Child Abuse And Neglect:
A Socio-legal Study of Mandatory Reporting in Australia

Report for the New South Wales Department of Family and Community Services

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Disclaimer

The views and findings expressed in this report are those of the authors and do not necessarily reflect those of the Commonwealth Government or of State and Territory child welfare departments.

The law as stated is current to 31 December 2012.

Important note: In 2014, the *Child Protection Reform Amendment Act 2014* (Qld) was passed, which will make substantial changes to Queensland's mandatory reporting legislation. These changes will shift Queensland's position towards the current position in Victoria. The changes will broaden some mandatory reporting duties, but will narrow others. The changes also will introduce a more formal statutory footing for differential response pathways. These pending changes in Queensland are the most significant legislative amendments made in any jurisdiction to mandatory reporting legislation in the period after the 2003-12 time period which defined the scope of this research project.

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Executive Summary

EXECUTIVE SUMMARY: NSW

1. Introduction

This **Executive Summary** presents key findings from this research project entitled *Child Abuse and Neglect: A Socio-legal Study of Mandatory Reporting in Australia*. A comprehensive treatment of our analysis is presented in the full Report.

A key component of this research project was to access official government data to analyse the reporting of different types of child abuse and neglect, by different reporter groups (both mandated reporters such as police, and non-mandated reporters), over the nine year period 2004/05-2012/13 in New South Wales. This summary captures some of the most important trends identified by our analysis, which can inform future advances to policy and practice.

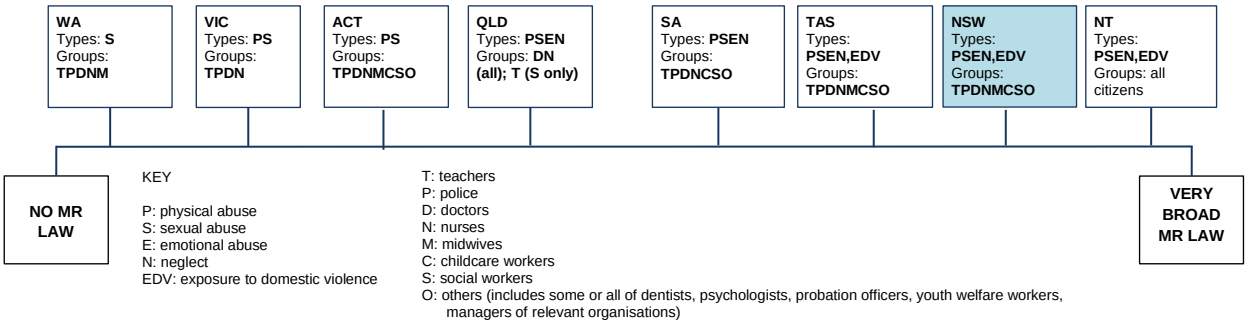
2. New South Wales's mandatory reporting law

New South Wales has a relatively broad mandatory reporting law, compared with other States and Territories (**Fig 1**).

A wide range of occupational groups are designated as 'mandated reporters', including teachers, police, doctors, nurses, childcare workers, social workers and others.

Reports (notifications) must be made of situations where a child is at risk of significant harm because of the presence, to a significant extent, of five major categories of maltreatment: physical abuse, sexual abuse, psychological abuse, neglect (including failure to attend school), and exposure to domestic violence.

Fig 1: Mandatory reporting law spectrum*



* Reflects general position at 31 December 2012: full reports provide complete details. Victoria limits the reporting duty to situations where the child's parents have not protected the child from harm. Queensland has uncommenced amendments which will place it close to Victoria's position. Emotional abuse is sometimes named psychological abuse. NSW, Tas also require reports of prenatal risk of harm in some circumstances. In NT, EDV refers to exposure to physical violence, and is more limited than in NSW, Tas.

3. Major findings from analysis of data on notifications and outcomes 2004/05-2012/13

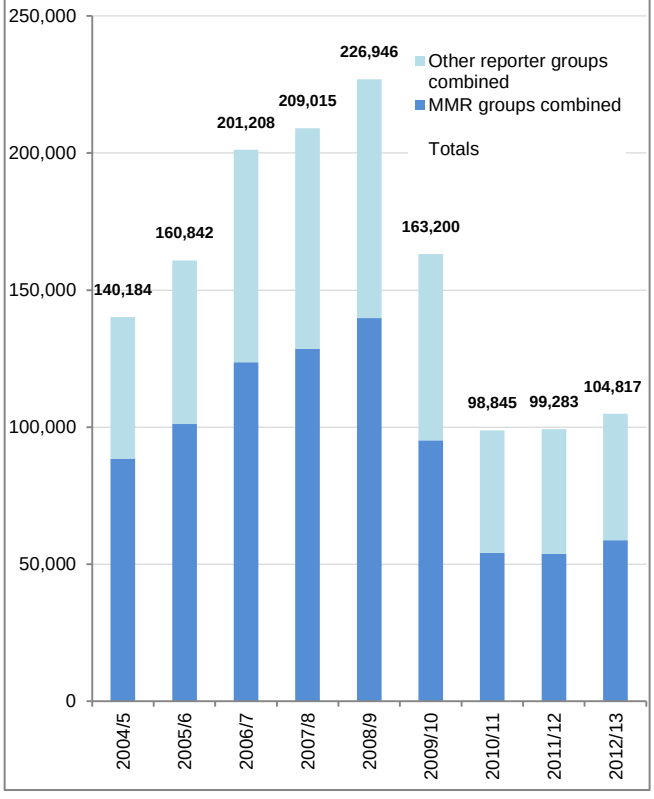
Some major trends emerge from our analysis of the data on notifications of child abuse and neglect in New South Wales.

1. The major mandated reporter groups – police, health and educational personnel including childcare - make the majority of all notifications. There were 1,022,486 notifications of the five major types of child abuse and neglect made by all persons over the nine year period. The major mandated reporter groups made approximately 60% of these reports (**Fig 2**).

2. A significant proportion of notifications is also made by non-mandated reporters, and by some groups of mandated reporters. Non-mandated reporters (such as family members, neighbours and other community members) made approximately 25% of all notifications. Mandated reporter groups who report less frequently (such as social workers) made approximately 15% of all notifications. This suggests the practices of non-mandated reporters merits attention to enhance reporting.

3. Total numbers of notifications increased significantly from 2004/05 through 2008/09, before the 2010 legislative changes produced a dramatic downwards impact on report numbers. The 2010 legislative amendments had a major impact on numbers of reports to the Department from all reporters, and particularly from mandated reporters. There were 226,946 notifications in 2008/09. By 2010/11, this number had been reduced by more than half, with this trend then stabilising (**Fig 2**).

Fig 2: Number of reports by all major reporter groups combined with other reporter groups combined, 2004/05-2012/13



4. The number and proportion of notifications differs by type of child abuse or neglect. In particular, notifications of *exposure to domestic violence* (EDV) showed a trend of a dramatic increase and plateau through 2008/09, followed by a similarly dramatic decline after the 2010 legislative amendments.

Overall, notifications by all persons of exposure to domestic violence show several distinct trends compared to other types of abuse and neglect (**Fig 3**).

First, over the nine year period, EDV reports contributed most strongly to the total number of reports. EDV reports accounted for 29% of all reports; neglect 24%; physical abuse 24%; sexual abuse 12% and emotional abuse 10%.

Second, from 2004/05 to 2008/09, EDV was by far the most frequently reported type of maltreatment, in most years accounting for 33-35% of all reports. In four of these five years, there were more notifications of EDV alone than of physical abuse and sexual abuse combined.

Third, EDV notifications increased markedly during this period from 33,533 in 2004/05, to over 50,000 in 2006/07, and remaining over 50,000 per annum in 2007/08 and 2008/09. Notifications of neglect and physical abuse also followed this trend, but accounted for a lower proportion of all reports.

Fourth, based on other analyses, reporting of EDV was not evenly spread across reporter groups; rather, a large proportion of notifications were made by one reporter group: police.

Fifth, the legislative amendments commencing on 24 January (associated with other factors) had a dramatic impact on reports of most forms of maltreatment, but particularly on reports of EDV. Reports of EDV declined from 51,630 in 2008/09, to 31,271 in 2009/10, and to 14,390 in 2010/11, with numbers stable since then. The key amendments – the renewed focus on significant harm; the removal of the statutory penalty for failing to report; and the capacity to report less significant cases to child wellbeing units – seem to have influenced a major and sustained change in the number of reports of EDV being made to the Department.

5. The number and proportion of notifications also differs by reporter group.

Overall, notifications by different reporter groups show several distinct trends (**Fig 4**). An exploration of numbers of reports made by four key groups – three mandated groups, and one non-mandated – reveals different trends in proportion of reports made, and changes over time.

Overall, police are the single reporter group who consistently make the highest number of reports. This trend was particularly pronounced from 2004/05 through 2009/10. Police overall made 1.7 times as many reports as the next highest reporter group over the nine year period.

The group to make the next highest number of reports was health personnel. School and childcare personnel combined also made a substantial proportion of reports during this period, accounting for almost as many reports as health personnel. All three of these groups (police, health, education) were mandated reporters. However, non-mandated family members also made a substantial number of reports, approaching the number made by school and childcare personnel.

These proportional reporting contributions were relatively stable over the nine year period. However, there have been some changes over time for all groups.

1. First, the level of reporting by all four groups increased from 2004/05 through 2008/09, by a similar proportion. This suggests the factors influencing more active reporting operated across society and were not specific to mandated reporter groups.
2. Second, reports by all four groups then declined after 2008/09, especially for police, health and family reporters, and by similar proportions. This suggests the 2010 legislative changes including the capacity to report to differential response agencies (child wellbeing units) had an impact on both mandated reporter groups and those in the community.
3. Third, police reports have declined the most since 2008/09, so that in 2011/12 they were surpassed by school and childcare personnel combined as the most frequently-reporting group. This again suggests the reporting by police of EDV was particularly strongly affected by the 2010 amendments to law and policy.
4. Finally, the reporting numbers of all four groups have remained relatively stable in the last three years of the nine year period. This suggests the impact of the differential response mechanism and the other legislative changes has had a sustained impact on reporting practice of both mandated and non-mandated groups.

Fig 3: Number of reports by year, by abuse type, all reporter groups combined, 2004/05-2012/13

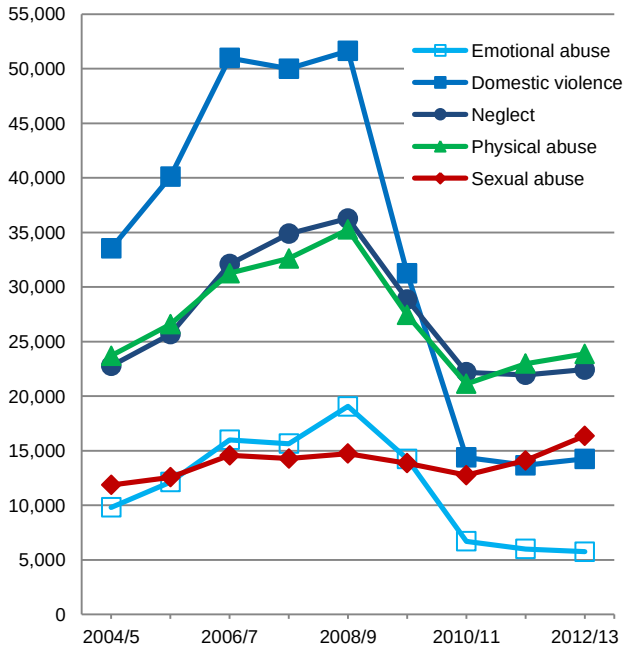
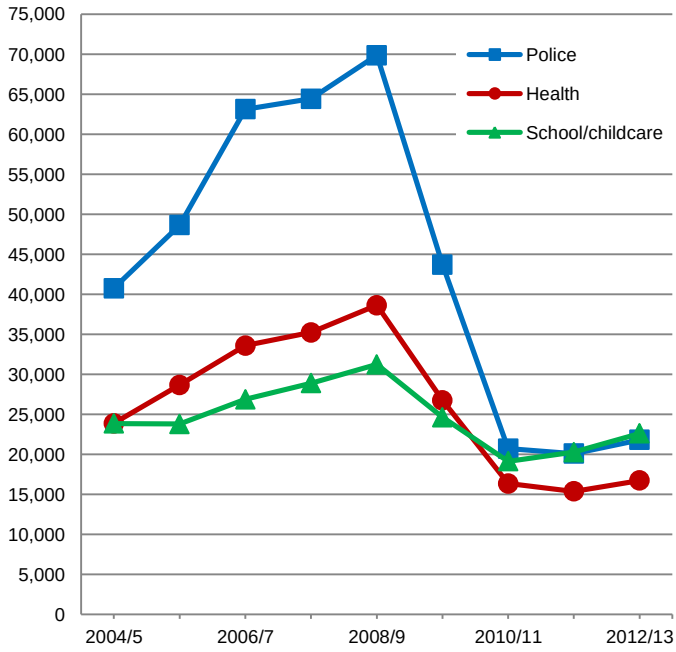


Fig 4: Number of reports by year, by reporter group, all abuse types combined, 2004/05-2012/13



6. Other trends in reporting by major mandated reporter groups combined, by type of abuse and neglect

Several other trends emerge from the data on notifications by the major mandated reporter groups (police, health and educational personnel), over a three year period 2010/11 to 2012/13, by type of abuse and neglect, and by outcome (**Fig 5**).

