting obligation on a teacher who 'believes, or suspects, on reasonable grounds, or knows... that a child has been or is being abused or neglected; or... that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides'.	Duty to report; Unqualified	Duty to report; Qualified	Duty to report; Qualified	Duty to report; Qualified

Jurisdiction	Legislation	Sexual abuse; extent of harm required to activate reporting duty	Physical abuse; extent of harm required to activate reporting duty	Psychological or emotional abuse; extent of harm required to activate reporting duty	Neglect; extent of harm required to activate reporting duty
Tasmania cont ...	Extends beyond suspicions of past/present abuse to suspicions of a child being at risk of abuse, but limited to cases where suspected likely wrongdoer resides with child.				
Victoria	Children and Young Persons Act 1989 Section 63 defines when a child is 'in need of protection'. Section 64(1A) imposes a reporting obligation on teachers who form a 'belief on reasonable grounds that a child is in need of protection' on selected grounds only. Extends beyond suspicions of past/present abuse to suspicions of a child being at risk of abuse.	Duty to report; Qualified	Duty to report; Qualified	No duty to report	No duty to report
Western Australia	Nil (but note broader policy-based reporting obligations)	No duty to report	No duty to report	No duty to report	No duty to report