Chapter 1

Mandatory reporting laws: their origin, nature and development over time

Dr Ben Mathews

Introduction

Most children have relatively happy childhoods in loving and capable families but some do not. Throughout human history, a significant proportion of children have endured severe maltreatment from their parents and caregivers. Due to the innate vulnerability of infants and children, the extreme power asymmetry of the parent/child relationship, and the private setting of severe maltreatment, these infants and children are uniquely marginalised and oppressed. Their experience of severe maltreatment is hidden in the family sphere, where parents’ activities are guarded by a heavy ideological curtain. Broken bones and beatings, rape and sexual assaults, severe emotional deprivation, and profound and even life-threatening neglect: all have traditionally remained silenced and protected from view. Even when another person became aware of such a situation, they would usually avert their gaze, such was children’s lack of status relative to their parents’; and given the severity of the conduct, the person might reasonably wonder what they could possibly do anyway.

Until relatively recently, there have been no systematic socio-legal measures or systems anywhere in the world to enable intervention by protective agencies to stop the continuance of maltreatment and enable provision to the child of health rehabilitation and a safe environment. In what has been described as a ‘tectonic shift’ (Runyan 2014), the social response to child suffering changed in the early 1960s in the USA, moving beyond earlier measures such as those in English Poor Laws and societies for the protection of children. The key advance was to create a measure to open the curtain shading the private family sphere and shed light on instances of serious child maltreatment. Laws were enacted across the USA which required designated persons to report serious child physical abuse to authorities; those authorities would receive the reports and determine the appropriate course of action.

As other forms of serious maltreatment became recognised and understood, these ‘mandatory reporting laws’ were extended to encompass those types of maltreatment as well. The laws have since been adopted by many countries, in different forms (Mathews & Kenny 2008; Daro 2006). They are a heterogeneous, organic, flexible mechanism enabling social intervention where otherwise such intervention is severely compromised or impossible. Their primary function is to comprise but one aspect of a multifaceted child welfare apparatus by identifying cases of serious maltreatment which would not otherwise come to light; their essential role is therefore primarily tertiary and is not a purely preventative one. As noted later in this chapter, the evidence indicates that on this basis they have greatly assisted in case identification and remain superior to alternative approaches. As well as the laws imposing a direct obligation on selected individuals to act, as a strategy endorsed by parliament as representatives of the community, they embody a declaration about what is and is not acceptable conduct, and about what interests it
values society must and will protect. In this sense they are also an instrument to influence positive development in attitudes, behaviors and societal culture.

Dozens of countries have now enacted mandatory reporting laws in various forms. However, in many countries, such measures still do not exist. Others like England are currently considering them; others like Saudi Arabia have recently introduced them (Al Eissa & Almuneef 2010); others like Ireland are introducing them. Even where they exist, debates continue about their use and effects, both generally and for specific types and extents of maltreatment (Besharov 1985; Drake & Jonson-Reid 2007; Mathews & Bross 2008; Melton 2005; Wald 2014a, 2014b). This chapter outlines the origins and provenance of the first mandatory reporting laws; discusses their nature; describes major developments over time; and identifies some major effects and their consequences.

**Origins and provenance: the first mandatory reporting laws**

The impetus behind the first mandatory reporting law about any kind of child abuse or neglect was the work of the Colorado paediatrician C. Henry Kempe and his medical colleagues (1962) in identifying cases of severe child physical abuse, and conceptualising this as ‘the battered-child syndrome’. Kempe et al. were seeing numerous cases of severe intentional physical injury to children in their hospitals; an example was given of one day’s intake including four infants suffering parent-inflicted battering, two of whom died, another of whom died four weeks later, with the fourth recovering. Kempe et al. acknowledged that this battering of children by their caregivers occurred on a spectrum of less severe cases to extremely severe cases. However, their emphasis was on severe injury, especially cases involving bone fractures (whether of the skull, arms or legs) and or subdural hematoma. Because of their understanding and empathy towards the child’s situation – notably, it is the child who is the primary subject of concern, not the parents - they had been disturbed by doctors encountering these cases and not taking appropriate action to prevent avoidable harm to the child. Children who were known or should have been known to have been victims of severe physical injury were being ignored, returned to the offending parents, and would continue to suffer and in some cases would die.

Kempe et al. (1962, p.17) defined the battered-child syndrome as:

> A term used by us to characterize a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent...It is a significant cause of childhood disability and death. Unfortunately, it is frequently not recognized or, if diagnosed, is inadequately handled by the physician because of hesitation to bring the case to the attention of the proper authorities...The battered-child syndrome may occur at any age, but, in general, the affected children are younger than 3 years.

Their conclusion was that appropriate management by doctors involved making (1962, p. 23):

> the correct diagnosis so that he can institute proper therapy and make certain that a similar event will not occur again. He should report possible wilful trauma to the police department or any special children’s protective services that operate in his community. The report that he makes should be restricted to the objective findings which can be verified and, where possible, should be supported by photographs and roentgenograms.

Kempe had identified and publicised not only the situation of severe intentional injury being inflicted on parents, but also the widespread reluctance and or seeming inability of
many doctors to recognise it and deal with it appropriately by reporting it to authorities (Bross & Mathews 2014). Their position was that such serious instances of maltreatment must no longer be tolerated and a mechanism had to be devised to circumvent individuals’ reluctance and or inability to act, and to enable outside intervention to assist the child. Doctors’ repeated failure to act on clear cases of violent assault to infants embodied the phenomenon of ‘gaze aversion’; they looked away when they encountered a situation which caused them discomfort or psychological confusion. This gaze aversion was not limited to doctors, and it continues today, although in cultures where people are more informed about and sensitised to child abuse and its consequences, and more supportive of children’s rights, it is arguably less likely to persist.

