Mandatory reporting laws and child sexual abuse

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Today's seminar

Part 1: Background to mandatory reporting laws for child sexual abuse

1. Introduction to MR laws
2. Rationale for introducing MR laws for child sexual abuse
3. Distinguish MR laws from other duties to report child sexual abuse in law and policy
4. Contrast MR laws for sexual abuse only, with MR laws for five types of maltreatment
5. Brief overview of high-level pros and cons of mandatory reporting

Part 2: The impact of MR laws in Australia: Results of five empirical studies into MR of CSA at national and state levels

1. What happens before and after introducing a MR law for CSA? (Western Australia)
2. What are the long-term trends in numbers and outcomes of reports of CSA where MR is introduced? (Victoria)
3. What is the difference in numbers and outcomes of reports of CSA in two comparable jurisdictions, where only one has a MR law for CSA? (Victoria v Ireland)
4. How do reports of CSA differ from reports of other abuse/neglect? (New South Wales)
5. How do reports of CSA differ from reports of other kinds of abuse and neglect over time? (Australia: eight jurisdictions)

1. Introduction to mandatory reporting laws

The nature of MR laws

- Laws made by Parliament requiring designated professionals to report known and suspected child abuse (e.g., sexual, physical, psychological abuse) to child protection agencies, where the abuse is of a certain severity
- MR laws have a similar general approach, but national and State MR laws differ in:
  - which occupations are made mandated reporters (broad v narrow range)
  - types of abuse that have to be reported (e.g., from 1-5 types; neglect often excluded)
- MR laws:
  - say who is mandated (those working with children: teachers, doctors, nurses, police, etc)
  - say which types of abuse/neglect have to be reported (and define these concepts)
  - provide clear protections for reporters (immunity; confidentiality)
  - normally include a penalty for breach
  - do not require reporters to investigate; only to report known/suspected cases (full accuracy not expected: difficult to detect; post-report assessment is for child protection agencies)
  - supported by sector-wide education about CSA, what should and should not be reported
- The laws require reports by professionals who may develop knowledge or suspicion of CSA (e.g., child says something direct/indirect; symptoms/behaviour strongly consistent with CSA; other observations e.g., of the offender, grooming)
- MR laws are a public policy intervention to respond to a widespread, severe, hidden problem which causes massive cost to individuals, communities and the nation.

The origin of MR laws

- USA, 1960s: to require reports of known and suspected cases of severe physical abuse of infants (Kempe et al., 1962, Battered-child syndrome)
- protecting children and overcoming "gaze aversion": doctors treated children and knew of the abuse, but did not report – subsequent further injury / fatality
- Laws enacted in all 8 Australian States from 1969, and scores of countries globally
- scope expanded - sexual abuse, other forms of significant abuse/neglect

The purpose of MR laws: Multiple policy goals

- First: to protect children by bringing cases of significant abuse to the attention of protective welfare agencies, and stopping the abuse continuing (social justice)
  - **enabling child protection and health rehabilitation / early intervention** (public health: tertiary; secondary / care orders where necessary)
  - **enabling service provision and parental/family assistance in cases of need**
  - connects with criminal justice in some cases
- The laws use the designated professionals as protective sentinels to act in the child's best interest and bring cases to light which otherwise would remain hidden …
- They become key members of a safer community protecting children's rights to safety
- MR laws are **not** aimed at trivial incidents, poverty, or "less than ideal parenting"
- Only one part of a child protection system; not intended as primary prevention
  - Note: differential response systems – child and family service need

2. Rationale for introducing mandatory reporting laws for child sexual abuse

- CSA is serious criminal conduct (spectrum of offences: e.g., indecent exposure to rape)
- grave violation of bodily, sexual and psychological integrity; accompanied by psych. trauma
- breach of fundamental human rights of particularly vulnerable individuals
- typical age of onset ~ 9-10; often endured repeatedly; usually by someone known to the child

Definition: contact and non-contact sexual acts by any adult or child in a position of power over the victim, when the child either does not have full capacity to provide consent, or has capacity but does not provide consent