Overall, a stable trend of numbers of reports, and an increase in substantiated cases

After the period of volatility in report numbers from 2004/05 to 2008/09, the introduction of the 2010 legislative changes has witnessed two trends.

First, there is a period of stability in numbers of reports. The stability in numbers of reports by the major mandated reporter groups combined is evident for each type of abuse and neglect.

Second, there are positive upwards trends in numbers of substantiations. This positive trend is evident for all forms of maltreatment.

Emotional abuse
Reports of emotional abuse (including exposure to domestic violence) by these reporter groups combined have remained stable at 14,388-13,915.

Substantiations of emotional abuse have nearly doubled in this three year period, increasing numerically from 1396 to 2712.

Physical abuse
Reports of physical abuse by these reporter groups combined have remained relatively stable, although have increased slightly, from 11,671-13,431.

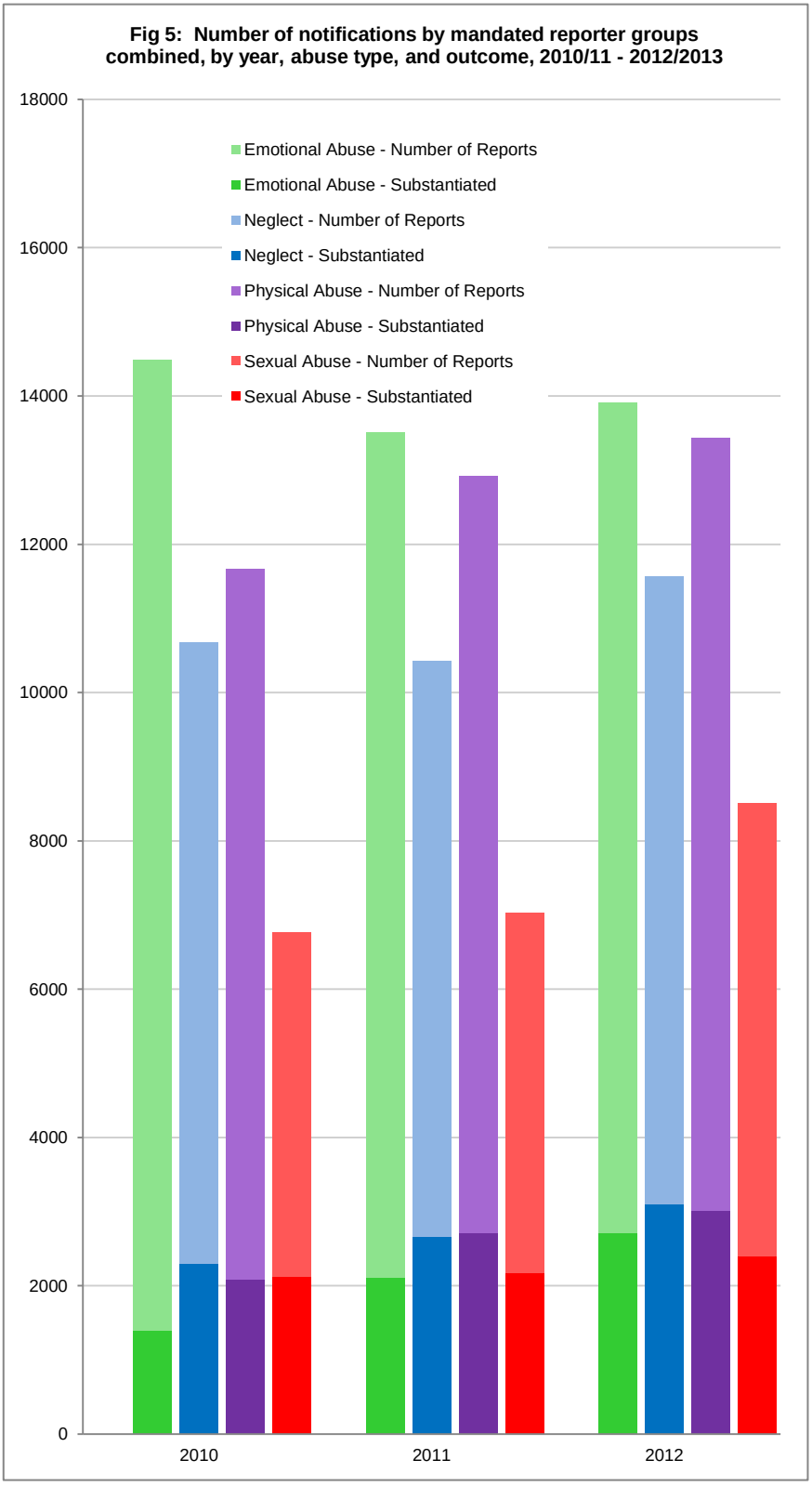
Substantiations of physical abuse have increased by 50% in this three year period, increasing numerically from 2081 to 3011.

Sexual abuse
Reports of sexual abuse by these reporter groups combined have remained relatively stable, although have increased slightly, from 6769 to 8508.

Substantiations of sexual abuse have remained relatively stable in this three year period (2126; 2176; 2394),

Neglect
Reports of neglect by these reporter groups have remained stable at 10,682-11,567. Substantiations of neglect have increased in this three year period, increasing numerically from 2302 to 3105.

Fig 5: Number of notifications by mandated reporter groups combined, by year, abuse type, and outcome, 2010/11 - 2012/2013



7. Analysis of notifications by police reveals a number of key findings.

Police are the mandated reporter group which makes the most notifications. Several key findings emerge from an analysis of their reporting trends, both before the legislative changes on 24 January 2010 (**Fig 4**), and over a three year period 2010/11-2012/13 (**Fig 6**).

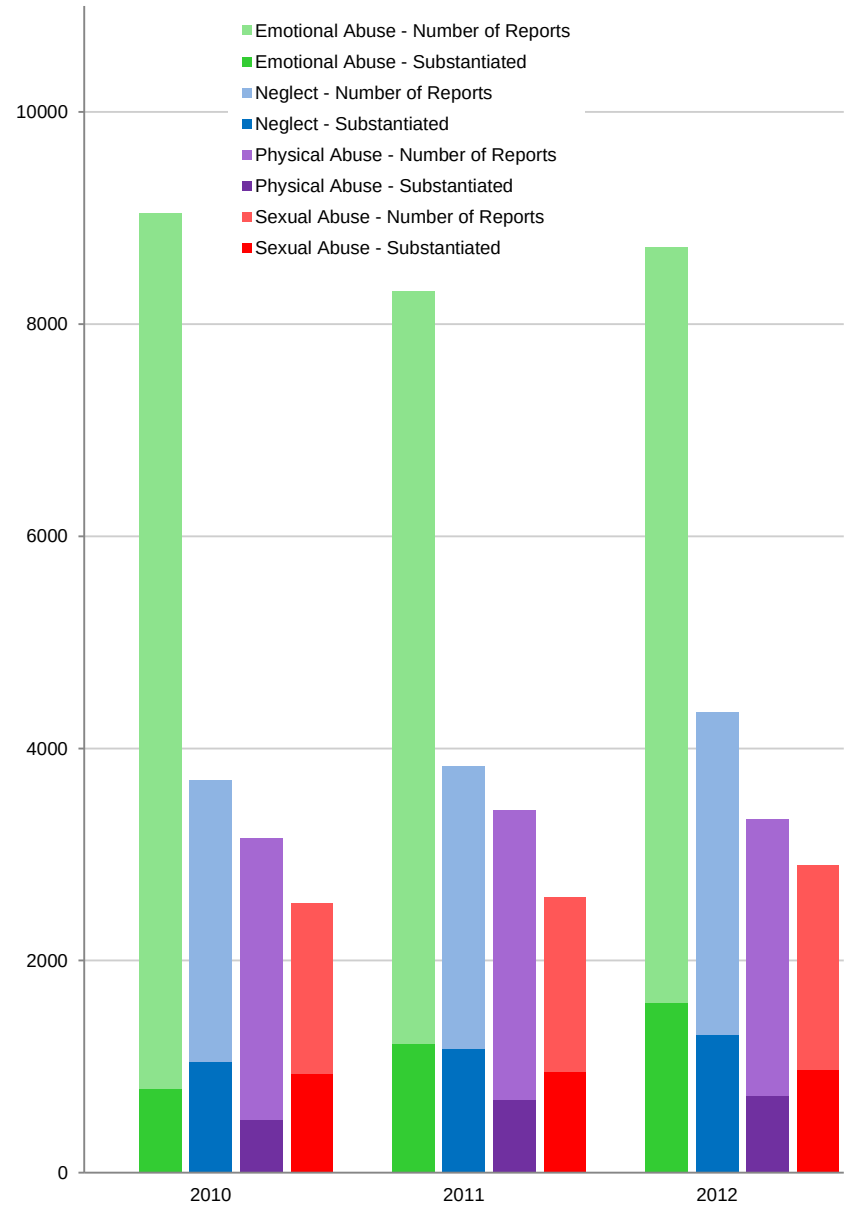
Police reports 2004/05-2008/09
First, notifications by police increased dramatically in the period 2004/05-2008/09, from 40,747 reports to 69,866 reports (**Fig 4**). The data provided for this period do not enable direct breakdown of police reports by type of maltreatment, but this trend co-exists with the increase in reports of EDV during this period and it is plausible to conclude that much of this increase can be accounted for by police reports of EDV, and to a lesser extent, neglect.

Police reports 2008/09 onwards
Second, notifications by police decreased dramatically from 2008/09 to 2010/11, from 69,866 reports to 20,730 reports (**Fig 4**). This decline again is likely associated with a decline in reports of EDV. This suggests the introduction of the 2010 legislative changes had a marked effect on police reporting practice, especially for EDV.

Third, the decline after 2008/09 was sustained in the three year period 2010/11-2012/13 (**Fig 6**). The number of reports by police for each type of maltreatment stabilised, although there is a slight increase for neglect. This suggests the 2010 changes had a sustained effect on reporting. It is likely the EDV reports previously made to the Department are now being made to child wellbeing units.

Fourth, substantiated notifications by police increased in 2010/11-2012/13, almost doubling for emotional abuse including EDV (792 to 1599) and increasing for physical abuse (499 to 725) and neglect (1046 to 1301): **Fig 6**.

Fig 6: Number of notifications by police, by year, abuse type, and outcome



8. Conclusion

This Executive Summary has identified some key findings from the analyses conducted in this research study. These findings can assist government agencies and reporter groups in identifying areas where reporting practice for different types of child abuse and neglect may be enhanced.