Kempe et als’ research was accompanied by intensive lobbying for legislative reform. As a result, the first mandatory reporting laws were enacted in every State of the USA (except Hawaii) between 1963 and 1967 (Besharov, 1985; Kalichman, 1999; Nelson, 1984; Paulsen et al. 1966; Paulsen 1967). In accordance with the scope of Kempe’s work at this time, these laws were initially limited to requiring medical professionals to report suspected serious physical injury inflicted by a child’s parent or caregiver. The fundamental premise was that doctors regularly encounter children by virtue of their profession, and because of this are well placed to identify cases of severe maltreatment, and by reporting it enable intervention by welfare agencies to interrupt the abuse and facilitate health rehabilitation and other services for the child and family.

The nature of a mandatory reporting law: what it is, and what it is not
Before proceeding to explain how the laws have developed over time, it is important to make some observations about the nature of a mandatory reporting law. First, they are different from a specific duty in a criminal statute requiring all persons to disclose a serious indictable offence which they know or believe to have been committed. These provisions do exist in some jurisdictions. In Australia, the New South Wales Crimes Act s 316 is one example, and Victoria has just introduced a similar provision which in fact has as its sole object of concern the disclosure of child sexual abuse (Crimes Amendment (Protection of Children) Bill 2014 clause 4). However, these are not ‘mandatory reporting laws’ in the true sense of the term; one reason for this is that these provisions are a more limited ad hoc approach to crime detection, whereas mandatory reporting laws are a more systematic approach to child welfare accompanied by a range of structural mechanisms to support them, such as expert reporter training¹ and child protection response systems to assist children and families.

Different approaches to reporting laws: a spectrum of choice
Second, as will be shown below, because mandatory reporting laws are made by each specific jurisdiction according to its preferred design and function within its socio-political system, they have a similar schematic approach but have different dimensions and application. There is a spectrum of different approaches from which a jurisdiction can choose: the laws can be very broad, or very narrow. They can apply to a broad or a narrow range of reporter groups. They can apply to a broad or a narrow range of types of maltreatment; they do not always apply to every form of abuse and neglect; and importantly, they do not apply to every instance where abuse or neglect occurs. Rather, they are usually limited to cases where the reporter knows or suspects it is a case of serious or significant harm that has already been caused by the abuse or neglect, or where the harm may not yet have appeared but is likely to eventuate from the abuse or

¹ See the chapters by Kenny and by Donohue et al. in this volume.
neglect suspected to have occurred.\(^2\) The laws do not require reports of trivial incidents, or of less than ideal parenting. In addition, the reporting laws are primarily an exercise in reporting known and suspected \textit{existing} cases of abuse or neglect and serious harm; they are not an exercise in pure prediction of future events. They do not require people to report any situation in which they perceive any kind of ‘risk’ to a child.

An example of the text from a reporting law is indicative.\(^3\) The mandatory reporting legislation in two States of Australia (South Australia, and Tasmania) is identical in this respect, identifying ‘abuse or neglect’ as (author’s emphasis):\(^4\)

(a) sexual abuse; or
(b) physical or emotional injury or other abuse, or neglect, to \textit{the extent that}—
   (i) the injured, abused, or neglected person has suffered, or is likely to suffer, physical or psychological \textit{harm detrimental to the person’s wellbeing}; or
   (ii) the injured, abused, or neglected person’s \textit{physical or psychological development is in jeopardy}.

In sum: together with the other parts of the reporting law, and as clarified in formal reporter training and accompanying documentation, a mandated reporter in these two jurisdictions would be required to report any suspected case of child sexual abuse; the other types must only be reported if the abuse or harm is present to the specified extent of significance.

In federated jurisdictions such as the USA, Canada and Australia, each State, Territory and Province will create its own legislation. This can produce considerable variation across jurisdictions within the same country (Mathews & Kenny 2008). Other national jurisdictions will also naturally be able to fashion their reporting law according to their preference. Consequently, there are major differences in the laws made by different jurisdictions both across and within countries concerning who has to report, what types of maltreatment must be reported, and other dimensions of the duty. Below I outline the common schematic approach to the legislative schemes, with notes showing how they can differ across jurisdiction (and within the same jurisdiction over time) (Mathews & Kenny 2008).

\(^2\) The primary subject matter of the reporting provisions is ‘abuse’ either explicitly, or as a natural and co-existing consequence of being the \textit{cause} of the significant or serious ‘injury’ or ‘harm’ specified. The two are inextricably linked, and the co-existing causal relationship and link is often acknowledged directly in the provisions by the use of the term ‘caused by’. There are some instances where a type of abuse must be reported without any mention of harm – most often, for sexual abuse (eg in Australia, ACT, NT, SA, Tas, WA), and for physical injury by abuse (ACT). In five statutes the first concept used is ‘abuse’, with proceeding words or provisions relating to the abuse causing harm, and the extent of this harm required to activate the reporting duty (ACT, Qld, SA, Tas, WA). In four statutes the first concept used is ‘harm’, with proceeding words or provisions identifying or recognising that this ‘harm’ is \textit{caused by} various kinds of abuse and neglect (NSW, NT, Qld, Vic).

\(^3\) As anyone who has taken the time to access and read a piece of legislation will know, mandatory reporting provisions, like many other types of legal provisions, are long and complex, may involve numerous different numbered provisions scattered through different parts of a statute (and sometimes several different statutes), and on top of this are subject to the rules of statutory construction (both legislative and common law) which apply to all legislation. A ‘mandatory reporting law’ is therefore not a simple creature which can be easily located, read and understood.

