

# Child abuse and mandatory reporting

A review in progress

Grant Holland

## CHILD ABUSE

In Victoria, and to some extent Australia, the last two decades have seen some clarification in the classification of the various forms of child maltreatment and abuse. Currently, the major recognised forms of child abuse are acknowledged as being:

- physical abuse or non-accidental physical injury;
- sexual abuse and exploitation;
- emotional/psychological abuse; and
- neglect.

These forms of maltreatment often convey an image of non-accidental or wilful harm against children. Abuse, however, can often occur by neglect or a failure to protect children, and therefore can be characterised as abuse by omission. Many practitioners and professionals now use the term 'child abuse and neglect' rather than the single 'child abuse' term.

Government welfare departments, such as the Victorian Department of Human Services (DHS), have distributed their own practice and statutory definitions of child maltreatment. DHS defines its practice definition of child abuse and neglect as:

Child abuse is an act by parents or caregivers which endangers a child's or young person's physical or emotional health and development. Child abuse is not usually a single incident, but takes place over time. In Victoria, a child or young person is a person under 17 years of age. (DHS 1995: 2)

Definitions such as this can be misleading and restrictive in their interpretation of child abuse, in that many acts of abuse are committed by people other than parents and caregivers (see Editor's note no. 1). The Department of Human Services (Vic) further defines the various forms of abuse by category:

Physical abuse refers to a situation in which a child suffers or is likely to suffer significant harm from an injury inflicted by a child's parent or caregiver. The injury may be inflicted intentionally or may be the inadvertent consequence of physical punishment or physically aggressive treatment of a child. Physical injury and significant harm to a child may also result from neglect by a parent or caregiver.

Sexual abuse refers to a situation in which a person uses power or authority over a child to involve the child in a sexual activity, and the child's parent or caregiver has not protected the child. Emotional/Psychological abuse refers to a situation in which a child's parent or caregiver repeatedly rejects the child or uses threats to frighten the child, to the extent that it significantly damages the child's physical, social, intellectual or emotional development.

Neglect refers to a situation in which a child's parent or caregiver fails to provide the child with the basic necessities of life, such as food, clothing, shelter, medical attention or supervision, to the extent that the child's health and development is, or is likely to be, significantly harmed.

(DHS 1996: 22)

With regard to the current statutory and legal definitions pertaining to children who have been abused and/or are in need of protection, the Children and Young Persons Act, Victoria (1989), has prescribed the following definitions:

Section 63. When is a child in need of protection ?

For the purpose of this Act a child is in need of protection if any of the following grounds exist:

- (a) The child has been abandoned by his/her parents and after reasonable inquiries:
    - (i) the parents cannot be found; and
    - (ii) no other suitable person can be found who is willing and able to care for the child;
  - (b) The child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child.
  - (c) The child has suffered, or is likely to suffer significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type.
  - (d) The child has suffered, or is likely to suffer significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type.
  - (e) The child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type.
  - (f) The child's physical development or health has been, or is likely to be significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of basic care or effective medical, surgical or other remedial care.
- (Children & Young Persons Act, Victoria, 1989, Section 63)

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It is within the above legal framework that concerned professionals and the public make notifications to their local child protection intake unit at the Victorian Department of Human Services. Similar legislative provisions and procedures apply in other states.

The general community's framework for government welfare intervention, however, is often much broader. There appears to be a widening gap between the relatively narrow and forensically driven child abuse intervention focus, and a community that expects 'the government' to do something about a range of child welfare issues, not all of which fit in with the government's legislative mandate – hence public frustration with state welfare departments and argument by child protection services that they do not, and should not, deal with every social issue concerning children (see Editor's note no. 2).

### A broader perspective

Apart from the varying definitions and forms of child maltreatment, it should also be noted that child abuse occurs at varying levels of interaction. Child abuse is sometimes regarded as occurring on an individual to individual level.