- Oral, vaginal, anal penetration by any body part/object; fondling of breasts/genitals; other sexual touching; masturbation/arousal; voyeurism; exhibitionism; involvement in/exposure to pornography
- not constituted by normal developmental play, or genuinely consensual behaviour between peers

CSA is widespread (UK <18: Radford et al., 2013)

- **Contact CSA** by any adult or peer: 18.6% girls, 5.3% boys (1 in 8 children)
- **Any CSA** by any adult or peer: 31% girls, 17.4% boys (24.1% of all children: 1 in 4 children)
- CSA by parent or caregiver: 1% girls, 1.5% boys

CSA causes serious health, behavioural and economic consequences through the lifespan

- School performance and long-term academic and economic achievement
- Mental health: depression, anxiety, PTSD, self-harm, suicide
- Adverse coping strategies: smoking, alcohol and drug abuse, sexual behaviour, teen pregnancy
- Adverse physical health outcomes from coping strategies, including obesity
- Effects on adult relationships, re-victimisation, intergenerational maltreatment

2. Rationale for introducing mandatory reporting for child sexual abuse (cont'd)

- The problem of **non-disclosure**: the sexually abused child is often unable to seek help
  - Normally occurs in private, without witnesses (family home, other places, institutions)
  - Multiple factors prevent victims telling: lack of cognition; **shame**; perceived guilt; **fear**; **threats**; punishments; **power dynamics** (personal and institutional); gender constructions (boys); social taboos (cultural factors)
  - As a result, most cases remain undisclosed

- The problem of professionals and others **failing to report** known and suspected cases
  - gaze aversion (discomfort; fear)
  - lack of education (cognitive understanding, affective dispositions)
  - wilful concealment and corruption (especially in institutional cases)

- MR laws for CSA encourage, support and require a professional who knows or suspects the child has been sexually abused to bring the child's situation to the attention of helping agencies
  - The child's overriding need is for the abuse to stop, and to be safe
  - The individual professional becomes a protective sentinel for the child
  - This professional may be the only person in the child's life who can help them
  - **These professions collectively are able to identify substantial numbers of cases of CSA that would otherwise remain hidden and undisclosed**

2. Rationale for introducing mandatory reporting for child sexual abuse (cont'd)

An example from Victoria

- MR introduced: CSA and PA only (November 1993: doctors, nurses, police; July 1994: teachers)

Parliament was influenced by:

- Reporting practice pre-MR found to be insufficient by govt inquiries (VLRC, 1988, Rec. 18):
- 1988: a "consistent and striking" pattern of doctors in Victoria reporting five to nine times fewer cases of CSA than doctors in four other States with MR
- 1993: Victoria received five times fewer reports of CSA in total than New South Wales
- the beneficial outcomes of NSW's introduction of MR for CSA (1988)
- voluntary reporting deemed to be insufficient
- unique qualitative features of CSA (secrecy, serious criminal acts, breach of human rights)
- VLRC accepted that unsubstantiated cases may involve maltreatment, and that data on unsubstantiated reports should not be used to measure reporting efficacy
- VLRC concluded the laws do not lead to an "explosion in reporting" or undermine systemic capacity to respond to known cases
- VLRC emphasised the need for sector-wide education to accompany the MR law

Victorian Law Reform Commission. (1988). *Report 18: Sexual Offences Against Children*. Melbourne: VLRC. Paragraphs 106-193, Recommendations 18-22.

Mathews, B. (2014). *Mandatory reporting laws for child sexual abuse in Australia: A legislative history – Report for the Royal Commission Into Institutional Responses to Child Sexual Abuse*. Sydney: Commonwealth of Australia.

3. Distinguish MR from other duties to report child sexual abuse in law and policy

There are different types of duties in law and policy to report child sexual abuse.