One finding is that non-mandated reports account for a substantial minority of notifications. This indicates that while mandated reporting practice merits attention to enhance reporting practice and outcomes, attention may also be productively directed towards reporting by non-mandated reporters.

Several findings suggest positive outcomes and trends in recent years in relation to notifications by mandated reporters.

In particular, the data on reporting since the 2010 legislative changes is notable. It appears that the three major changes introduced at that time - introduction of child wellbeing units as a differential response pathway for less significant cases; a renewed emphasis on significant harm; and removal of the statutory penalty - has produced the anticipated outcome of reducing unintended reports, especially of exposure to domestic violence.

In addition, the analyses have indicated some areas of practice where the effects of the 2010 changes appear to be producing sustained desired outcomes. In particular, the period from 2010 has witnessed stable trends in numbers of reports by major mandated reporter groups, and an increase in substantiated cases, especially for emotional abuse, physical abuse and neglect.

Identification of these trends suggests positive outcomes from recent legislative and systemic developments. Further research may indicate dimensions of reporting and systemic responses which might yield further positive gains for children, families, communities, service providers and government agencies.

Stage 1
Legal Analysis

STAGE 1: LEGAL ANALYSIS

1.1. Introduction

As part of the effort to protect children from significant abuse and neglect, each State and Territory in Australia has enacted legislation commonly known as 'mandatory reporting laws'. The laws differ in scope and have changed over time. Accordingly, the main aim of this Stage 1 Report is to review and explain the legislative principles across Australia and to chart changes in the decade from 1 January 2003 – 31 December 2012. In doing so, the Report will identify differences between State and Territory law over this time period.

1.1.1. General nature and effect of mandatory reporting laws

Mandatory reporting laws are laws passed by Parliament requiring designated persons to report certain kinds of child abuse and neglect[1] to government authorities. The core principle motivating these laws is that many cases of severe child abuse and neglect occur in private, cause substantial harm to extremely vulnerable children, and are unlikely to be brought to the attention of helping agencies. Governments have chosen, as a social policy and public health measure, to enact these laws to draw on the capacity of professionals who typically deal with children in the course of their work (such as teachers, police, doctors and nurses), and who encounter cases of serious child abuse and neglect, to report these situations to helping agencies. Generally, the primary aim is to protect the child from significant harm. The secondary aim is to assist the child's parents or caregivers to decrease the likelihood of recurrence.[2]

Consequently, there are differences across Australian jurisdictions concerning who has to report, and what types of maltreatment must be reported. Before pointing out these differences in the legislative duties, a common approach to the legislative scheme can be identified. The laws will:

- define which persons must make reports;
- identify what state of mind a reporter must have before the reporting duty is activated;
- define the types of abuse and neglect that must be reported;
- define the extent of abuse or neglect which requires a report;
- state whether the duty applies only to past or present abuse, or also to future abuse which has not occurred yet but which is thought likely to occur;
- state penalties for failure to report (to encourage reporting rather than police it);
- provide a reporter with confidentiality regarding their identity;
- provide a reporter with immunity from liability arising from a report made in good faith;
- state when the report must be made;
- state to whom the report must be made;
- state what details a report should contain;

---

1 Or the harm caused by them: see further Part 2.1.2 and Table 1.7.

2 In Stage 3 of this study, we will explore normative arguments about these laws, which either in whole or in part have been both criticized (see for example, Ainsworth, 2002; Ainsworth & Hansen 2005; Melton 2005), and defended (Besharov 2005; Drake & Jonson-Reid, 2007; Finkelhor, 1990, 2005; Mathews & Bross, 2008). Recent Australian State government child protection inquiries in New South Wales and Victoria have concluded that mandatory reporting laws are a necessary component of child protection systems (Wood 2008; Cummins, Scott, & Scales 2012). In 2013, the Carmody Inquiry in Queensland also made recommendations to harmonise and refine reporting laws and to improve reporter education, and to increase a differential response approach, but did not recommend abolishing them (Carmody 2013).

- enable any other person to make a report in good faith, even if not required to do so, and grant confidentiality and legal immunity to these persons.[3]

1.2. Major legislative differences and common approaches across Australia

This section provides a brief summary of major legislative differences and common approaches in Australian State and Territory laws.

1.2.1. Different reporter groups

To begin with, there are differences in who is required to report. Normally, the reporting duty is applied to a minimum of four occupations who regularly work with children: police, teachers, doctors and nurses. However, even this general approach is not present in every Australian State and Territory. There are numerous different approaches. At one end of the spectrum, the Northern Territory makes all citizens mandated reporters. Close to this end of the spectrum is New South Wales, South Australia and Tasmania, which mandate a large range of occupations. Closer to the other end of the spectrum is Queensland, which mandates only two professions completely.[4] A summary is set out in **Table 1.1**.

1.2.2. Different types of abuse and neglect must be reported

Another major difference is in which types of abuse and neglect (or the harm caused by them: see **Table 1.7**)[5] must be reported. For example, most but not all States and Territories clearly require reports of significant neglect. In contrast, Western Australia and the ACT clearly do not require reports of even life-threatening neglect, and it is arguable that Victoria also does not require reports of these situations.[6] Some jurisdictions, such as New South Wales and Tasmania, have relatively recently imposed a requirement to report exposure of a child to domestic violence. This might be expected to produce a high number of additional reports which would not otherwise be made. A summary is set out in **Table 1.2**.

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[3] Legislation in all jurisdictions enables non-mandated reporters to make reports, and confers these protections on such reporters. In several jurisdictions, including Victoria, legislative provisions for voluntary reporting pre-date mandatory reporting schemes (see eg *Children and Young Persons Act 1989* s 64, and provisions prior to this). Stage 3 will further discuss the context for some jurisdictions' movement from an approach based only on voluntary reporting to one having a form of mandatory reporting; one impetus was the perceived lack of reports from a purely voluntary system compared with one having mandatory reporting: see Hansard, Victoria, Queensland, and the studies cited in Victoria.

[4] In this regard, it can be noted that the federal *Family Law Act 1975* (Cth) also imposes a reporting duty on members of Court personnel.

[5] As Table 1.7 illustrates, the primary subject matter of the reporting provisions is 'abuse' either explicitly, or as a natural and co-existing consequence of being the *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' (see the underlined words in Table 1.7). There are some instances where a type of abuse must be reported without any mention of harm – most often, for sexual abuse (eg 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 caused by various kinds of abuse and neglect (NSW, NT, Qld, Vic).

[6] For further discussion of neglect and the complex issue of the scope of Victoria's reporting provisions, see Part 1.5.7.4.

1.2.3. Different extent of harm activates the reporting duty

There are differences in the extent of suspected harm which activates the reporting duty. Especially for physical abuse, psychological abuse, and neglect, the laws are generally not intended to require reports of any and all behaviour perceived to be abusive or neglectful. Accidental injuries and trivial incidents of less than ideal parenting practice are not the intended object of the laws. Rather, the laws are concerned with acts and omissions that are significantly harmful to the child's health, safety, wellbeing or development. The legislation differs in how these concepts are expressed, but generally uses indeterminate concepts such as 'significant harm' or 'detriment' which beg the question of what constitutes these injuries. Except for cases that are clearly very serious, this ambiguity may cause confusion and uncertainty for reporters. For psychological abuse and neglect, especially, this indeterminacy may be particularly problematic. These different concepts and standards are set out in **Table 1.3**.

1.2.4. Different states of mind activate the reporting duty

There are also differences in the state of mind that a reporter must have before the duty is activated. Duties are never so strictly limited that it only applies to cases where the person is certain that the child is being abused or neglected; but nor are they so wide as to apply to cases where a person may have the merest inkling that abuse or neglect may have occurred. While this is a reasonable approach, there are differences between the jurisdictions in how this state of mind is expressed, which may cause confusion for reporters. The legislation variously uses the concept of 'belief on reasonable grounds' (four jurisdictions), and 'suspects on reasonable grounds' (four jurisdictions). Technically, belief requires a higher level of certainty than suspicion. These differences in reporters' states of mind are set out in **Table 1.3**.

While discussed in more detail later in this Report, it can also be noted here that Victoria is the only jurisdiction which has as part of its mandatory reporting provision a clause which further limits the duty to cases in which the reporter not only has a reasonable belief about the child's harm/abuse, but that the reporter must also have a reasonable belief that the child's parent has not protected the child from the abuse (or in the case of a report of a child who is likely to suffer significant harm, the child does not have a parent who is likely to protect the child from that harm).

1.2.5. Different temporal/situational scope of the reporting duty

As well, there are differences in whether the reporting duty is applied to past or currently occurring abuse only, or also to perceived risk of future abuse to a child who is not suspected to have been abused yet. In all jurisdictions, the reporting duty applies to cases of suspected past abuse and of suspected abuse that is currently occurring. However, four jurisdictions (New South Wales, Queensland, Victoria and the Northern Territory) extend the duty to cases where the reporter has a reasonable suspicion that a child is at risk of being abused in future, no matter who the suspected future perpetrator may be. South Australia and Tasmania require reports of suspicions that a child is likely to be abused in future, but only if the suspected future perpetrator is a person who lives with the child. In contrast, the Australian Capital Territory and Western Australia limit the duty to cases of past or current abuse. Australian jurisdictions generally have a strong approach to preventing future abuse, as well as responding to abuse thought to have already occurred. These different approaches are set out in **Table 1.4**.

1.2.6. Different definition of 'child' to whom the reporting duty is owed

The general approach across States and Territories is to apply the reporting duty to suspected abuse and neglect of children under 18, which is the age of majority for most legal purposes. However, there are three differences which should be noted. Most significantly, New South Wales restricts the duty to abuse and neglect of children aged under 16 years, and Victoria restricts the duty to abuse of children under 17. This makes these two States the only jurisdictions in Australia to exclude children aged 16 and 17 (in NSW) and

children aged 17 (in Victoria) from the benefit of the reporting provisions. Of less significance, but still of interest, is that Queensland's prior duty under the health legislation (applying the duty to doctors) restricted the duty to children under 17; this was amended in 2005 to include 17 year olds under the reporting framework. These different provisions, and their changes over the decade, are set out in **Table 1.5**.

1.2.7. Different penalties

Penalties for noncompliance are present in seven of the eight jurisdictions. New South Wales originally provided a penalty, but this was omitted after the Wood Inquiry recommendations and legislation in 2009. It is significant that the penalties across jurisdictions differ substantially. These differences may be important as without effective reporter training, severe penalties might influence hypersensitive or 'defensive' reporting of minor incidents not intended to be covered by the law. This is despite the fact that it is generally perceived that the penalties are meant to encourage reporting rather than to police it. These different penalties are set out in **Table 1.6**.

1.2.8. Common approaches

Other dimensions of the reporting duty are more consistent. Across jurisdictions, the duty is obligatory, rather than discretionary (words such as 'must', are used rather than 'may'). It must be complied with immediately. The report destination is usually the jurisdiction's department of child protection. Confidentiality and immunity are universal features, both for mandated reporters (those required by the law to report), and for non-mandated reporters (those not required to report, but enabled to do so, such as neighbours, family, and friends).

1.3. Mandatory reporting legislation as one element of a systematic approach to child protection and welfare: A note on differential response

1.3.1. Mandatory reporting laws' focus on serious cases more likely to require child protection and services

Mandatory reporting laws are 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 analogy might be the inappropriate use of an ambulance to deal with a minor health complaint. It is important to avoid overburdening child protection systems wherever possible.

1.3.2. Differential response systems' focus on less serious cases requiring services and assistance

Some jurisdictions have formalised these different responses – commonly called 'differential response' – to a greater extent than others. As previously noted, the aim is not to apply mandatory reporting laws to any and all cases of 'abuse' and 'neglect', but to limit those laws to severe cases, and to enable referral to and

deployment of supportive community agencies to situations of less severe problems. This applies especially in situations of neglect and domestic violence. Distinguishing between more serious cases of abuse and neglect, and less serious ones can be difficult, but this is what differential response aims to achieve. At one end of the differential response continuum, in cases of serious abuse and neglect statutory responses such as child protection orders can be made. At the other end of the continuum, ideally, are supports such as assistance with housing, finance, employment, substance abuse, alcohol dependency, mental health conditions, domestic violence respite care, and parenting skills. Cases of serious abuse and neglect may require a blend of both statutory intervention and support to the family.