A second level, often referred to as institutional abuse, can occur when children are in a group and abused by caregivers rather than their parents, such as in a children's home type setting.

The third, or societal, level of abuse pertains to the social and economic circumstances and practices within society, which can impact on children's development such as the health effects caused by urban pollution, eg, lead contamination in a children's playground.

An overall definition that attempts to encompass these three levels of maltreatment as well as highlighting the primary physical, sexual, emotional and neglect aspects of child maltreatment has been put forward by Peter Boss:

Child abuse in its widest sense means the curtailment of normal development of a child occasioned by deliberate or neglectful action by an individual, a group of people, or even a whole society. In its narrower sense, child abuse occurs when a child experiences some physical, emotional or mental damage occasioned other than through accident, by the behaviour of one or more individuals. (Boss, 1986: 6)

Some doubt, however, still lingers over the effect that confusion over definitions of abuse and related terms can have on the broad data relating to abuse statistics. The Victorian Government's Crime Prevention Committee report 'Combating Sexual Assault' (1995) echoed such concern regarding the Children and Young Persons Act, Victoria (1989). The committee's first recommendation out of one hundred and thirty recommendations, was that the word 'significant' pertaining to the definition of abuse in the Act be defined so as to ensure appropriate investigation of abuse.

### MANDATORY REPORTING

Mandatory reporting is the statutory requirement for certain people, usually designated professional groups, to report

known or suspected cases of child abuse to a prescribed authority. Most mandatory reporting statutes usually outline:

- what is reportable,
- who is mandated to report,
- sanctions for failing to report,
- a designated authority and procedures for reporting.

Voluntary reporting relies on the use of professional sanctions and a moral duty to report suspected or actual cases of abuse to the appropriate authorities.

The Victorian mandatory reporting legislation does not cover all types of child abuse. A mandated professional must report when they believe on 'reasonable grounds' that a child is in need of protection. According to the Children and Young Persons Act, Victoria (1989) with regard to mandatory reporting, a child is in need of protection when he or she has suffered, or is likely to suffer, significant harm as a result of physical injury or sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type. (Children & Young Persons Act, 1989, as amended, Sections 63c and d) No definition of 'reasonable grounds' is given.

Mandatory reporting legislation does not specifically cover emotional/psychological abuse and neglect, despite the statement of the Minister Dr. D. Napthine, which appears to claim the contrary:

The need for home based care has grown since the introduction of mandatory reporting of suspected abuse and neglect and through greater community awareness... (Napthine 1996) (see Editor's note no. 3).

Naturally, physical abuse caused through neglect is covered by the legislation, but it is still classed as physical abuse, not neglect. Hence confusion as to whether neglect per se is covered by the mandatory reporting legislation. It is not.

A mandated professional must report to the Victorian Department of Human Services, Child Protection Unit, when he or she:

- (1) forms a belief on reasonable grounds, and
- (2) in the course of practising his or her profession or carrying out the duties of his or her office, position of employment, that
- (3) a child is in need of protection (as defined above re: physical and/or sexual abuse). (Children & Young Persons Act 1989, as amended, Section 64, 1a)

A mandated professional is required to make a notification as soon as possible after forming a suspicion based on reasonable belief of abuse. There are penalties for failing to report. If the mandated professional, however, is able to prove that he or she believed that the child had already been the subject of a notification to DHS, then this is classified as a legitimate defence for non-notification (see Editor's note no. 4).

The legislation is also retrospective in that a mandated professional is required to report even if the belief was formed before the date on which he or she was mandated to report

abuse (Children & Young Persons Act 1989, as amended, Section 64, 1h).

### Proposed list of mandated professionals

Victorian Mandatory Reporting legislation details a lengthy list of proposed mandated professionals: medical practitioners, psychiatrists, teachers, proprietors and employees of kindergarten centres and child care centres, social workers, youth workers, welfare workers, youth and child care officers working for DHS, psychologists, police, parole officers and probation officers.