\(^4\) Children’s Protection Act 1993 (SA) s 6; Children, Young Persons and Their Families Act 1997 (Tas) s 3.
Table 1: Dimensions of the schematic approach common to all mandatory reporting laws, with notes on their usual features and typical differences

<table>
<thead>
<tr>
<th>Dimension of the reporting law</th>
<th>Usual features and typical differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defines which persons must make reports</td>
<td>Usually restricted to members of key professions who deal regularly with children in the course of their work, such as police, teachers, nurses and doctors; but sometimes applied to all citizens(^5)</td>
</tr>
<tr>
<td>Defines what state of mind a reporter must have before the reporting duty is activated</td>
<td>Usually the possession of ‘reasonable grounds to suspect’ or ‘reasonable grounds to believe’; certainty is not necessary, but it requires something more than an inkling</td>
</tr>
<tr>
<td>Defines the types of abuse and neglect that must be reported</td>
<td>Varies widely across jurisdictions: some only require reports of sexual abuse; some only of physical and sexual abuse; many require reports of physical, sexual and emotional abuse, and neglect; some require reports of these four types and exposure to family violence, and more</td>
</tr>
<tr>
<td>Defines the extent of harm/abuse or neglect which requires a report</td>
<td>The ‘significant harm’ aspect, which is defined using a range of terms, and which is used in most but not all jurisdictions. Often, the significant harm aspect is not applied to sexual abuse. Some jurisdictions do not clearly specify the degree of ‘harm’; unless complemented in reporter training this may produce more reports (but this may fit with the more preventative intention of these jurisdictions)</td>
</tr>
<tr>
<td>Define whether the duty applies only to past or present abuse/harm; or also to future abuse/harm which has not occurred yet but which is thought likely to occur</td>
<td>All laws apply to the former (the classical Kempe scenario of tertiary response). Some laws include the latter also: this is clearly a more preventative aspiration and a good example of this is the duty to report suspected likely future sexual abuse – which can be seen in situations of grooming of a child for sexual abuse.</td>
</tr>
<tr>
<td>Defines other familial circumstances which must be present to require a report</td>
<td>Some jurisdictions (eg several in Canada, Victoria in Australia) limit the reporting duty by only requiring a report if the reporter believes the child’s parents ‘have not protected, or are unlikely to protect the child’ from the harm</td>
</tr>
<tr>
<td>Defines penalties for failure to report</td>
<td>These vary widely but are meant to encourage reporting rather than police it; prosecutions are extremely rare but high penalties may produce hypersensitive reporting. The New South Wales legislation removed its penalty in 2010</td>
</tr>
<tr>
<td>Provide a reporter with confidentiality regarding their identity</td>
<td>An important protection for reporters</td>
</tr>
<tr>
<td>Provide a reporter with immunity from suit</td>
<td>Also a critical protection for reporters, as shown by the experience of jurisdictions without legislation (Mathews, Payne et al 2009)(^6)</td>
</tr>
<tr>
<td>State when the report must be made</td>
<td>Usually immediately</td>
</tr>
<tr>
<td>State to whom the report must be made</td>
<td>Usually to the government agency responsible for child protection; but now, often, reports of lesser situations of need rather than harm can be reported to differential response agencies</td>
</tr>
<tr>
<td>State what details a report should contain</td>
<td>Usually all relevant information about the child, the injuries, the circumstances, statements, the child’s family situation, contact details</td>
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</tbody>
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\(^5\) It is not uncommon for clergy to be mandated reporters; in the USA, 27 jurisdictions include clergy as mandated reporters (Children’s Bureau, Clergy as Mandated Reporters of Child Abuse and Neglect, Child Welfare Information Gateway, Washington, 2012).

\(^6\) A barrier to reporting can arise in jurisdictions without mandatory reporting legislation’s protective shields for reporters. A soft policy-based duty to report provides no direct protections. In England and Wales, paediatricians have reported anxiety about parental complaints and fear of disciplinary action if reports are made and not substantiated. Cases of complaints against paediatricians appear to have impacted on others’ willingness to report and to take on leadership roles in child protection. Government and the House of Lords have confirmed that paediatricians’ first legal duty is to the care of the child so that reports should be made (Department for Children, Schools and Families, 2007; JD v East Berkshire Community Health NHS Trust & Ors, 2005), but anxiety within the profession remains.

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It should also be noted that the laws also enable non-mandated persons to report suspected cases: and in fact, the data shows that mandated reporters make only around 50-60% of all reports. These explanations are important because one of the asserted problems caused by mandatory reporting – that ‘it produces too many unwarranted reports’ - is based on an incorrect assumption about their nature, a failure to distinguish between different patterns of reporting by different reporter groups and for different types of maltreatment, and a misunderstanding about the nature of substantiation (Drake 1996; Drake & Jonson-Reid 2007; Kohl et al 2009). It is true that instances of ‘undesirable’ reporting have sometimes occurred, but in these instances arguably the major factors have been poor planning and drafting, and a failure of public administration by governments in not properly preparing reporters to comply with their duty, and in inadequate resourcing of response systems (Mathews 2012). Later in this chapter I will indicate a clear example of flawed public administration which appeared to produce undesired effects, but which does not detract from the principle animating the reporting law.

Developments over time: extensions and contractions of mandatory reporting laws, and adoption by many countries in various forms

In the USA, the scope of States’ initial legislation was restricted to require medical practitioners to report serious intentional physical injury,7 with the laws being heavily informed in this respect by draft legislation recommended by the Children’s Bureau, the American Medical Association and the Council of State Governments (Paulsen 1967). Only a few states included a requirement to report serious injury caused by neglect. The general ambit of these laws soon expanded in three ways. Importantly, and unlike many other countries, these expansions were strongly influenced by the effect of the passage in 1974 of the federal Child Abuse Prevention and Treatment Act (CAPTA), which allocated funds to states based on the parameters of their laws. In essence, State laws were obliged to make their reporting laws have certain parameters to qualify for receipt of federal economic support for child welfare. One key provision in this regard in the first version of CAPTA was the definition of “child abuse and neglect” as (author’s emphasis):8

The physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child’s welfare under circumstances which indicate the child’s health or welfare is harmed or threatened thereby.

The three major expansions were as follows. First, state laws were gradually amended to require members of additional professional groups beyond medical practitioners to report suspected cases of abuse; some states would require all citizens to make reports. For example, in 1974, all laws required medical practitioners to report, but only nine required police officers to report; by 1986, many more states had added other professions to their lists of mandated reporters (Fraser 1986; Zellman & Fair 2002).