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.[7] 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.[8] 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.[9] 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' (Government of Victoria, 2006).[10] Equally, reports made to child protective services may be redirected to ChildFIRST if deemed not to require a child protection response (Government of Victoria, 2006).[11]

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 fulfil their reporting duty (Children, Young Persons and Their Families Act 1997 Part 5B). In New South Wales, to renew an emphasis on limiting mandatory reporting to cases of significant harm, the Keep Them Safe: Annual Report 2010-11 set out the new system requiring mandated reporters to report to the department only cases of suspected significant harm. Section 27A of the Children and Young Persons (Care and Protection) Act 1998 (NSW) then 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 (NSW Department of Premier and Cabinet, 2011). The units' focus is on ascertaining what the family needs to minimise or overcome their present situation and on facilitating the most appropriate assistance.

These developments will be tracked in the historical research below and effects anticipated on mandated reports.

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7 The *Children, Youth and Families Act 2005* (Vic) s 31 states that 'A person who has a significant concern for the wellbeing of a child may refer the matter to a community-based child and family service'.

8 See Part 3.7. The *Children, Youth and Families Act 2005* (Vic) s 184 states that a mandatory reporter who forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in s 162(1)(c) or (d) 'must report to the Secretary'.

9 *Children, Youth and Families Act 2005* (Vic) s 33.

10 *Children, Youth and Families Act 2005* (Vic) s 33(2).

11 *Children, Youth and Families Act 2005* (Vic) ss 187, 30.

1.4. Comparative tables

This section displays seven comparative tables relevant to State and Territory reporting provisions detailed in the previous sections (section 1.1 to section 1.3). The tables are:

- Table 1.1 Reporter groups
- Table 1.2 Types of abuse and neglect that must be reported
- Table 1.3 Key features of legislative reporting duties
- Table 1.4 Legislation containing reporting duties and key provisions
- Table 1.5 Legislative definition of 'child' for the purpose of reporting duties
- Table 1.6 Maximum penalties, and penalty units
- Table 1.7 What must be reported – types of abuse and neglect, abuse vs harm, and the extent of harm

Important note

These comparative tables show the law at 31 December 2012. The treatment in Stage 1 of developments in each State and Territory charts the changes to each jurisdiction's laws over the period 2003-12.

In 2014, the *Child Protection Reform Amendment Act 2014* (Qld) was passed, which will make substantial changes to Queensland's mandatory reporting legislation. These changes will shift Queensland's position towards the current position in Victoria. The changes will broaden some mandatory reporting duties, but will narrow others. The changes also will introduce a more formal statutory footing for differential response pathways.

These pending changes in Queensland are the most significant legislative amendments made in any jurisdiction to mandatory reporting legislation in the period after the 2003-12 time period which defined the scope of this research project.

Table 1.1: Reporter groups: Australian States and Territories

Jurisdiction	Teachers	Police	Nurses	Doctors	Others
ACT	Yes	Yes	Yes	Yes	Dentists, midwives, home education inspectors, school counsellors, childcare centre carers, home-based care officers, public servants working in services related to families and children, the public advocate, the official visitor, paid teacher's assistants/aides, paid childcare assistants/aides
NSW	Yes	Yes	Yes	Yes	A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children (and managers in organisations providing such services)
NT	Yes	Yes	Yes	Yes	All persons
QLD	Yes	No	Yes	Yes	Nil
SA	Yes	Yes	Yes	Yes	Pharmacists, dentists, psychologists, community corrections officers, social workers, religious ministers, employees and volunteers in religious organisations, teachers in educational institutions; family day care providers; employees and volunteers in organisations providing health, education, welfare, sporting or recreational services to children; managers in relevant organisations
TAS	Yes	Yes	Yes	Yes	Midwives, dentists, psychologists, probation officers, principals and teachers in any educational institution, child care providers, employees and volunteers in government funded agencies providing health, welfare or education services to children
VIC	Yes	Yes	Yes	Yes	Midwives, school principals
WA	Yes	Yes	Yes	Yes	Midwives
Cth	No	No	No	No	Registrar or a Deputy Registrar of a Registry of the Family Court of Australia, or of the Family Court of Western Australia; a Registrar of the Federal Magistrates Court; or family consultants; family counsellors; family dispute resolution practitioners; arbitrators; lawyers independently representing a child's interests

Table 1.2: Types of abuse and neglect that must be reported: Australian States and Territories

Jurisdiction	Physical abuse	Sexual abuse	Psychological / emotional abuse	Neglect	Exposure to domestic violence
ACT	Yes	Yes	No	No	No
NSW	Yes	Yes	Yes	Yes	Yes
NT	Yes	Yes	Yes	Yes	Yes
QLD	Yes	Yes	Yes	Yes	No
SA	Yes	Yes	Yes	Yes	No
TAS	Yes	Yes	Yes	Yes	Yes
VIC	Yes	Yes	No	No	No
WA	No	Yes	No	No	No
Cth	Yes	Yes	Yes	Yes	Yes

Table 1.3: Key features of legislative reporting duties: Australian States and Territories

Jurisdiction	State of mind	Extent of harm	Past and present only / both past and present, and future
ACT	Belief on reasonable grounds	Not specified: 'sexual abuse…or non-accidental physical injury'	Past and present only
NSW	Suspects on reasonable grounds that a child is at risk of significant harm	A child or young person 'is at risk of significant harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of… basic physical or psychological needs are not being met…physical or sexual abuse or ill-treatment… serious psychological harm'	Both
NT	Belief on reasonable grounds	Any significant detrimental effect caused by any act, omission or circumstance on the physical, psychological or emotional wellbeing or development of the child	Both
QLD	Becomes aware, or reasonably suspects	Significant detrimental effect on the child's physical, psychological or emotional wellbeing	Both
SA	Suspects on reasonable grounds	Any sexual abuse; physical or psychological abuse or neglect to extent that to the extent that the child 'has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or the child's physical or psychological development is in jeopardy'	Past and present only [12]
TAS	Believes, or suspects, on reasonable grounds, or knows	Any sexual abuse; physical or emotional injury or other abuse, or neglect, to extent that the child has suffered, or is likely to suffer, physical or psychological harm detrimental to the child's wellbeing; or the child's physical or psychological development is in jeopardy	Past and present only [13]
VIC	Belief on reasonable grounds (both regarding the child's injury or abuse, *and* the presence of a protective parent)	Child 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	Both
WA	Belief on reasonable grounds	Not specified: any sexual abuse	Past and present only
Cth	Suspects on reasonable grounds	Not specified: any assault or sexual assault; serious psychological harm; serious neglect	Both

[12] Also if 'a person with whom the child resides (whether a guardian of the child or not)—
(i) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
(ii) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person'

[13] Also if there is 'a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides'.

Table 1.4: Legislation containing reporting duties and key provisions: Australian States and Territories*

Jurisdiction	Legislation
ACT	Children and Young People Act 2008 (ACT) s 356
NSW	Children and Young Persons (Care and Protection) Act 1998 (NSW) ss 23, 27
NT	Care and Protection of Children Act (NT) ss 15, 16, 26
QLD	Public Health Act 2005 (Qld) ss 158, 191; Education (General Provisions) Act 2006 (Qld) ss 364-366A; Child Protection Act 1999 (Qld) ss 22, 186
SA	Children's Protection Act 1993 (SA) ss 6, 10, 11
TAS	Children, Young Persons and Their Families Act 1997 (Tas) ss 3, 4, 14
VIC	Children, Youth and Families Act 2005 (Vic) ss 162, 182, 184
WA	Children and Community Services Act 2004 (WA) ss 124A-H
Commonwealth	Family Law Act 1975 (Cth) ss 4, 67ZA

* Note: many jurisdictions also impose other obligations to make notifications of harm occurring to children while in their care, or in departmental care. Examples are obligations on licensees (and other responsible officers) of departmental and licensed care services (see for example *Child Protection Act 1999* (Qld) s 148), and licensees of child care services (see for example *Child Care Services (Child Care) Regulations 2006* (WA) r 20). Because these obligations are somewhat different in provenance, purpose and operation to the mandatory reporting duties enacted in legislation, we have not treated these obligations as a 'true' mandatory reporting duty for the purpose of this research project.

Table 1.5: Legislative definition of 'child' for the purpose of the reporting duties: Australian States and Territories

Jurisdiction	Current Legislation	Former provisions	Children to whom the provisions apply
ACT	Children and Young People Act 2008 (ACT) s 11: a 'child' is a person under 12 years old; s 12: a 'young person' is a person of 12 years or older, but not yet an adult.	Both CYPA 1999 at 1 January 2003; and CYPA immediately before CYPA 2008 as made, defined 'child' in s 7 and 'young person' in s 8 in the same way as the 2008 legislation.	Children under age 18
NSW	Children and Young Persons (Care and Protection) Act 1998 (NSW) s 3: 'child' is a person who is under the age of 16 years; 'young person' is a person who is aged 16 or above but who is under the age of 18 years; but the duty to report in s 27 applies only where a person 'has reasonable grounds to suspect that a *child* is at risk of harm' (our emphasis)	Children and Young Persons (Care and Protection) Act 1998 (NSW) s 3: 'child' is a person who is under the age of 16 years; 'young person' is a person who is aged 16 or above but who is under the age of 18 years	Children under age 16
NT	Care and Protection of Children Act (NT) s 13: 'child' is a person who is under the age of 18 years	Community Welfare Act s 4: 'child' is a person who has not attained the age of 18 years	Children under age 18
QLD	Public Health Act 2005 (Qld) Sch 2: 'child' means an individual under 18 years; Education (General Provisions) Act 2006 (Qld) ss 364-366A apply to students under 18; Child Protection Act 1999 (Qld) s 8: a child is an individual under 18 years.	Health Act 1937 s 76M at 1 January 2003 defined 'child' as a person under the age of 17 years; this was changed so the duty applied to children under 18 years via s 76K, comm 31 August 2005; Education (General Provisions) Act 1989 (Qld) ss 146A-B apply to students under 18 Child Protection Act 1999 (Qld) s 8: a child is an individual under 18 years.	Children under age 18
SA	Children's Protection Act 1993 (SA) s 6(1): a 'child' is a person under 18 years of age	Children's Protection Act 1993 (SA) s 6(1) at 1 January 2003: a 'child' is a person under 18 years of age	Children under age 18
TAS	Children, Young Persons and Their Families Act 1997 (Tas) s 3(1): a 'child' is a person under 18 years of age	Children, Young Persons and Their Families Act 1997 (Tas) s 3(1): a 'child' is a person under 18 years of age	Children under age 18
VIC	Children, Youth and Families Act 2005 (Vic) s 3(1): 'child' means a person who is under the age of 17 years	Children and Young Persons Act 1989 (Vic) s 3(1): 'child' means a person who is under the age of 17 years	Children under age 17
WA	Children and Community Services Act 2004 (WA) s 3: a 'child' is a person under 18 years of age	Children and Community Services Act 2004 (WA) s 3: a 'child' is a person under 18 years of age	Children under age 18

Table 1.6: Maximum penalties, and penalty units: Australian States and Territories