In October 1993, police, medical practitioners and nurses were officially mandated to report under the above provisions. Teachers were mandated from July 1994. Despite the lengthy list of proposed professional groups originally to be mandated, only doctors, nurses, police and teachers have been officially mandated to report abuse under the Act.

The term 'doctor' applies to those qualified medical practitioners operating under the Medical Practitioners Act, Victoria, 1994. Such professionals include general practitioners and psychiatrists but not dentists who are registered under a different Act. There has been no information from government or the Department of Human Services as to when the remaining professional groups will be mandated, if at all.

To add to the confusion, the Department of Human Services (Vic) also distributed pamphlets and booklets (*Child Abuse and Neglect: Effective Court Practice: A Guide for Professionals*, January 1994; *Reporting Child Abuse*, June 1995) stating that the following professionals are mandated reporters: operators, owners and employees of children's service centres, eg, kindergartens, social workers, youth workers, welfare workers, youth and child care officers, psychologists, parole and probation officers. These professionals, however, are not yet mandated reporters. Consequently, reporting abuse for all non-mandated professionals and the general community remains essentially a voluntary and moral-based decision (see Editor's note no. 5).

### Mandatory reporting: State by State.

The following information briefly outlines the reporting requirements for professional and other groups pertaining to each state in Australia.

**VICTORIA:** Although the Children and Young Persons Act 1989 outlined a range of professionals to be mandated, currently only doctors, nurses, police and teachers are legally required to report suspected cases of physical or sexual abuse (Children & Young Persons Act, 1989 as amended).

**SOUTH AUSTRALIA:** Under Section 91(2) of the Community Welfare Act 1972, prescribed persons who are required to report cases of suspected abuse are: doctors, dentists, pharmacists, nurses, police, probation officers, social workers, teachers, teachers' aides and kindergarten attendants and voluntary workers providing children's services (Community Law Reform Committee, 1993:20).

**NORTHERN TERRITORY:** Mandatory reporting was introduced in the Northern Territory under Sections 13 and 14

of the Community Welfare Act 1983. Any person who has reasonable grounds to suspect that a child has been, or is, the subject of maltreatment, must notify the Minister or a member of the police force (Community Law Reform Committee, 1993:20; James, 1995:383).

**AUSTRALIAN CAPITAL TERRITORY:** Section 103(2) of the proposed Children's Services Act outlines a number of prescribed professional groups that will have to compulsorily report cases of physical and/or sexual abuse. A pilot project and some professional training has already occurred, but the Department of Family and Children's Services states that this legislation will not be enacted until late 1997. (Department of Family Services, 1996).

**QUEENSLAND:** In Queensland, only doctors are legally required to report suspected child abuse. The legislation requiring them to report comes under the Queensland Health Act 1937 (Community Law Reform Committee, 1993:17).

**NEW SOUTH WALES:** NSW has had mandatory reporting for prescribed professionals since 1987. Medical practitioners are required by law to report child abuse to the Director-General of Community Services (Community Law Reform Committee, 1993:15).

**TASMANIA:** In Tasmania the Child Protection Act 1974 provides that anyone who suspects that a child has been the subject of abuse is required to notify an officer of the Child Protection Board (James, 1995:383).

**WESTERN AUSTRALIA:** There is currently no specific legislation covering any compulsory reporting of child abuse (Community Law Reform Committee, 1993:21; James, 1995:383).

Any information on this topic is gratefully received, and also passed on to any interested parties. I am not territorial about my research, the greater professional and public education, the better outcomes for our children, clients and families.