Second, the types of reportable abuse were expanded to include not only physical abuse but sexual abuse, emotional or psychological abuse, and neglect (Zellman & Fair 2002). Third, as seen in the definition above, the extent of harm to have been caused or suspected to be likely to activate the reporting duty was required by CAPTA to be unqualified by expressions such as “serious” or “significant” harm; most states

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7 A few States chose not to incorporate the ‘serious’ injury qualification (Paulsen 1967).
abandoned such qualifications and this would broaden the scope of the reporting duty (Kalichman, 1999; Mathews & Kenny 2008).

It can be noted that these extensions were in part influenced by growing recognition of the nature and consequences of other forms of child maltreatment. After Kempe’s initial primary concern with severe physical abuse, different maltreatment types were recognised: sexual abuse, emotional or psychological abuse, and neglect. For example, research in the late 1970s and early 1980s brought incest and other classes of child sexual abuse to greater prominence (Giarretto 1977; Kempe 1978; Summit & Kryso 1978; Finkelhor 1979).

CAPTA would periodically be amended and reauthorised, and was completely rewritten in 1988 (P.L. 100-294). At this point, the definition in s 14(4) still retained the essential features established in 1974, although had broadened the concept of sexual abuse. By 1986, most states had mandated teachers, nurses, social workers and mental health professionals as reporters (Fraser 1986).

However, a significant change was made in 1996 (P.L. 104-235), when the definition of “child abuse and neglect” was modified by s 110(3) inserting a qualification of “serious” harm. The definition then read (author’s emphasis):

the term ‘child abuse and neglect’ means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.

The most recent revision of CAPTA in 2010 retains this definition of “child abuse and neglect” (42 U.S.C. s 5106g(2)). The emphasis is clearly on, at a minimum, acts of abuse and neglect which have caused significant harm. This insertion of the ‘serious harm’ qualification effectively contracts the required scope of State legislation. However, State legislatures may still choose to adopt a broader definition, and some States have done so (Mathews & Kenny 2008). Where such qualifications regarding significant harm are not present, a jurisdiction has chosen to have a higher emphasis on prevention of more serious maltreatment by intervening at an earlier point in the process of maltreatment, as well as interrupting serious harm or abuse. Such an approach often uses both child protection systems’ investigative function, as well as a differential response approach which focuses on a different post-report response pathway.

A more explicit focus on significant harm is found in most US State laws and in most of the legislation across Australia. Moreover, some jurisdictions add a further qualification to the reporting duty, also restricting it to cases where not only is the significant harm qualification present, but in addition, the child does not have a parent able to protect them from the harm. Examples of this approach can be found in several provinces of Canada, and in Victoria in Australia (Mathews & Kenny 2008).

**Mandatory reporting evolving to include differential response approaches**

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9 The term “child abuse and neglect” was defined as meaning “the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by a person who is responsible for the child’s welfare, under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby”.

Mandatory reporting legislation continues to evolve and adapt in virtually all jurisdictions which have adopted it. One of the most significant recent changes can be seen in many jurisdictions which are attempting to balance, on the one hand, the need for government child protection agencies to receive reports of significant harm and employ a traditional investigative response from child protective services teams to determine whether maltreatment has occurred, and what response is most appropriate; and on the other hand, to ease the burden on child protection departments by diverting reports to welfare agencies of clearly less serious situations in which either there is no maltreatment at all, but simply need based on poverty, or which involve only minor harm or maltreatment which does not require more formal systemic responses. This latter focus on ‘differential response’ is seen by most as a generally positive development, and is becoming more widespread both in the USA and Australia, although its contours and implementation are not uniform (Fluke et al. 2013; American Humane 2008). In general, it aims to provide an additional mechanism to respond more efficiently and justifiably to reported cases of a different type of situation which have a different type of needed response. The focus is on provision of services to the child’s caregivers and the child. In principle, a nuanced approach to response is essential: an otherwise happy and healthy eight year old who sometimes does not have appropriate clothing or food due solely to his single mother’s poverty requires a far different response to a three-weeks old neonate whose drug-addicted parents beat him, burn him and will not engage with support.

Arguably, if implemented soundly, differential response is as essential a part of a public health approach as are the reporting laws. However, it has been observed that such systems must be shown to be successful (and not only by measures of parental satisfaction), should not compromise the child’s safety, should be backed by a capacity to compel parental compliance where necessary (noting that parental engagement is voluntary), and must not be used by politicians to withdraw net funding from the child protection and child welfare endeavour (Bartholet 2013; Bartholet & Heimpel 2013; Heimpel & Bartholet 2014).

The process of development and evolution of the laws, including the incorporation of differential response mechanisms, and the adoption of different approaches across the

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11 In Australia, examples include Victoria’s Child and Family Information, Referral and Support Teams (ChildFIRST) system, which enables individuals who have a significant concern about a child’s wellbeing to refer their concern to ChildFIRST for help, rather than reporting to the department responsible for child protection (Children, Youth and Families Act 2005 (Vic) s 31). This provision complements the mandatory reporting provisions, where reports of specified cases of a child being ‘in need of protection’ must be made to the Secretary of the Department (Children, Youth and Families Act 2005 (Vic) s 184). Children and families who are referred to ChildFIRST are assessed and may be offered home-based family support or referred to other health and welfare services (Children, Youth and Families Act 2005 (Vic) s 33). ChildFIRST must forward reports to child protection services if the community-based child and family service considers that the situation may involve more significant harm or risk of harm; that is, that the child may be ‘in need of protection’ (Children, Youth and Families Act 2005 (Vic) s 33(2)). Equally, reports made to child protective services may be redirected to ChildFIRST if deemed not to require a child protection response (Children, Youth and Families Act 2005 (Vic) ss 187, 30). The ChildFIRST model was adopted in Tasmania under the name ‘Gateways’. Tasmania also amended its mandatory reporting laws to facilitate a preventative approach. Mandatory reporters could report their concerns about the care of a child to a ‘Community-Based Intake Service’, and this would fulfill their reporting duty (Children, Young Persons and Their Families Act 1997 Part 5B). In New South Wales, s 27A of the Children and Young Persons (Care and Protection) Act 1998 (NSW) enabled mandated reporters to make reports to ‘Child Wellbeing Units’ which were established in the four major State government departmental groups (health, education, police, and family and community services). These units provide support and advice to mandated reporters on whether a situation warrants a mandated report and on local services which might be of assistance. The units’ focus is on ascertaining what the family needs to minimise or overcome their situation and on facilitating the most appropriate assistance.
spectrum of choice, can be illustrated by a concise chronological overview of developments in Australia from the 1960s to date.