Jurisdiction	Child protection legislation at 1/1/2003	Penalty unit at 1/1/2003	Changes over time
ACT	*Children and Young People Act 1999* (ACT) s 159(2) (maximum penalty of **50 penalty units ($5000), 6 months' imprisonment, or both).**	$100 (see note in CYP Act)	Legislation Act s 133: $110 (am by Legislation (Penalty Units) Amendment Act 2009 No 35) comm 21 Oct 2009) so from 21 Oct 2009 to 31 Dec 2012 penalty was 50 penalty units ($5500), 6 months' imprisonment, or both. (Note: penalty unit now $140 since 23 August 2013, am by Legislation (Penalty Units) Amendment Act 2013)
NSW	*Children and Young Persons (Care and Protection) Act 1998* s 27(2) (maximum penalty of 200 penalty units, hence **$22,000**)	A penalty unit was $110: *Crimes (Sentencing Procedure) Act 1999* s 17	NSW penalty unit remains $110 but now no penalty as the penalty was removed from s 27 by the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13, Schedule 1.1 [7], comm 24 January 2010
NT	*Community Welfare Act 1983* (NT) s 14(1) (maximum penalty of 200 penalty units, hence **$22,000**)	A penalty unit was $110: *Penalty Units Act* (NT) s 3(1))	The maximum penalty remains 200 penalty units. The *Penalty Units Act* s 3 sets the value of a penalty unit as $130, so the maximum penalty is $26,000. (Note: *Community Welfare Amendment Act 2002* (Act No. 61; comm 9 December 2002) s 10 increased the maximum penalty from $500 to 200 penalty units.
QLD	*Health Act 1937* (Qld) s 76KE (maximum penalty of 50 penalty units, hence **$3750**)	A penalty unit was $75: *Penalties and Sentences Act 1992* (Qld) s 5(1)(b))	The penalty unit value has changed from 2003-2012 as follows: from 27 Nov 2000: s 5(1)(b): $75 (1999 No 70 s 166 sch 1); from 1 January 2009: s 5(1)(c): $100 (2008 No 66 s 3(2)); renumb as s 5(1)(d) by 2011 No 18 s 403; from 21 August 2012: s 5(1)(d): $110 (2012 No 17 s 34). PHA: 50 penalty units ($5500); EGPA: 20 pen. units ($2200)
SA	*Children's Protection Act 1993* (SA) s 11(1) (maximum penalty of **$2500**)	na	Increased to $10,000 by the *Children's Protection (Miscellaneous) Amendment Act 2005* (SA) (No 76) s 10(1) (comm 31/12/2006).
TAS	*Children, Young Persons and Their Families Act 1997* (Tas) s 14(2)(b) (maximum penalty of 20 penalty units, hence **$2000**	A penalty unit was $100: *Penalty Units and Other Penalties Act 1987* (Tas) s 4)	Increased to $2400 as penalty unit increased to $120 (comm 24 October 2007 – am by Act 37 of 2007)
VIC	*Children and Young Persons Act 1989* (Vic) s 64(1A) (maximum penalty of 10 penalty units, hence **$1000**	A penalty unit was $100: *Sentencing Act 1991* (Vic) s 110;	*Children, Youth and Families Act 2005* (Vic), s 184(1) maximum penalty is 10 penalty units. Through *Sentencing Act 1991* (Vic), s 110 and *Monetary Units Act 2004* (No 10 of 2004), the value of a penalty provision can be indexed and amended. Under the MUA 2004 s 11(1)(b) a penalty unit for the 2012/13 financial year was $140.84. So, the maximum penalty since 1 July 2012 has been $1408.
WA	None	Not applicable	From 1 January 2009: $6000.

Table 1.7: What must be reported – types of abuse and neglect, abuse vs harm, and the extent of harm: Australian States and Territories

	Legislative reporting provisions - what must be reported - types of abuse and neglect – extent of harm	Abuse / harm; significant harm
ACT	*Children and Young People Act 2008* (ACT) Section **356**(1)(c) If the mandated reporter 'believes on reasonable grounds that a child or young person **has experienced, or is experiencing** - i. **sexual abuse**; or ii. **non-accidental physical injury**; and the person's reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work	*Focus is 'abuse' explicitly for sexual abuse, and 'injury' as a consequence of abuse causing physical injury* Sexual abuse (any) Non-accidental physical injury (any; no mention of significance)
NSW	*Children and Young Persons (Care and Protection) Act 1998* (NSW) Section **27**: If the mandated reporter 'has ***reasonable grounds to suspect that a child is at risk of significant harm***; and those grounds arise during the course of or from the person's work' Section **23(1)**: A child 'is ***at risk of significant harm*** if current concerns exist for the safety, welfare or well-being of the child because of the presence, ***to a significant extent***, of any one or more of the following circumstances: (a) the child's or young person's **basic physical or psychological needs** are not being met or are at risk of not being met, (b) the parents or other caregivers have not arranged **and** are unable or unwilling to arrange for the child or young person to receive necessary **medical care**, (b1) in the case of a child or young person who is required to **attend school** in accordance with the Education Act 1990—the parents or other caregivers have not arranged **and** are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act, (c) the child or young person has been, or is at risk of being, **physically or sexually abused** or ill-treated, (d) the child or young person is living in a household where there have been incidents of **domestic violence** and, as a consequence, the child or young person is at risk of serious physical or psychological harm, (e) a **parent or other caregiver has behaved in such a way** towards the child or young person that the child or young person has suffered or is at risk of suffering **serious psychological harm**, (f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.'	*Focus is 'risk of significant harm' with subsequent provisions focusing on the abuse causing the 'harm' specified* Neglect (a), (b), (b1) Physical abuse (c) Sexual abuse (c) Exposure to domestic violence + risk of serious physical or psychological harm (d) Psychological/other abuse + serious psychological harm (e) Focus on 'significant harm' (but complex, convoluted drafting)

	Legislative reporting provisions - what must be reported - types of abuse and neglect – extent of harm	Abuse / harm; significant harm
NT	*Care and Protection of Children Act 2007* (NT) Section **26**(1): A person is guilty of an offence if the person (a) 'believes, on reasonable grounds, any of the following: i. a child has suffered or is likely to suffer **harm** or **exploitation**; ii. a child aged less than 14 years has been or is likely to be a victim of a sexual offence; iii. a child has been or is likely to be a victim of an offence against section 128 of the Criminal Code' and does not report it. Section 26(2): A person is guilty of an offence if the person (a) is a health practitioner or someone prescribed by regulation; and (b) 'believes, on reasonable grounds, i. that a child aged at least 14 years (but less than 16 years) has been or is likely to be a victim of a **sexual offence**; and ii. that the difference in age between the child and alleged sexual offender is more than 2 years; and does not report it. Section **15**(1): **Harm** to a child is any **significant detrimental effect** caused by any act, omission or circumstance on: (a) the physical, psychological or emotional wellbeing of the child; or (b) the physical, psychological or emotional development of the child. Section 15(2): Without limiting subsection (1), harm can be <u>caused by</u> the following: (a) **physical, psychological or emotional abuse** or neglect of the child; (b) **sexual abuse or other exploitation** of the child; (c) **exposure of the child to physical violence**. *Example: A child witnessing violence between the child's parents at home* Section **16**(1): **Exploitation** of a child includes sexual and any other forms of exploitation of the child. Section 16(2): Without limiting subsection (1), sexual exploitation of a child includes: (a) sexual abuse of the child; and (b) involving the child as a participant or spectator in any of the following: (i) an act of a sexual nature; (ii) prostitution; (iii) a pornographic performance.	*Focus is on the child suffering 'harm' as a consequence of abuse <u>causing</u> the 'harm' specified* *For sexual abuse, the focus is also explicitly on the child being a victim of 'exploitation', which is akin to 'abuse'* Physical abuse Sexual abuse Emotional abuse Neglect Exposure to physical violence (e.g., a child witnessing violence between parents at home) Focus on significant harm via 'significant detrimental effect' concept

	Legislative reporting provisions - what must be reported - types of abuse and neglect – extent of harm	Abuse / harm; significant harm
QLD	*Public Health Act 2005* (Qld) Section **191**: A mandated reporter must report **'the harm or likely harm'** if they 'become aware, or reasonably suspect, during the practice of his or her profession, that a child has been, is being, or is likely to be, harmed' Section **158**: **Harm** means 'any **detrimental effect** on the child's physical, psychological or emotional wellbeing— (a) that is of a **significant** nature; and (b) that has been caused by— (i) physical, psychological or emotional abuse or neglect; or (ii) sexual abuse or exploitation.'	*Focus is on the child suffering 'harm' as a consequence of abuse causing the 'harm' specified* Physical abuse Psychological abuse Emotional abuse Neglect Sexual abuse or exploitation Focus on significant harm via 'significant detrimental effect'
	Education (General Provisions) Act 2006 (Qld) Section 364 defines 'sexual abuse'. **Sections 365, 366** (State and non-State schools respectively): 'if a staff member becomes aware, or reasonably suspects, in the course of the staff member's employment at the school, that a child attending the school has been sexually abused' Sections **365A, 366A** (State and non-State schools respectively): 'if a staff member becomes aware, or reasonably suspects, in the course of the staff member's employment at the school, that a child attending the school is likely to be sexually abused'	*Focus is 'abuse' explicitly* Sexual abuse only (school staff)
SA	*Children's Protection Act 1993* (SA) Section **6**(1): '***abuse or neglect***, in relation to a child, means— (a) sexual abuse of the child; or (b) physical or emotional abuse of the child, or neglect of the child, to the extent that— (i) the child has suffered, or is likely to suffer, physical or psychological **injury *detrimental to the child's wellbeing***; or (ii) the child's physical or psychological development is in jeopardy Section **10**: '***abuse or neglect***', in relation to a child, has the same meaning as in section 6(1), but includes a reasonable likelihood, in terms of section 6(2)(b), of the child being killed, injured, abused or neglected by a person with whom the child resides. Section **11**(1) 'If (a) a person to whom this section applies suspects on reasonable grounds that a child has been or is being abused or neglected; and (b) the suspicion is formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties', the person must report it.	*Focus is 'abuse' explicitly, and as a consequence of being the cause of the 'injury' specified* Sexual abuse Physical abuse Emotional abuse Neglect Less strong focus on significant harm via 'detriment to wellbeing' concept

	Legislative reporting provisions - what must be reported - types of abuse and neglect – extent of harm	Abuse / harm; significant harm
TAS	*Children, Young Persons and Their Families Act 1997* (Tas) Section **3**(1): '***abuse or neglect***', means (a) sexual abuse; or (b) physical or emotional **injury** or other abuse, or neglect, <u>to the extent that</u>— (i) the injured, abused, or neglected person has suffered, or is likely to suffer, physical or psychological **harm** ***detrimental to the person's wellbeing***; or (ii) the injured, abused, or neglected person's physical or psychological development is in jeopardy Section **14**(2) 'If a prescribed person, in carrying out official duties or in the course of his or her work (whether paid or voluntary), believes, or suspects, on reasonable grounds, or knows – (a) that a child has been or is being abused or neglected or is an affected child within the meaning of the Family Violence Act 2004; or (b) that there is a reasonable likelihood of a child being killed or injured or abused or neglected by a person with whom the child resides; or (c) while a woman is pregnant that there is a reasonable likelihood that after the birth of the child – (i) the child will suffer abuse or neglect, or may be killed by a person with whom the child is likely to reside; or (ii) the child will require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman resides or is likely to reside, before the birth of the child' the person must report it.	*Focus is 'abuse' explicitly, and as a consequence of being the <u>cause</u> of the 'injury' specified* Sexual abuse Physical injury or abuse Emotional injury or abuse Neglect Exposure to family violence Less strong focus on significant harm via 'detriment to wellbeing' concept
VIC	*Children, Youth and Families Act 2005* (Vic) Section **184**(1): 'A mandatory reporter who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as set out in section 182, forms the ***belief on reasonable grounds*** *that a* ***child is in need of protection on a ground referred to*** in section 162(1)(c) or 162(1)(d)' must report it. Section **162**(1) 'For the purposes of this Act a child is ***in need of protection*** if any of the following grounds exist - (c) the child has suffered, or is likely to suffer, ***significant harm*** <u>as a result of</u> **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*** <u>as a result of</u> **sexual abuse** ***and*** the child's parents have not protected, or are unlikely to protect, the child from harm of that type;'	*Focus is the child being 'in need of protection' due to 'harm' as a consequence of injury or abuse being the <u>cause</u> of the 'harm', plus the absence of a protective parent* Physical injury Sexual abuse Clear focus on 'significant harm'

	Legislative reporting provisions - what must be reported - types of abuse and neglect – extent of harm	Abuse / harm; significant harm
WA	*Children and Community Services Act 2004* Section 124A defines 'sexual abuse'. Section **124B**(1) requires a mandated reporter who in the course of their work 'believes on reasonable grounds that a child (i) has been the subject of sexual abuse that occurred on or after commencement day; or (ii) is the subject of ongoing sexual abuse' to report it.	*Focus is 'abuse' explicitly* Sexual abuse

1.5. Legislative developments for each State and Territory over time: 2003-2012

In Australia, reporting laws have developed since the 1970s. Each State and Territory has constitutional power to pass legislation about child protection. In the absence of a coordinated national approach, and with States and Territories having different priorities and preferences about child protection and family welfare, each jurisdiction has enacted its own mandatory reporting legislation at different times, in different ways, and with occasional amendments which usually broaden but sometimes narrow the scope of the duty (Mathews & Kenny, 2008).[14]

Below, we provide a 10 year historical review and analysis of the development of the mandatory reporting laws in each State and Territory. For each jurisdiction, we describe:

- the original legislative position at 1 January 2003;
- key legislative changes between 1 January 2003 and 31 December 2012, noting the effects these changes may have on reporting practice;
- a summary of the position at 31 December 2012; and
- a summary timeline depicting key changes.

