# PUBLISHED VERSION

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Journal of Primary Health Care, 2012; 4(1):80-82

# Does mandatory reporting really help child protection? The view of a mandated Australian

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Mandatory reporting is the legal requirement for certain designated professionals who have reasonable grounds to notify a statutory agency of a suspicion of child abuse or neglect. The requirement is usually contained within the child protection legislation of the particular jurisdiction.

It was first introduced in California in the early 1960s following the publication of *The Battered Child Syndrome*.[1] That publication emphasised the recognition and investigation of the Battered Child Syndrome and the duty and responsibility to the child that doctors had to ensure that the problem was fully evaluated, to "guarantee that no expected repetition of trauma will be permitted to occur". Subsequently, by the end of the 1960s, all of the states in the United States and the Canadian provinces had introduced mandatory reporting.

Mandatory reporting was considered an important tool in the management of 'The Battered Baby Syndrome'. For example, a study reported that, in a group of 180 children referred to the Massachusetts Society for the Prevention of Cruelty to Children in 1960, only 9% had been referred by hospitals or doctors, though they had been involved in over 30% of the cases.[2] It was considered that mandatory reporting would rectify this disparity which was due to inaccurate diagnoses (because of unfamiliarity with the syndrome of multiple injuries); doctors denying the fact of abuse because they found the idea that parents could abuse their children so abhorrent; the lack of social conscience in some doctors and the fear of court procedures or adverse publicity.

Mandatory reporting legislation was justified by reasoning that abused children most frequently came to public attention when a caregiver sought medical assistance for their child and, in many cases, only the diagnostic ability of the paediatrician "is a sensitive enough instrument to sort out discrepancies between a child's physical state and the caretakers' explanation for the event".[3] A legislative requirement would assist doctors to resolve the feeling that they were 'meddling' or violating the professional confidence vested in them by caretakers.

Also, the majority of mandatory reporting legislation protected the anonymity of notifiers and stipulated that no legal action could be taken against them if they made the notification in good faith. Legal penalties were introduced if it was learned that a mandated notifier had failed in their reporting responsibility. Experience has shown that the assumptions which led to mandated reporting laws were largely wrong; particularly in regard to the extent of maltreatment, and that it was able to be simply identified and managed.

Firstly, in the 1960s maltreatment in the United States was considered to be a relatively small problem, annually affecting a few hundred children, subjected to the violent behaviour of seriously disturbed parents. Hence, in that context it was appropriate to require health professionals (primarily doctors and later nurses) to notify. But it became apparent that millions of children in the United States were likely victims with the severity of maltreatment varying along a spectrum.

Secondly, the complexity of maltreatment both in regard to its recognition, assessment and intervention was not initially appreciated. Mandated notification in fact became a tool for trying to obtain services from State statutory agencies for

J PRIM HEALTH CARE 2012;4(1):80–82.

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families where the maltreatment was less serious and removal of the child from parents/carers would not be considered appropriate.

Major jurisdictions, in particular the United Kingdom and New Zealand and most of Continental Europe, have not introduced mandatory reporting. In those jurisdictions child protection is managed more at a community level. A disadvantage of that system is that the need for some children to be protected is not always well identified and repeat abuse occurs. Inquiries in the United Kingdom frequently highlight the lack of appropriate notification, assessment and intervention.

In Australia, South Australia introduced mandatory reporting in 1973 followed by Tasmania. Steadily, each of the Australian states and territories introduced mandatory reporting in various forms. A summary of the various aspects of mandatory reporting (including lists of mandated notifiers, requirements for notification, penalties for failing to notify) in each of the Australian states and territories was published by the Australian Institute of Family Studies in August 2010.*

Whenever and wherever mandatory reporting has been introduced, the number of notifications to statutory authorities dramatically increases. Throughout Australia the number of notifications made by mandated notifiers has well passed that which is possible for state statutory authorities to adequately manage.

Mandatory reporting is regarded as an indication of the high level of concern for children held in the community and no jurisdiction has withdrawn it. For mandatory reporting to be optimally utilised it is necessary to review the current concepts of child protection. For a start, the child protection system consists of more than state statutory authorities; it includes police, government welfare agencies, health services, education departments and facilities, state housing organisations and non-government agencies. However, primarily through mandatory reporting, the main responsibility for all levels of child protection has been forced onto the state statutory welfare agencies, even when a child is not in need of protection from present or future harm.

The report of The Special Commission of Enquiry into Child Protection Services in New South Wales[4] analysed in detail reports made to the Department of Community in 2007/08. It showed that 13% of reports made were not defined as necessary by the Children and Young Person's Care and Protection Act 1998,[5] clearly the subject family may have needed assistance but this could have been provided by another agency. Too many reports were being made which did not warrant the exercise of statutory powers; as a consequence there was considerable over expenditure managing the reports. Better utilisation would be by other agencies providing services to those children who did not require active statutory agency involvement.

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Also, because mandated notifiers received little feedback from the statutory agency, they made further reports seeking a response from the statutory agency. This leads to frustration and

* http://www.aifs.gov.au/nch/pubs/sheets/rs3/rs3.html

discontent with the statutory agency by mandated notifiers.

The Wood enquiry concluded that "the child protection system should comprise integrated universal, secondary and tertiary services, with universal services comprising the greater proportion. Services should be delivered by a mixture of the non-government sector and state agencies with the statutory agency being a provider of last resort".

Despite the many justified criticisms of mandatory reporting it should continue to have a place in the child protection system. Its presence does reflect the standard the community expects for the care of children and facilitates widespread community awareness of child protection. Also, it does provide mandated notifiers with a "legally required reason" for reporting suspicion in the context of a parent/child consultation.

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Based on the experience of those jurisdictions where mandatory reporting has been in place for some time, its introduction into a new jurisdiction should follow certain specific principles.

1. Mandatory reporting should only occur when there is a legitimate concern that a child may need protection from abuse. It should not be considered the avenue for the provision of "welfare services". When mandated notifiers are concerned about a child's wellbeing, but a statutory child protection response is not necessary, they should actively develop and use alternate pathways for a service. The same should occur in families where lesser forms of harm have occurred or in whom there is a possibility that harm will occur if services are not provided.

2. Because mandated notifiers are usually part of health, education or the non-government sector, these agency groups should create a structure which allows individual mandated notifiers to be advised as to whether, in a particular situation, a notification should occur. Advice can also be provided as to the best way for the notification to be made and, if notification is not made, then advice as to the availability of non-statutory services should be provided.

3. Mandated notifiers can be guided in their reporting considerations by being able to access information from previous child protection concerns (from any part of the child protection system). Information sharing based on such concerns should be enabled by legislation.

4. The child protection training given to professionals within the health, education and non-government sectors should address the broader concepts of the child protection system, particularly at a primary and secondary level of service provision and intervention. Mandatory reporting training should be added but its primary function should be emphasised, namely to enable tertiary level services to be accessed for the purpose of statutory intervention or police action.

5. Training in mandated notification should contain, in addition to the recognition of possible abuse and neglect, a component which emphasises the ongoing responsibility of a mandated notifier to a notified family. This helps ensure that notified families do not become isolated from their primary sources of care, particularly health.

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