### REFERENCES

- Boss P. 1986, 'History of child abuse in Australia', in *National Conference on Child Abuse: Proceedings*, ed P. Snashall, Australian Institute of Criminology, Canberra.
- Children and Young Persons Act, Victoria 1989, as amended.
- Community Law Reform Committee 1993, *Report on Mandatory Reporting of Child Abuse*, Australian Capital Territory.
- Crime Prevention Committee 1995, *Combating sexual assault: An integrated model: Inquiry into sexual offences against children and adults*, Parliament of Victoria, Government Printer, Melbourne.
- Department of Family and Children's Services 1996, Australian Capital Territory. (Contact: Gail Winkworth)
- Department of Human Services (Vic) 1995, *Understanding and responding to child abuse and neglect*, information pamphlet, H&CS Promotions Unit, Melbourne.

Department of Human Services (Vic) 1995, *Reporting child abuse*, Protection and Care Branch, June.

Department of Human Services (Vic) 1996, as cited in Auditor-General's Report; *Protecting Victoria's Children. The Role of the Department of Human Services*, June 1996, Victorian Auditor-General's Office, Melbourne.

Health & Community Services 1994. *Child Abuse and Neglect: Effective Court Practice: A Guide for Professionals*, H&CS Promotions Unit, January.

James, J. 1995, *Health Care and the Law*, Law Book Company Limited, North Ryde, NSW.

Napthine, Dr. D., Minister for Community Services 1996, in *People First*, Department of Human Services newspaper publicity insert, Herald-Sun, 30 September 1996.

### EDITOR'S NOTES

The subject of mandatory reporting continues to be debated around Australia, although all states except Western Australia have adopted some form of it. The Victorian Department of Human Services were provided with a proof copy of Grant Holland's report and the following editor's notes nos. 1 - 5 have been extracted from their response.

1. It should be noted that the definitions of child abuse and neglect used by DHS relate specifically to the Department's role as statutory interveners, and are not intended to be all encompassing. The core role of the DHS relates only to those cases where the parents or caregivers of a child or young person are unable or unwilling to protect them from abuse or neglect. Other cases are police matters.
2. The alternate criticism directed at welfare departments is that protective services are too interventionist. An acknowledgement of both views would illustrate the extremes of the general public's judgements, and therefore the difficult position of welfare departments.
3. Minister Napthine's statement does not state categorically that all forms of neglect are required to be reported under mandatory reporting legislation. This statement is open to interpretation, but could be equally seen as a reference to those extremes of neglect which result in physical injury and significant harm, as discussed in the paragraph which follows it.

As Minister Napthine's statement appears in a newspaper article intended for the general community, it is reasonable to assume that his statement was intended to give a broad understanding of reporting requirements, and was not intended to provide a detailed legal definition for use by mandated professionals.

4. It is only true that a mandated profession would not need to report suspected abuse if they were sure that all current concerns had been reported to DHS. This is most likely to be the case where a protocol exists for reporting where a number of professionals make one report which conveys all of the concerns of the group. For example, a student

welfare coordinator or principal may report on behalf of several teachers.

It is not sufficient that a professional decides not to make a report because they know that the child has already been the subject of a notification to DHS. Whether knowledge of a child's previous notification to DHS is a legitimate defence for non-notification has yet to be tested in the courts.

5. It is true that the cited editions of the booklets *Reporting Child Abuse* and *Child Abuse and Neglect: Effective Court Practice: A guide for professionals* give the full list of professions which appear in Section 64(1A) of the Children and Young Persons Act as being mandated notifiers. At the time of publication it was anticipated that these professions would all be gazetted in the immediate future, and that the information contained in these publications would therefore be accurate. Enacted legislation is, however, subjected to a process of gazettal before it can come into force. The government of the day controls the timing of gazettal. It is true that gazettal of all professionals listed in the legislation has not occurred as anticipated. In response to this need for accurate information, both publications have been reprinted to reflect the current status of professionals mandated to report abuse. Current editions of these publications issued by the Department of Human Services (Victoria) are: *Understanding and Responding to Child Abuse and Neglect*, January 1997, and *Child Abuse and Neglect: Effective Court Practice: A guide for professionals*, November 1996.
6. A note prepared for the *Paediatric Nursing Review* by Margery Kennedy, A/Area Coordinator, Child Protection Education, South Eastern Sydney Area Health Service, gives the following updated information for NSW:

In February 1997, the New South Wales Government, in conjunction with the NSW Child Protection Council, launched the new Interagency Guidelines for Child Protection Intervention. These guidelines have been adopted by all NSW Government departments and agencies involved in child protection intervention. The NSW Interagency Guidelines list physical abuse, physical assault, sexual abuse, emotional abuse and neglect as recognised forms of abuse of children, but also now make specific reference to domestic violence as having a profound effect on children and acknowledge this as a form of child abuse. The guidelines define abuse as:

- a) assault (including sexual assault) of the child; or
- b) ill treatment of the child; or
- c) expose or subject the child to behaviour that physically harms the child, whether or not, in any case, with the consent of the child.

A child in NSW is defined under the Children (Care and Protection) Act 1987 as a person who is under the age of 18 years and adds that 'a person who abuses a child, or causes or procures a child to be abused, is guilty of an offence'.

The NSW Children (Care and Protection) Act 1987 and the Children (Care and Protection) Amendment (Disclosure of Information) Act 1996 establish a process so that people who believe, on reasonable grounds, that a child is being or is in danger of being abused can give information to the Department of Community Services so that action can be taken to protect the child. At the present time only doctors, school teachers, counsellors, social workers attached to schools and early childhood teachers at schools are mandated to report child abuse. The NSW Children (Care and Protection) Act 1987 is currently under review and is expected to expand the categories of professional who will be mandated to report child abuse. All NSW health employees are required under the NSW Health Department Circular 97/14 to report all forms of abuse or suspected abuse of children who are under 16 or 17 years of age.

In line with the publication of the Interagency Guidelines for Child Protection Intervention, the NSW Department of Health has updated its own Child Protection Policy and Procedures Manual. Included with the Manual is:

- a) The NSW Health Policy for protecting children and young people from physical abuse, emotional abuse and neglect;
  - b) Recognising and notifying child abuse and neglect: Procedures for front line health professionals in community health, adult, child and adolescent mental health, emergency departments, paediatric wards, maternity units, and dental services;
  - c) Child sexual assault procedure manual for specialist sexual assault services; and
  - d) Physical abuse, emotional abuse and neglect of children: Procedure manual for health workers providing secondary response.
7. Advice is to hand that Tasmania is in the process of enacting new legislation in the form of the Children, Young People and their Families Bill.
8. To enable interested readers to pursue the issue further, statutory departments responsible for child protection services in each State or Territory are as follows:

**New South Wales**

Care & Protection Unit, Dept of Community Services  
Locked Bag 28, Ashfield, NSW 2131.  
Fax: 02 9916 2442

**Victoria**

Child, Adolescent & Family Welfare  
Department of Human Services  
GPO Box 4057, Melbourne, Vic 3001  
Fax: 03 9616 7965

**Tasmania**

Child, Family & Community Support  
Department of Community & Health Services  
GPO Box 125B, Hobart, Tas 7001  
Fax: 03 6233 2883

**Western Australia**

Protection and Care  
Family & Children's Services  
PO Box 6334, East Perth, WA 6892  
Fax: 09 421 1641

**South Australia**

Dept of Family & Community Services  
PO Box 39, Rundle Mall PO, Adelaide, SA 5000  
Fax: 08 226 7098

**Northern Territory**

Family, Youth & Children's Services  
Territory Health Services  
PO Box 40596, Casuarina, NT 0811  
Fax: 08 89 992 833

**Queensland**

Protective Services Branch  
Department of Family & Community Services  
GPO Box 806, Brisbane, Qld 4001  
Fax: 07 3224 2013

**ACT**

ACT Family Services  
PO Box 1584, Tuggeranong, ACT 2901  
Fax: 06 207 1491