The findings from this Stage 1 Report will then inform our analysis in Stage 2 of this study. In Stage 2, we will collate and analyse government data about reports and outcomes of reports for each type of child abuse and neglect, by each reporter group, from each State and Territory for the 2003-2012 period. This will indicate within each jurisdiction the influence of different legislative provisions on reporting practice and outcomes. It will also inform an analysis across jurisdictions of the influence of different legislative frameworks on reporting practice and outcomes.

The following sections detail legislative developments for each State and Territory over the period 2003-2012:

- 1.5.1 Australian Capital Territory
- 1.5.2 New South Wales
- 1.5.3 Northern Territory
- 1.5.4 Queensland
- 1.5.5 South Australia
- 1.5.6 Tasmania
- 1.5.7 Victoria
- 1.5.8 Western Australia

[14] Note that the State and Territory laws synthesized and traced below do not contain references to the Commonwealth provisions under the Family Law Act, which apply nationally.

1.5.1. Australian Capital Territory

1.5.1.1. Original position at 1 January 2003: Australian Capital Territory

Children and Young People Act 1999

In the Australian Capital Territory, the Children and Young People Act 1999 (ACT) s 159(2) imposed a fairly narrow mandatory reporting duty. Section 159(2) imposed a duty to report reasonable suspicions of past or presently-occurring sexual abuse or non-accidental physical injury to a child or young person, on selected persons who form that suspicion in the course of their work or voluntary duties. Hence, the duty did not apply to neglect, or emotional abuse. As well, the duty did not apply to risk of future abuse.

The duty was imposed by s 159(1) on a broad range of professionals as follows:

(a) doctors
(b) dentists
(c) enrolled or registered nurses
(d) school teachers
(e) police officers
(f) school counsellors
(g) persons caring for children at child care centres
(h) persons coordinating or monitoring the provision of home-based care on behalf of a family day-care scheme licensee
(i) public servants who provide services related to the health and welfare of children, young people or families
(j) the community advocate
(k) the official visitor.

As in other jurisdictions, voluntary reports could be made of situations outside the mandatory reporting duty (s 158). For mandated reports, immunity was conferred by s 163(1)(a) and (b). Confidentiality was conferred by ss 404 and 405. An unusual provision provided a penalty for making a report other than in good faith (s 160). Uniquely in Australia, the Australian Capital Territory penalty provision included the possibility of imprisonment: s 159(2) set a maximum penalty of 50 penalty units (at the time, a penalty unit was $100, hence $5000), 6 months' imprisonment, or both.

1.5.1.2. Key changes, 2003-12: Australian Capital Territory

The *Children and Young Persons Act 2008* replaced the *Children and Young Persons Act 1999*, commencing 27 October 2008. Between 2003 and this date, the only substantive change was to add midwives as a reporter group in 159(1)(e). However, several other changes occurred which should be noted.

Midwives added as a reporter group (commencing 18 November 2006)

This occurred when the *Health Legislation Amendment Act 2006 (No 2)* Sch 2 Pt 2.2 commenced on 18 November 2006, which renumbered subsections in s 159(1) and added midwives as a reporter group:

> (c) a nurse; or
> (ca) an enrolled nurse; or
> (cb) a midwife

This may be expected to have produced an increase in reports by this group, but probably only very moderate due to the restricted scope of the reporting duty.

New excuse in 159(3) (commencing 1 August 2006)

Section 159(3) provided an excuse for not reporting and was inserted by ***Children and Young People Amendment Act 2006 (Act 6)*** s 16, which commenced on 1 August 2006. The excuse applied if a reporter had a reasonable belief that someone else has made a report about the same child or young person in relation to the same abuse or neglect[15] and the other person reported the same reasons for their belief as the person has for their belief.

If anything, this may be expected to have produced a slight decline in the number of multiple reports about the same child.

Children and Young Persons Act 2008 (commencing 27 October 2008)

The Children and Young Persons Act 2008, which commenced on 27 October 2008, made the following changes:

- some provisions were renumbered (the key mandated reporting provision, formerly s 159, was renumbered s 356, without changing the scope; the offence provision for a false or misleading mandatory report is in s 358; immunity was provided, in s 874; confidentiality was provided, in s 857; the excuse in the former s 159(3) was renumbered s 357(1) ie where a reporter has a reasonable belief that someone else has made a report about the same child or young person in relation to the same abuse, and the other person reported the same reasons for their belief as the person has for their belief;
- there was a clarification of the scope of some mandated reporter groups (s 356) by stating that:
    - 'teacher' at a school includes a teacher's assistant or aide if the person is in paid employment at the school;
    - person caring for a child at a childcare centre includes a childcare assistant or aide caring for a child at the childcare centre if they are in paid employment there (but not volunteers caring for a child).
- a new excuse was added by s 357(2) for not reporting in situations where a reporter had a reasonable belief that physical injury was caused to a child by another child or young person, and a person with parental responsibility for the child is willing and able to protect the child from further injury
    - if this kind of situation was previously being reported (erroneously) then this may be expected to produce a small decline in reports of physical injury.

Change in penalty (commencing 21 October 2009)

The penalty was unchanged in its form but in substance it is higher, due to changes in the definition of a 'penalty unit'. A penalty unit was redefined as $110 in the Legislation Act s 133, by the Legislation (Penalty Units) Amendment Act 2009 (No 35), so from 21 October 2009 to 31 December 2012 the penalty was 50 penalty units ($5500), 6 months' imprisonment, or both.

New reporter group: home education inspectors (commencing 20 September 2010)

An addition was made to the list of mandated reporters in s 356(2)(g) of 'persons authorized to inspect education programs, materials or other records used for home education of a child or young person' as a

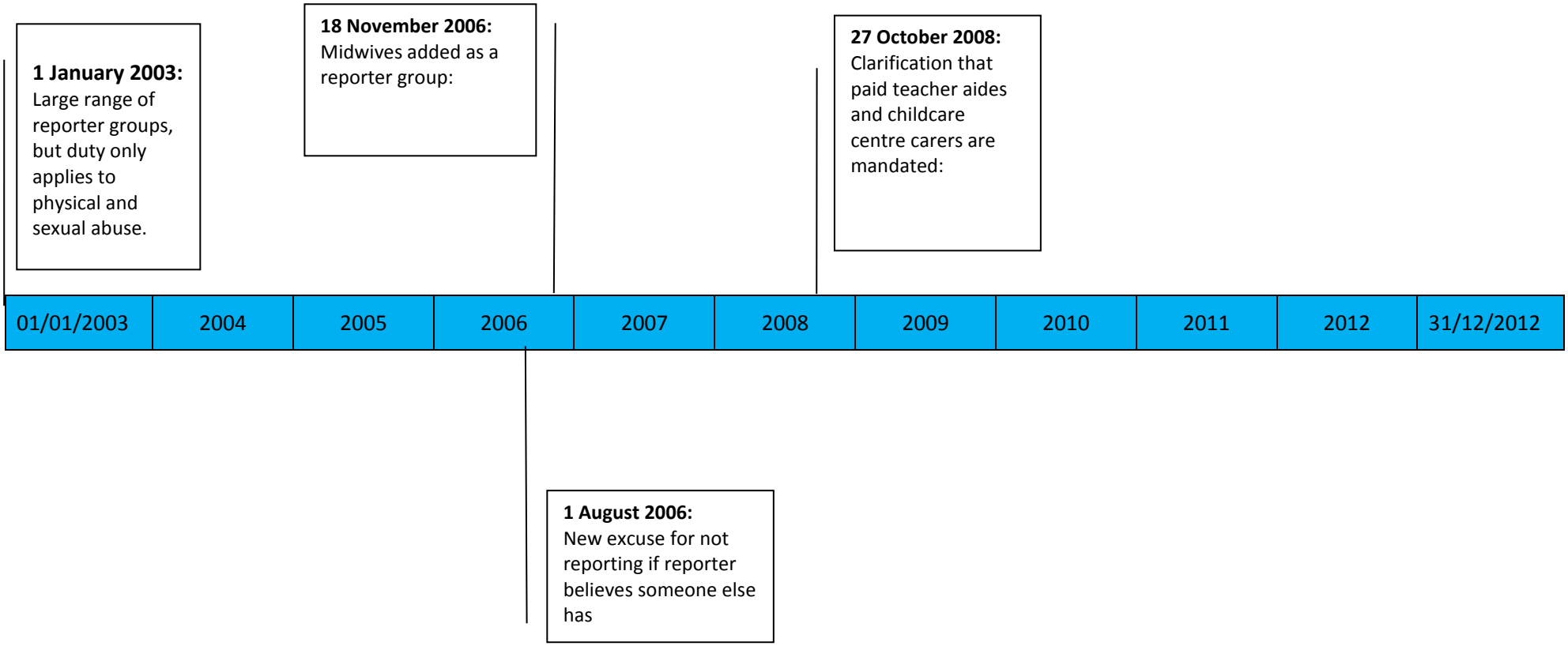
[15] This wording appears to imply that the reporting duty can apply to neglect. However, the reporting duty is clearly expressed as being limited to sexual abuse and intentional physical injury. Neglect can certainly cause physical injury, but any physical injury caused by neglect is arguably usually caused without intention, at least in contrast to the kind of physical injury caused intentionally by physical abuse. At most, this inclusion arguably should be limited to situations of physical injury caused intentionally by neglect. Alternatively, this is a drafting error and should be amended. Based on the clear definitions of 'abuse' and 'neglect' in ss 342 and 343, in my view it is a drafting error.

mandated reporter group (inserted by Children and Young People Amendment Act 2010 (No 2)). Due to the small population of this group of mandated reporters, and the narrow scope of the reporting duty, this change may not be expected to cause much difference in reporting practice.

1.5.1.3. Current position: Australian Capital Territory

The duty is limited to intentional physical injury and sexual abuse, but is applied to a wide range of professionals. A very substantial penalty is provided, and uniquely in Australia includes the possibility of imprisonment. Provisions indicate situations in which a report is not required. A drafting error in these provisions may confuse reporters about whether or not neglect and emotional abuse must be reported.

Figure 1.1: Timeline showing key developments, Australian Capital Territory, 2003-2012



1.5.2. New South Wales

1.5.2.1. Original position at 1 January 2003: New South Wales

Children and Young Persons (Care and Protection) Act 1998

At 1 January 2003, in New South Wales the *Children and Young Persons (Care and Protection) Act 1998* (NSW) imposed a broad range of mandatory reporting obligations. Under s 23, the duty applied to a broad range of types of child abuse and neglect. This range of reportable types included exposure to domestic violence, and NSW at the time was the only State to include such a duty. The state of mind activating the duty was 'reasonable grounds to suspect a child is at risk of harm'. The duty applied to both suspected past/present harm, and to risk of suspected future harm. Under s 27, the duty was extended to a broad range of professionals in professions including education, health, welfare and law enforcement who delivered services to children, and to those in management positions in these organisations. The penalty was 200 penalty units, which equated to $22,000. A limiting feature in this legislation compared to most other jurisdictions was that a 'child' was defined as a person under 16; hence the reporting duty only applied to those aged 15 or under (s 3). Immunity from proceedings was provide by s 29(1)(a)-(e). Confidentiality was conferred by s 29(1)(f).