A legislative "mandatory reporting duty" is different from other duties, e.g. :

- **criminal law duty** of all citizens to report knowledge or belief about a child sexual offence (Victoria, New South Wales, Ireland)
- **civil law duty** of managers in a child-serving organisation to report knowledge or belief about CSA by a person in the organisation ("reportable conduct schemes": Vic, NSW, ACT)
- **civil law duty in negligence** ("duty of care") to report where one knows or ought to have known a child has been sexually abused (UK, Australia, Canada, USA, NZ)
- **occupational policy-based duty** to report known/suspected CSA (e.g., educational / medical authority policy) (UK, Australia, Canada, USA, NZ)

Key differences between MR duty and other duties

- Uses skilled professionals trained in child development who deal with children daily
- Assisted by systematic education, awareness-raising, support for workforce (pre- & in-service), applied universally across sectors (not fragmented); creates a sector-wide culture
- Accompanied by clear legislative protections for reporters (other assistance, e.g., consultants)
- Compels action, imposing a clear obligation on the individual professional
- Underpinned by Parliament's commitment to children's rights; component of a coherent system
- Stronger and clearer than a negligence or policy-based duty, fully integrated into professional culture, supported by education and backed by sanctions.

4. Contrast MR laws for child sexual abuse only, with MR laws for all five types of child abuse and neglect

There is not one type of MR law; there are many different legislative models of mandatory reporting

Jurisdictions design MR laws to suit their priorities.

Often the law's initial scope is narrow, and is broadened over time after its effects are understood.

MR laws differ in:

- who is required to report;
- what types of child abuse must be reported; and
- what extents of abuse must be reported.

A spectrum of laws: Australia's different MR laws

In Australia, each of the 8 States/Territories has its own MR law. They range from:

- very narrow (CSA only, and a small number of MR groups), to
- very broad (5 types of abuse and neglect, and large number of MR groups).

This variance has consequences for reporting practice, sector-wide education, inter-agency collaboration, systemic resourcing and other systemic requirements.

Differences in MR laws in Australian States and Territories

Jurisdiction (State / Territory)	Physical abuse	Sexual abuse	Psychological / emotional abuse	Neglect	Exposure to domestic violence
AUSTRALIAN CAPITAL TERRITORY	Yes	Yes	No	No	No
NEW SOUTH WALES	Yes	Yes	Yes	Yes	Yes
NORTHERN TERRITORY	Yes	Yes	Yes	Yes	Yes
QUEENSLAND	Yes	Yes	No	No	No
SOUTH AUSTRALIA	Yes	Yes	Yes	Yes	No
TASMANIA	Yes	Yes	Yes	Yes	Yes
VICTORIA	Yes	Yes	No	No	No
WESTERN AUSTRALIA	No	Yes	No	No	No

Four important notes, when evaluating MR data and considering MR for CSA as social policy

1. CSA is qualitatively different from other forms of maltreatment and requires different policy responses to many other instances of child maltreatment (e.g., neglect).
   - CSA is so serious that we must not ignore scientific evidence about successful policy responses and prefer to ignore it or maintain unsuccessful responses
   - CSA is always criminal, and usually the child needs some kind of support. Contrast with, e.g., neglect.
   - Acknowledge it may be justifiable to use different policy approaches for CSA vs other maltreatment
2. The empirical evidence about mandatory reporting of CSA is reassuring.
   - It is understandable to question the effect on child welfare systems of introducing MR, even if only for CSA. These are sincere concerns held by any practitioner in this field serving children's best interests.
   - Yet, we must **distinguish between data on reporting of different types of abuse**:
     - There are far fewer reports of CSA (~10%, of which only about half are MR) than other abuse/neglect
     - There is not an intolerable "flood" of reports of CSA – and nor is there a continual increase in reports
     - Multiple government inquiries have found it is supported as ongoing optimal public policy
     - When "undesirable reporting" has occurred, it has not been about CSA but about other maltreatment, for avoidable reasons; and reversed
3. "Unsubstantiated reports" are not a sound measure of the success of reporting practice
   - Large proportion are multiple reports of same child (counted as one): little systemic burden
   - Many do involve maltreatment, harm or service need ("unsubst'd" for technical evidentiary reasons)
   - Numerically, more unsubstantiated reports result in service provision than substantiated reports
   - Contribute to developing picture of the child's situation and inform subsequent substantiation
   - Note low cost of intake and assessment (~7.5%) vs out-of-home care (>60%)
5. Improvements can always be made (clear legislative drafting and professional education to avoid clearly unnecessary reports; interagency collaboration for optimal responses)