**An example of developments and differences: an Australian overview**

Soon after Kempe’s work, some early Australian research also made similar observations about the physical abuse of children (Birrell & Birrell 1966; Wurfel & Maxwell 1965). This research helped to inform the development of the first mandatory reporting laws in Australia, including the first enactment in South Australia in 1969. The first Australian mandatory reporting laws in the late 1960s and early 1970s focused primarily on physical abuse, and, to an extent, severe neglect. Like their American counterparts, usually these first laws were limited to requiring medical practitioners to report.

Subsequently, all eight Australian States and Territories have introduced, and incrementally expanded, mandatory reporting requirements. Legal historical analysis by Mathews (2014) revealed the disjointed process of introduction of mandatory reporting laws in time, place and subject matter in Australia. Table 2 shows the national chronology.

**Table 2: Chronology of introduction in Australian States and Territories of first mandatory reporting laws, and their focus**

<table>
<thead>
<tr>
<th>Date of first mandatory reporting provision</th>
<th>Jurisdiction</th>
<th>Focus of original reporting duty</th>
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</thead>
<tbody>
<tr>
<td>27 November 1969</td>
<td>South Australia</td>
<td>Neglect and ill-treatment by parents and caregivers</td>
</tr>
<tr>
<td>22 October 1975</td>
<td>Tasmania</td>
<td>Physical abuse and neglect</td>
</tr>
<tr>
<td>1 July 1977</td>
<td>New South Wales</td>
<td>Physical abuse and neglect</td>
</tr>
<tr>
<td>14 June 1980</td>
<td>Queensland</td>
<td>Physical abuse and neglect</td>
</tr>
<tr>
<td>20 April 1984</td>
<td>Northern Territory</td>
<td>All forms of child abuse and neglect, where the child does not have a parent who can protect the child from the abuse</td>
</tr>
<tr>
<td>4 November 1993</td>
<td>Victoria</td>
<td>Children in need of care and protection as a result of harm from physical injury or sexual abuse, and lack of a parent who can protect the child from that harm</td>
</tr>
<tr>
<td>1 June 1997</td>
<td>Australian Capital Territory</td>
<td>Physical abuse and sexual abuse</td>
</tr>
<tr>
<td>1 January 2009</td>
<td>Western Australia</td>
<td>Sexual abuse</td>
</tr>
</tbody>
</table>

**A dynamic, flexible instrument of social policy**

The example of Australia also shows how the laws are a dynamic, organic measure which is adaptable to change. As with all legislation, mandatory reporting legislation are instruments of socio-legal policy which are able to be refined and developed – whether by expansion, contraction, or refinement - to accommodate new knowledge, policy imperatives, and systems changes. The developments in the laws and in differential response systems in the last decade or so provide a clear example of this. The refinements made in each Australian State and Territory in the last decade alone show how governments can choose to modify this important instrument, either enlarging, contracting, or otherwise modifying its technical scope (parameters of the law) and practical implementation (eg mandated reporter training, and systems approaches). Research is important in this respect as it can identify differential reporting practices between jurisdictions with different legal frameworks, between reporter groups, and between different types of maltreatment, and can help to identify areas of more or less effective reporting practice, and areas of systemic need. National research in Australia is
currently being undertaken in this regard. Research into reporting systems is an essential aspect of the monitoring component of a public health approach.

This point is important, because it demonstrates how when research and monitoring reveals problems with the law, appropriate changes can be devised and implemented. Creation of a legal framework does not bind policy and strategy forever. It also means that when a problem is identified, we can carefully consider principles and evidence and figure out how best to respond to it. This reasoned approach guards against unnecessary ‘all or nothing’ overreactions and extreme exhortations to abandon the entire policy; such exhortations are extremely rare but have been made (Melton 2005) and later strongly criticized (Drake & Jonson-Reid 2007; Mathews & Bross 2008).

Legislative analysis of each Australian jurisdiction reveals many changes in the decade 2003-2012, of which the following are the most substantial developments (Mathews 2014).

Table 3: Chronology of notable legislative developments and refinements in Australian State and Territory mandatory reporting laws, 2003-12

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Notable legislative developments and refinements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australian Capital Territory</strong></td>
<td>1 August 2006: Clarification that no need to report if reporter believes someone else already has</td>
</tr>
</tbody>
</table>
| **New South Wales**   | 30 March 2007: New duty to report prenatally where birth mothers subject of prenatal report do not engage with services  
24 January 2010: Clearer requirement of significant harm to activate reporting duty  
Duty to report failure to attend school  
Removal of penalty for not reporting  
Reports by mandated reporters enabled to be made to differential response agencies |
| **Northern Territory** | 8 December 2008: ‘Maltreatment’ definition replaced by ‘harm’, which is defined to include all forms of abuse and neglect as well as exposure to physical violence, with ‘harm’ requiring suffering of ‘significant detrimental effect’ on physical, psychological or emotional wellbeing or development |
| **Queensland**        | 31 August 2005: New duty for nurses to report all sexual abuse, and to report physical abuse, emotional abuse, and neglect where it has caused or is likely to cause significant harm  
9 July 2012: new duty for school staff to report all suspected child sexual abuse |
| **South Australia**   | 31 December 2006: Penalty for not reporting increased from $2500 to $10,000. New reporter groups added: ministers of religion; employees and volunteers in religious, spiritual, sporting and recreational organisations |
| **Tasmania**          | 30 March 2005: New duty to report exposure of child to family violence where child’s ‘safety, psychological wellbeing or interests are affected or likely to be affected by family violence’ – family violence defined very broadly  
1 August 2009: Reports by mandated reporters can be made to a differential response agency  
New duty to report prenatally where suspect that the child after birth will suffer abuse or neglect, be killed, or will require medical treatment as a result of the mother’s behavior, or the behavior of a person with whom the mother resides or is likely to reside |
| **Victoria**          | No substantial changes for mandated reporters; but differential response emphasized from 23 April 2007 and non-mandated reports can be made to these agencies |