An unusually broad range and definition of 'risk of harm'

For the purpose of the mandatory reporting duty, a child was defined as being 'at risk of harm' by s 23 'if current concerns existed for the safety, welfare or well-being of the child' because of any of the following circumstances:

> (a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
>
> (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
>
> (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
>
> (d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
>
> (e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.

The definition in s 23 was broad in three ways:

1) By predicating the duty with the opening clause 'if current concerns exist for the safety, welfare or well-being of the child', the provision was premised on broader and more slippery concepts than other jurisdictions' legislation which imposed clearer limits on reportable cases of, for example, significant physical abuse and neglect;
2) By not clearly limiting the reporting duty in all cases to situations of significant harm; for example, with physical abuse, the legislation was drafted as applying where the child 'has been, or is at risk of being, physically abused or mistreated';
3) By including exposure to domestic violence, albeit technically limiting reportable situations to those situations where the child was at risk of serious physical or psychological harm. It can be noted that this provision may have influenced a likelihood among reporters, especially police officers, to be

unable or unwilling to discriminate amongst different domestic violence cases and hence to 'overreport').

Therefore, key features of the New South Wales definition provision which worked with the reporting duty provision may be expected to have influenced a much higher tendency towards reporting, including the reporting of cases which were of minimal gravity (overreporting).

The definition combined with the reporting provision in s 27 as follows:

> 27 Mandatory reporting
>
> (1) This section applies to:
>
> > (a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children, and
> >
> > (b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.
>
> (2) If:
>
> > (a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of harm, and
> >
> > (b) those grounds arise during the course of or from the person's work,
>
> the person must, as soon as practicable, report to the Director-General the name, or a description, of the child and the grounds for suspecting that the child is at risk of harm.

The penalty in s 27 of $22,000 was also unusually high and should also be noted as a factor possibly influencing reporting practice.

1.5.2.2. Key changes, 2003-12: New South Wales

A new category of mandated report (commencing 30 March 2007)

The *Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2006 No 95* (Sch 1 [1], commencing 30 March 2007), amended s 23 by adding a new category of mandated report, in s 23(f). Reports were required of situations where a child was the subject of a pre-natal report and 'the birth mother of the child did not engage successfully with support services to eliminate, or minimize to the lowest level reasonably practical, the risk factors that gave rise to the report'. This is also a broader reporting duty generally not replicated elsewhere.[16]

[16] A note to s 25 was added by this Act Sch 1 [2], stating that the intention of s 25 reports were (a) to allow assistance and support to be provided to the expectant mother to reduce the likelihood that her child, when born, will need to be placed in out-of-home care, and (b) to provide early information that a child who is not yet born may be at risk of harm subsequent to his or her birth, and (c) in conjunction with section 23 (f) and section 27, to provide for mandatory reporting if there are reasonable grounds to believe that the child is at risk of harm subsequent to his or her birth.

Major changes: the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13, Schedule 1.1 (commencing 24 January 2010)

After the Wood Inquiry into child protection in New South Wales, four substantial amendments were introduced which affected the concept of harm, a new category of reportable harm, the penalty provision, and reporting mechanisms.

(i) Change to concept of harm – 'significant' harm (commencing 24 January 2010)

The *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13* (hereafter referred to as the Wood legislation) added a qualification of 'significant harm' to the reporting duty in s 23 definition of 'risk of harm' (Sch 1.1). This limited the class of reportable cases in a clearer manner than had previously existed (Sch 1.1[1] and [2]). This was achieved by:

- changing the heading (so it reads 'Section 23 Child or young person at risk of significant harm');
- adding the word 'significant' to s 23(1) (so the sentence reads: 'a child or young person is at risk of significant harm' rather than the previous 'at risk of harm'
- adding the words 'to a significant extent' so the sentence reads as follows:

> 23 Child or young person at risk of significant harm
>
> For the purposes of this Part and Part 3, a child or young person is at risk of significant harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances.

If the previous unqualified concept of harm did in fact influence hypersensitive reporting (overreporting, or the making of clearly unnecessary reports) before this change, then if this change has been conveyed to reporters, it may be expected that there has been a reduction in such practice – ie fewer 'clearly unnecessary' reports – especially for exposure to domestic violence and neglect.

(ii) New category of reportable harm: school attendance (commencing 24 January 2010)

The Wood legislation added a new s 23(b1) which required reports where parents or caregivers have not arranged and are unable or unwilling to arrange for the child to receive an education where they are required to attend school in accordance with the Education Act 1990.

This may be expected to have resulted in an increase in reports under this category (or as a type of neglect).

(iii) Major change by removing the penalty from s 27(2) (commencing 24 January 2010)

At 1 January 2003, the penalty for failure to report was maximum of 200 penalty units. This equated to $22 000 (see Table 6). In a major change, the Wood legislation removed the penalty from s 27 (Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13, Schedule 1.1 [7]).[17]

If the penalty previously had any influence on hypersensitive reporting (overreporting, or the making of clearly unnecessary reports), then if this change has been conveyed to reporters one may expect a reduction in such practice ie fewer 'clearly unnecessary' reports.

(iv) Alternative reporting via s 27A (commencing 24 January 2010)

[17] Amendments to the NSW CYP (CP) Act made by the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 related to the Wood Inquiry recommendations 6.2 and 10.1.

To enable the new focus on differential response which was promoted by the Wood legislation, the amendments also added a new s 27A (Sch 1.1 [8]). This enabled mandated reporters to make a report to the assessment officer of designated agencies who had created such arrangements (Child Well Being Units: eg in health, education, police and juvenile justice) (s 27A(2)), and this report would meet the mandated reporter's duty under s 27 (S 27A(6)).

After receiving the report, the assessment officer is to assess whether the matter should be reported to the Director-General under s 27 (s 27A(3)).

- **If so**, then the assessment officer or the reporter must report the matter to the Director-General (s 27A(4)).
- **If not**, the assessor or the staff member may, if either have concerns for the wellbeing for the child, make such referral or take such action as considered necessary or appropriate (or as is reasonably available) to safeguard or promote the safety, welfare and well-being of the child (s 27A(5)).
- Under these arrangements, the normal protections to reporters are provided (s 29(1)(a)-(c) provides immunity; s 29(1)(f) confers confidentiality).

This new scheme may be expected to also reduce the number of reports of more minor concerns to the Director-General.

1.5.2.3. Current position: New South Wales

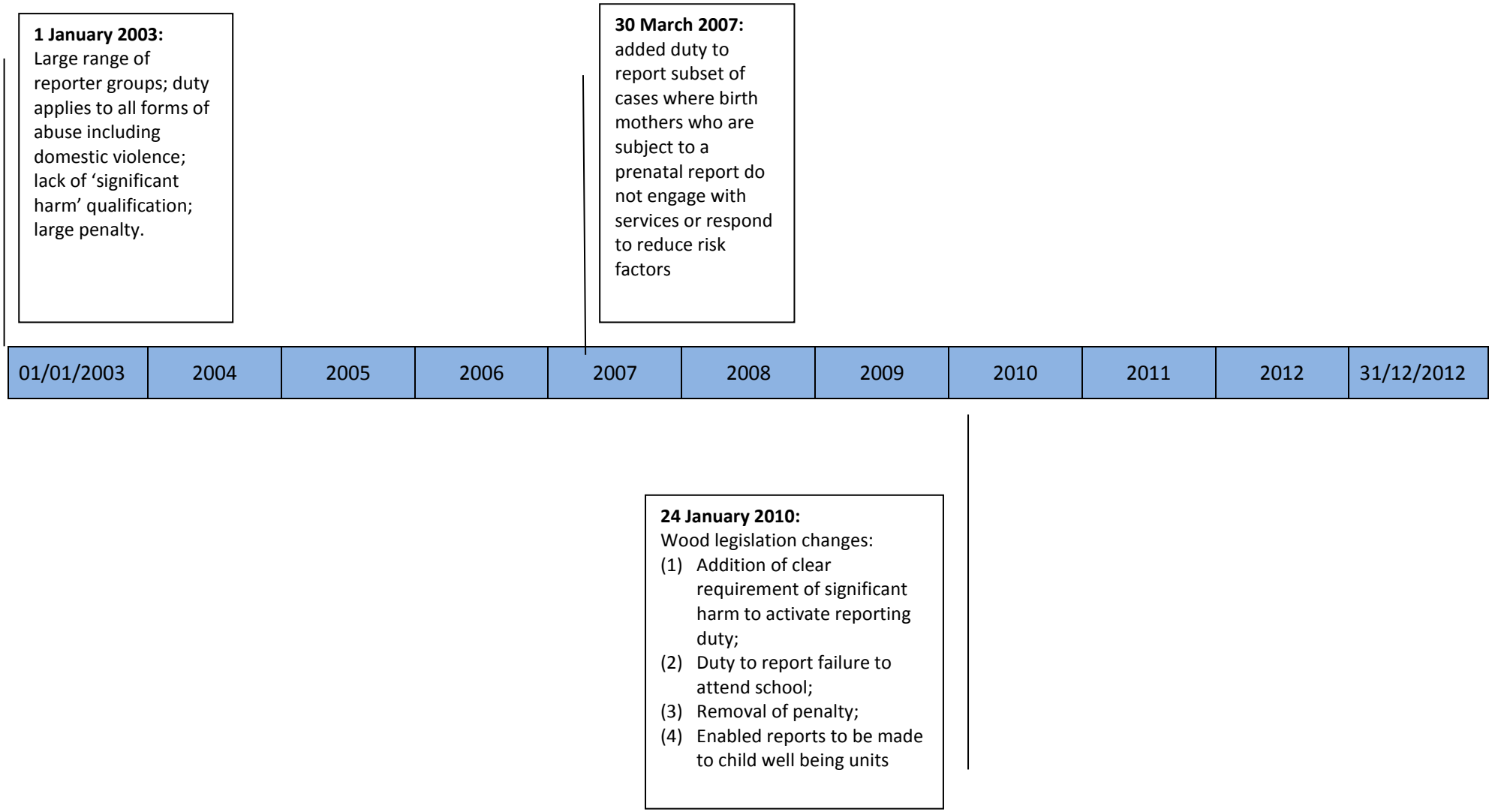
There have been no further changes after the Wood legislation. Therefore, the current situation, existing since 24 January 2010, is that members of a broad range of professions are required to report current concerns for the safety, welfare or well-being of a child because of the presence, to a significant extent, of (s 23)(1)):

(a) the child's basic physical or psychological needs are not being met or are at risk of not being met;
(b) lack of necessary medical care and the parents' caregivers are unable or willing to arrange it;

(b1) lack of education in accordance with the Education Act;
(c) the child has been or is at risk of being physically or sexually abused or ill-treated;
(d) the child is living in a household where there have been incidents of domestic violence and as a consequence the child is at risk of serious physical or psychological harm
(e) a parent/caregiver has behaved in such a way towards the child that the child has suffered or is at risk of suffering serious psychological harm;
(f) the child was subject of a prenatal report and the birth mother and the mother did not engage successfully with support services to eliminate, or minimize to the lowest level reasonably practical, the risk factors that gave rise to the report'.

No penalty exists for noncompliance.