12 By Mathews, Bromfield, and colleagues.
**International overview**

Many countries now have mandatory reporting laws. The three early adopters were the USA, Canada and Australia. Mathews and Kenny (2008) found that mandatory reporting legislation of some kind had been enacted in every jurisdiction in the USA, every jurisdiction in Canada, and all but one in Australia. The outlying Australian jurisdiction has since passed mandatory reporting law, limited to sexual abuse (Mathews et al 2009).

Beyond these nations, others with legislative mandatory reporting duties include Denmark, Norway, Sweden, France, Hungary, Israel and Brazil (Mathews & Kenny 2008; Daro 2006). The adoption of the laws continues: one nation to recently introduce them is Saudi Arabia, where the laws have been judged to produce a positive effect on case identification (Al Eissa & Almuneef 2010). Ireland recently introduced into Parliament the Children First Bill 2014. A recent survey of 62 nations involved 33 developed nations, and 29 developing nations found, overall, that some form of mandatory reporting existed in 81.8% of the 33 developed nations and 78.6% of the 29 developing nations (Daro 2006). By region, some form of mandatory reporting was present in 90% of the nations in the Americas; 86.4% of the nations in Europe; 77.8% of the nations in Africa; and 72.2% of the nations in Asia.

Usually, legislative mandatory reporting duties are placed in child protection legislation. However, another approach to mandatory reporting is to enshrine the duty in the criminal law. For example, France has a mandatory reporting duty enshrined in its Penal Code, as does Israel. Other nations, such as Sweden, enshrine the mandatory reporting duty in social services legislation.

**Major effects of mandatory reporting laws, and consequences of these effects**

Mandatory reporting laws have indisputably resulted in the identification of many cases of severe child maltreatment than would otherwise have been revealed (Besharov 2005; Zellman & Fair 2002). After introduction of the laws and their associated mechanisms – reporter training, dedicated child protection systems - reports of known and suspected maltreatment increased substantially, compared with the situation before the reporting laws. Many of these reports resulted in identification of severely abused and neglected children. Besharov (1985, p. 545) declared “there is no dispute that the great bulk of reports now received ... would not have been made but for the passage of mandatory reporting laws and the media campaigns that accompanied them.” Besharov (1990; 2005, p. 287) estimated that due to increased reporting and investigation and treatment services, annual child deaths in the USA have fallen from 3,000-5,000 to about 1,100 (they now number around 1500 annually).

**Overall positive effect**

In addition to the effect on fatalities, if one considers the situation both historically and from the perspective of the maltreated child, the overall effect on child protection and child welfare must be viewed as remarkably positive. This ongoing impact for so many thousands of children over many years, compared with the position without mandatory reporting, can be judged on numerous bases.

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13 Penal Code art 434.
14 Penal Law s 368D.
15 Social Services Act Ch 14 s 1.
First, the laws do result in more reports, at least initially, and substantial proportions of these result in substantiated cases and other outcomes which assist the child. In 1963 in the USA, only around 150,000 reports were made to welfare agencies, and this quadrupled by 1976 (Besharov 1990) and continued to increase, especially until the 1990s. In New South Wales, Australia, after the introduction of a reporting law for sexual abuse, the number of reports (and of substantiated reports) by the same reporter group tripled over a three month period (Lamond 1989). This has been found in other Australian jurisdictions for child sexual abuse reporting (Mathews 2014). Hence, reporting and case identification by the same specified reporter group within a jurisdiction will change after introduction of the reporting law.

Second, it is known that reports by the same professional reporter group (e.g., doctors or teachers) in a jurisdiction within a country which has a reporting law will make more reports and identify more cases than the same reporter group in another jurisdiction without a reporting law (Mathews et al. 2010; Mathews 2014; Victorian Law Reform Commission 1988). Hence, even taking population difference into account, the presence of a reporting law (and associated mechanisms e.g., reporter training) influences case identification by a specified reporter group.

Third, the known presence of a reporting law can influence what would otherwise be a reluctance to report. Studies have found that when asked if their decision not to report a suspected case would be changed if they knew at the time they were under a legal duty to report, a substantial number of initial non-reporters would change their mind and make a report (Webberley 1985; Shamley et al. 1984).

A comment is warranted regarding the substantial decline in child physical abuse and sexual abuse which has been traced in the USA since the early 1990s. These declines were declared in 2012 as being ‘as well established as crime trends can be in contemporary social science’ (Finkelhor and Jones 2012, p. 3). They were identified after analysis of seven different sources of data extending beyond official substantiated reports to include different kinds of national and State community incidence studies and self-report surveys (Finkelhor and Jones 2012). If accurate, these declines are a significant advance in child welfare. It has been postulated that several factors may have influenced this decline, including increased social agents of intervention, pharmacological treatments for depression and anxiety, incarceration of sexual offenders, economic upturns, and the flow-on effect of abortion law leading to fewer unwanted children being born (Finkelhor and Jones 2006; Finkelhor 2008). The precise reasons for these declines remain unclear, but it seems plausible that mandatory reporting and its placement within the rubric of the social agents of intervention may be a contributing factor.

**Reports do not always increase, and trends are not constant across maltreatment types or reporter groups**

This overall trend of increasing reports has been seen in both the USA and Australia, although before continuing, it should be noted that this trend does not continue forever, nor is it constant for each type of maltreatment. For example, rates of all reports in the USA have been little changed from 1999 to 2012 (US DHSS 2001, 2014). It must also be recognised that non-mandated reporters make roughly 45% of all reports. Initial increases after introduction or expansion of the laws are more notable: in the USA, the rate of reports per 1000 children increased from 10.1 in 1976 to 45.0 in 1992 (Zellman & Fair 2002). Yet, large proportions of reports — around 40% - are screened out and therefore
result in barely any systems burden. Substantial multiple numbers of reports are made about the same child.

Numbers of reports, and the number of children involved in them, can also decline. In Australia in the three years 2008/09 to 2011/12, the number of total notifications has declined from 339,454 to 252,962; and the number of children involved in these notifications has declined from 207,462 to 173,502 (Australian Institute of Health & Welfare 2013). Shifts in report patterns can be influenced by changes in legal frameworks and the introduction of differential response pathways. Reporting patterns differ markedly for different reporter groups and different maltreatment types. Neglect and emotional abuse are far more frequently reported than physical and sexual abuse. Mathews (2012) showed how the overwhelming systems burden in New South Wales in the middle of the last decade, Australia was due to the reporting of one kind of maltreatment (domestic violence) by one reporter group (police). This means that care must be taken not to make simplified generalisations about the effect of a mandatory reporting law.

**Substantiated and unsubstantiated reports**

Care must also be taken in drawing conclusions about the effects of mandatory reporting based on ‘substantiated reports’. The number of substantiated cases found as a result of reports is sometimes used as a proxy for measuring how many reports by a group of reporters are ‘effective’ or ‘justified’, and by extension whether mandatory reporting is good policy. This is a mistaken assumption because, as has been shown by Drake (1996) and Kohl et al. (2009), while there may be some variance between the cases the subject of the two kinds of outcome, there is little difference in the need for assistance and services between children in substantiated and unsubstantiated cases. As well, there are numerous reasons for a finding of ‘unsubstantiated’ in a case where there is nevertheless maltreatment and or harm: the report may have been a duplicate report made about the same child; it may have been referred directly to differential response; it may have involved maltreatment but insufficient evidence of harm; it may have involved evidence of harm but insufficient evidence of maltreatment; there may have been insufficient resources to investigate. In fact, many ‘unsubstantiated’ reports are actually just as (if not more) useful because they allow service provision and prevent a milder situation escalating. Numerically, more than twice the number of children in unsubstantiated reports receive services in the USA than do children in substantiated reports (Drake & Jonson-Reid 2007; US DHSS 2014).

**Responses to arguments against the laws**

Partly based on the unsubstantiated report premise, some have criticised the use of mandatory reporting laws. It has been claimed that the laws produce a surge in reports and that the burden to the system (and to parents) of receiving and especially investigating these outweighs the benefit (Ainsworth et al., 2006; Melton 2005). Yet, as well as not acknowledging the ‘substantiation’ fallacy outlined above, this argument does not recognize many features of the context: that close to half of all reports are made by non-mandated reporters; that a large proportion are multiple reports about the same children; that many reports are screened out and are not investigated, hence resulting in very little burden; and that in any event the substantiation rate of investigated cases is significantly higher (Mathews 2012). Others have also rebutted this claim (Drake and Jonson-Reid 2007; Dalziel & Siegal 2007). Moreover, by far the bulk of the economic cost involved in child protection is absorbed by foster care and residential care, accounting for...
at least half of the entire systemic cost. In contrast, Drake and Jonson-Reid’s chapter in this volume concludes that the cost of investigations is extremely low.

These and other arguments have been considered recently by five major government child protection inquiries in Australia when contemplating the merits and parameters of mandatory reporting. In Australia, five recent inquiries have occurred in New South Wales (Wood 1997); South Australia (Layton 2003); New South Wales again (Wood 2008); Victoria (Cummins, Scott and Scales 2012); and Queensland (Carmody 2013).

These inquiries have consistently supported mandatory reporting laws as a necessary component of social policy to identify and respond to child abuse and neglect. In 2012, the Victorian Inquiry recommended extending the mandated reporter groups (Cummins, Scott & Scales 2012, p. 349 Recommendation 44). In 2013, the Queensland Inquiry recommended harmonisation and refinement of fragmented and inconsistent mandatory reporting laws, improving reporter education, and increasing a differential response approach, but did not recommend abolishing them (Carmody 2013).

Even in New South Wales, where there had been an example of poor legislative drafting and administration leading to isolated subsets of unintended reporting - namely, reports by police of nearly any encounter with domestic violence (Mathews 2012) - the Wood Inquiry (2008) rejected isolated claims that mandated reporting produced a general flood of reports. Instead, it concluded that ‘the requirement to report should remain’, for several reasons including that:

- about 40% of all reports in NSW were made around this time by nonmandated reporters;
- child protection system workers generally supported mandatory reporting while endorsing amendments to how it operated;
- on a closer inspection of the data there was in fact no ‘evidence of a flood of reports with a reduction in outcomes, at least by reference to investigations and substantiations’;
- rather, a very large proportion of reports involved the same small group of children, and many reports were multiple reports about the same child or the same incident;
- multiple reporting had increased;
- the reporting of less serious circumstances had increased;
- a decrease had occurred in the number of children subject to reports;
- mandatory reporting is not the cause of undue increased reporting as reports increase in jurisdictions without mandatory reporting;
- substantiation rates had almost doubled in three years;
- reports receiving SAS 2 (the highest level of investigation) had more than doubled since 2004/05.

Wood (2008) concluded that rather than abolishing the reporting laws, the system needed greater effectiveness in reporting and more appropriate treatment of cases, including by a differential response pathway. In addition, amendments to the mandatory reporting provisions should be made to promote reports only being made about the kinds

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16 The Wood Inquiry (2008) noted that the child protection system in New South Wales was under strain, but rejected the ‘limited, and primarily academic support expressed to the Inquiry for abolition of the mandatory reporting based on the alleged result that MR caused it to be ‘flooded with reports, the response to which used up scarce resources and diverted attention from those families whose children were in need of the State’s intervention’.
of case the system aimed to receive; namely, cases of significant abuse or harm (Wood 2008, pp. xiii, 195-197).

This is not to say there are no issues with mandatory reporting, and no areas where it may be improved. There are well-known issues with reporter training, many of which are dealt with in this volume. Research needs to identify what educational measures are most effective in preparing reporters for their role. Child protection systems need to interact effectively with reporters, providing feedback on repos and their outcomes. There are also areas of undesirable reporting practice; poverty per se should not be reported, and low levels of neglect and lawful corporal punishment that is clearly disciplinary in intention and not producing clear injuries should not be reported. Better reporter training and public education are essential. Refinement of reporting laws is well worth implementation, if necessary, if carefully constructed, and if supported by principle and data. Investigation and differential response pathways are likely both needed, but require ongoing monitoring to ensure principled and efficient operation. Marginalised groups such as the homeless, and refugees, should be dealt with particularly sensitively if they are the subject of a report. Child protection systems should be better resourced so they can fulfil their remit. Some have claimed that neglect is not a justifiable province for mandatory reporting, yet neglect is the most frequent cause of child fatality of all forms of maltreatment, is particularly dangerous for neonates (babies in the first month of life) and infants, and there are numerous cases of clearly criminal parental neglect in which the parents’ culpability is clear, and is far different to minor poverty-related neglect.

Reporting of suspected serious child abuse and neglect is not an exact science and cannot be expected to be. The success of a complex policy in a sensitive domain of human conduct must not be gauged against an unreasonable expectation. Legal and social policy responses cannot be judged only to succeed if they always or even predominantly achieve their direct goal. Rather, the success of such measures should be judged holistically: overall, has the measure produced good results, created a better culture, and does it appear to be the best strategy currently available? Other emergency systems, such as hospital emergency department visits, emergency telephone calls to police, fire and ambulance departments, and police arrests, are subject to apparently substantial inefficiencies, yet nobody would seriously suggest they should be abandoned. Instead, they are seen correctly as essential public services regarding which ongoing efforts should be made to educate people to use them correctly, and to enhance triage methods within those systems (Finkelhor 1990).

Conclusion
Mandatory reporting laws can be designed to take one of many forms to suit the goals of the particular society. Societies considering their implementation can choose to adopt a more narrowly-framed approach, especially if resources are extremely scarce. Whether

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17 Australian Bureau of Statistics, Patient Experiences in Australia: Summary of findings, 4839.0, found that in the 12 month period 2012-2013, 2.5 million visits to emergency departments were made by people aged 15 and over (71% visited once; 23% 2-3 times; 5.8% 4 or more times): 13.6% of the national population. Self-report data showed that only 49.6% considered their condition serious or life-threatening; 25.5% said they went simply because the time of day or week suited them; 22.6% admitted they could have been treated by a general practitioner. In Australia, over 12 million calls to the 000 emergency phone line are made per year; only around 44% are genuine emergencies (M Russel, ‘Abuse of 000 calls risk to lives – police’ 10 February 2008, Sun-Herald). Data are similar in the UK and USA. In the UK, 31 million calls are made annually and half do not involve requests for help: British Telecom Press Release ‘999 celebrates its 75th birthday’, 29 June 2012. In the USA, there are 240 million calls per year (National Emergency Number Association).
couched broadly or narrowly, they should be a part of a system of responses to child protection and family welfare concerns. The different components of this system are necessary owing to the differences between types of maltreatment recognising that within the spectrum of circumstances, different responses are appropriate. A case of severe battering of a six month old infant, or of sexual abuse of a three year old, requires different responses than a case of mild neglect of a 14 year old arising only from conditions of poverty in an otherwise healthy and well-functioning family. Different responses cater to the needs of children, families, communities, and child protection systems. There is nothing to be gained from the inappropriate use of mandatory reporting laws for cases which are not their primary object; an ambulance should not be used for a minor health complaint. It is important to avoid overburdening child protection systems wherever possible. Yet equally, it is inappropriate to expect many cases of serious maltreatment inflicted by parents and caregivers, and of sexual abuse inflicted by anyone on a child, to come to the attention of welfare agencies without the assistance of members of the community. Nor is it realistic to imagine that this need will not continue regardless of future necessary efforts in prevention and community building.

In noting the growing modern emphasis on prevention efforts, Mikton et al (2013, p. 1238) observed that ‘only a small proportion of victims of child maltreatment ever come to the attention of child protection services – e.g. 5-10% in the West, 0.3% in Hong Kong, and none in the many countries where such services do not exist’. The evidence of far superior case-finding in jurisdictions which have introduced mandatory reporting indicates it is a powerful and life-changing tertiary response for many thousands of children every year, and their families. Compared with approaches which do not include a form of mandatory reporting, it appears that jurisdictions with it are better at identifying case of severe maltreatment.

As but one part of a public health system for child maltreatment, the laws fulfil a necessary tertiary role in helping sentinel reporters outside the child’s family bring cases to attention when they have already occurred. In some cases they also have a valuable secondary preventative role by identifying cases before the maltreatment occurs. More systematic secondary intervention is also an essential component of a balanced and coherent child protection system. It is known that certain characteristics at a child’s birth are significant predictors of future child protective service contact (Putnam-Hornstein & Needell 2011) and that some factors strongly predict repeated reports after early encounters with the system (Proctor et al. 2012). As well as primary prevention at the population level, if societies are to take child abuse and neglect seriously, investment in both secondary and tertiary dimensions is required to promote the welfare of children and their families, and the community.

References