Figure 1.2: Timeline showing key developments, New South Wales, 2003-2012



1.5.3. Northern Territory

1.5.3.1. Original position at 1 January 2003: Northern Territory

Community Welfare Act 1983

At 1 January 2003, the *Community Welfare Act 1983* (No 76)[18] contained wide mandatory reporting provisions which, uniquely for Australian jurisdictions, applied to all persons (s 14); a separate provision specifically applied to police officers (s 13).[19] Section 14 required a person 'who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment' to report it. The state of mind activating the duty was belief on reasonable grounds. Section 4(3) defined 'maltreatment' to include physical, emotional, psychological and sexual abuse, with a threshold of significance indicated by the concepts of 'seriousness', 'severity' and other stipulated qualifications regarding the injury caused or likely to be caused; it extended to risk of abuse and neglect to this degree (see below). It also contained a specific reference to female genital mutilation (s 4(3)(e)). Because of the definition of 'maltreatment in s 4(3), the duty applied to abuse and neglect thought to have already occurred or to be presently occurring, and to situations where there was believed to be a substantial risk of such abuse and neglect. The maximum penalty was 200 penalty units.[20] Immunity from liability for making a report was provided by s 14(2). Confidentiality was indirectly protected by s 97, although this was not as clear a protection as existed elsewhere.

Under the definition in s 4(3) operating from 2003, a child was deemed 'to have suffered maltreatment where –

> (a) he or she has suffered a physical injury causing temporary or permanent disfigurement or serious pain or has suffered impairment of a bodily function or the normal reserve or flexibility of a bodily function, inflicted or allowed to be inflicted by a parent, guardian or person having the custody of him or her or where there is substantial risk of his suffering such an injury or impairment;
>
> (b) he or she has suffered serious emotional or intellectual impairment evidenced by severe psychological or social malfunctioning measured by the commonly accepted standards of the community to which he or she belongs, because of his or her physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he or she is living or where there is a substantial risk that such surroundings, deprivation or environment will cause such emotional or intellectual impairment;

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[18] This Act and its original mandatory reporting provisions commenced on 20 April 1984. Note the addition at some point of the FGM subsection, and of the 'or she' after the original provisions' use of only the male pronoun.

[19] **13. Investigation of maltreatment -** (1) Where a member of the Police Force believes on reasonable grounds that a child has suffered or is suffering maltreatment, he or she – (a) shall, as soon as practicable, notify the Minister of the circumstances and the knowledge that constitutes the reasonable grounds for his or her so believing; and (b) may investigate the circumstances to ascertain if the child has suffered or is suffering maltreatment. (2) Where a member of the Police Force carries out an investigation under subsection (1)(b), he or she shall, within 24 hours after completing the investigation, furnish to the Minister a report on his or her investigations and, if he or she is satisfied on reasonable grounds that the child has suffered maltreatment, all material facts on which the knowledge that constitutes the reasonable grounds for his or her belief is based.

[20] **14. Maltreatment to be reported -** (1) A person, not being a member of the Police Force, who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment shall, as soon as practicable after obtaining the knowledge that constitutes the reasonable grounds for his or her so believing, report the fact, and all material facts on which that knowledge is based, to the Minister or a member of the Police Force. Penalty: 200 penalty units.

(c) he or she has suffered serious physical impairment evidenced by severe bodily malfunctioning, because of his or her physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he or she is living or where there is substantial risk that such surroundings, deprivation or environment will cause such impairment;

(d) he or she has been sexually abused or exploited, or where there is substantial risk of such abuse or exploitation occurring, and his or her parents, guardians or persons having the custody of him or her are unable or unwilling to protect him or her from such abuse or exploitation; or

(e) being a female, she – (i) has been subjected, or there is substantial risk that she will be subjected, to female genital mutilation, as defined in section 186A of the Criminal Code; or (ii) has been taken, or there is a substantial risk that she will be taken, from the Territory with the intention of having female genital mutilation performed on her.'

1.5.3.2. Key changes, 2003-12: Northern Territory

The *Community Welfare Act 1983* was amended by several Acts until 2007, but not substantially.[21]

Major change from 'maltreatment' to 'harm' and inclusion of exposure to physical violence (commencing 8 December 2008)

The *Care and Protection of Children Act 2007 (Act 37)* received assent on 12 December 2007, and Chapter 2 Part 2.1 (the new mandatory reporting provisions) commenced on 8 December 2008.[22] Until then, the MR provisions in the CWA effectively continued. From 8 December 2008, the key provisions in the *Care and Protection of Children Act 2007* applied, replacing the former *Community Welfare Act 1983*.

These new provisions in the *Care and Protection of Children Act 2007* had the following effects:

- The **key change** was replacing the concept of maltreatment with the concept of **'harm',** which was defined very broadly in s 15 (including exposure of a child to domestic violence, provided the harm threshold was reached). 'Harm' was defined as:
  (1) **any significant detrimental effect** caused by any act, omission or circumstance on:
  (a) the physical, psychological or emotional **wellbeing** of the child; or
  (b) the physical, psychological or emotional **development** of the child.
  (2) Without limiting subsection (1), harm can be caused by the following:
  (a) physical, psychological or emotional abuse or neglect of the child;
  (b) sexual abuse or other exploitation of the child;
  (c) **exposure of the child to physical violence**.
- Defining **'exploitation'** (s 16) to include sexual and other forms of exploitation of the child. Section 16(2) non-exhaustively defined sexual exploitation as including (a) sexual abuse; and (b) involving the child as a participant or spectator in (i) An act of a sexual nature; (ii) Prostitution; or (iii) A pornographic performance.
- Placing the reporting duty in s 26 in the following terms:

  (1) A person is guilty of an offence if the person:

  (a) believes, on reasonable grounds, that a child:

  (i) has been or is likely to be a victim of a sexual offence; or

[21] Earlier, a significant amendment had occurred in 2002 when ss 12-14 were amended by the *Community Welfare Amendment Act 2002* (Act No. 61, 2002; commenced 9 December 2002) s 10, which increased the maximum penalty from $500 to 200 penalty units.

[22] Chapter 1 (definitions) commenced on 7 May 2008 and other provisions.

(ii) otherwise has suffered or is likely to suffer harm or exploitation; and

(b) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer.

- Immunity from proceedings was provided by s 27. Confidentiality was indirectly protected by s 97, although this was not as clear a protection as existed elsewhere. The maximum penalty was 200 penalty units.

The new concepts and definitions of harm are arguably broader than the previous concept of maltreatment and the definitions of it. This may be expected to have produced an increase in reports in most categories, and especially for the new category of exposure to physical violence.

Further significant change regarding sexual abuse reporting (commencing 1 September 2009)

The *Care and Protection of Children Amendment Act 2009 (Act 23)* repealed and substituted s 26. This had the effect of: [23]

- Simplifying but not substantially altering the primary existing reporting duty
- Adding duties regarding selected sexual abuse scenarios as follows:
  - Adding a secondary reporting duty regarding a belief on reasonable grounds that a child aged **less than 14** has been or is likely to be a victim of a sexual offence,[24] or an offence against s 128 of the Criminal Code (a child 16-17 years old and under the offender's special care eg teacher or step-parent)
  - Adding a reporting duty for health practitioners, and others performing work of a kind prescribed by regulation, who believe on reasonable grounds that a child **aged 14 but less than 16** has been or is likely to be a victim of a sexual offence and the difference in age between the child and alleged offender is more than 2 years.

This, together with the context accompanying the legislative change, may be expected to have produced a significant increase in reports of sexual abuse from September 2009.

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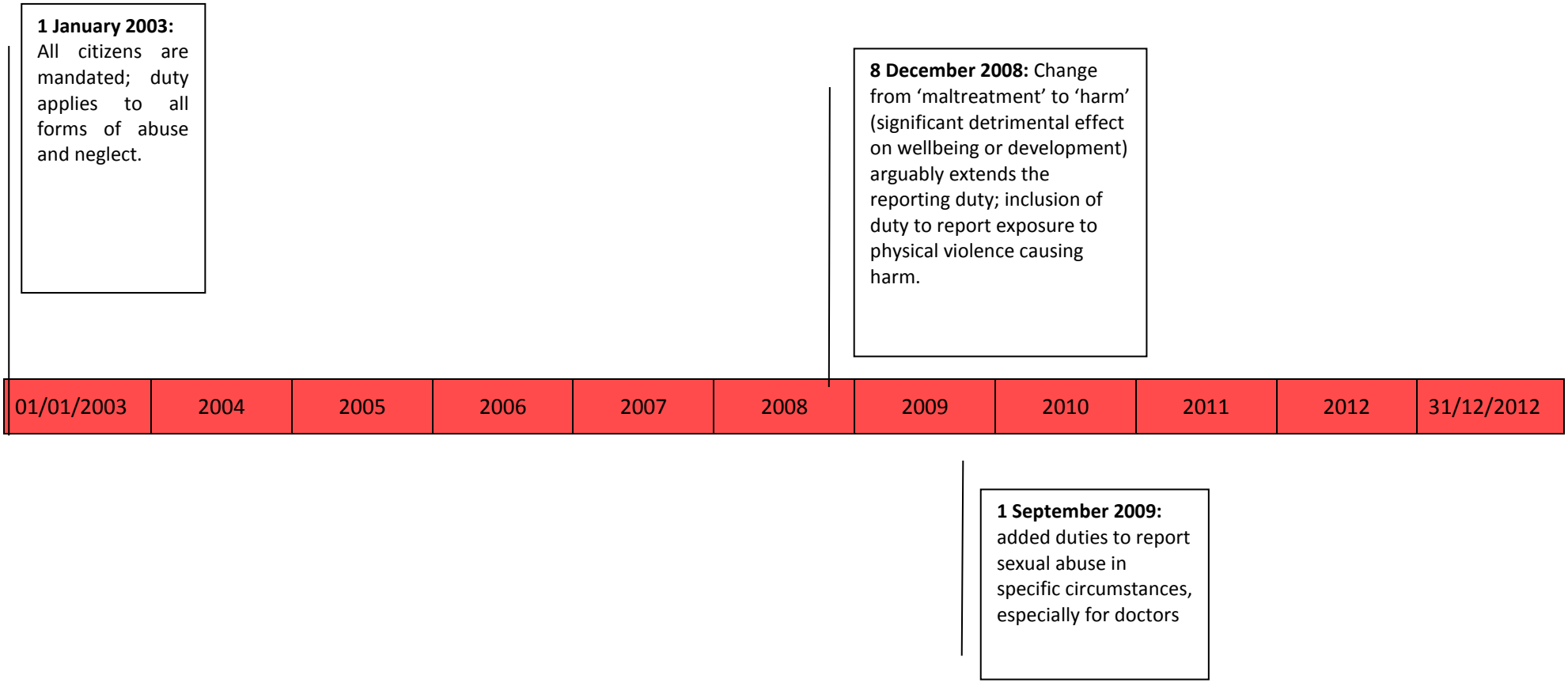
[23] Influenced by the federal government intervention? The provision read as follows: Section 26 - repeal, substitute:
26 Reporting obligations
(1) **A person** is guilty of an offence if the person:
(a) believes, on reasonable grounds, <u>any of the following</u>:
(i) a child has suffered or is likely to suffer **harm** or **exploitation**;
(ii) a child aged less than 14 years **has been or is likely to be a victim of a sexual offence**;
(iii) a child has been or is likely to be a victim of an **offence against section 128** of the Criminal Code; and
(b) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer: (i) that belief; and (ii) any knowledge of the person forming the grounds for that belief; and
(iii) any factual circumstances on which that knowledge is based.
Maximum penalty: 200 penalty units.
(2) A person is guilty of an offence if the person:
(a) is a **health practitioner** or someone who performs work of a kind that is prescribed by regulation; and
(b) believes, on reasonable grounds: (i) that a child aged at least 14 years (but less than 16 years) **has been or is likely to be a victim of a sexual offence**; and (ii) that the **difference in age between the child and alleged sexual offender is more than 2 years**; and (c) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer: (i) that belief; and (ii) any knowledge of the person forming the grounds for that belief; and (iii) any factual circumstances on which that knowledge is based. Maximum penalty: 200 penalty units.

[24] For the definition of 'sexual offence', see the Sexual Offences (Evidence and Procedure) Act s 3.

Figure 1.3: Timeline showing key developments, Northern Territory, 2003-2012



1.5.4. Queensland

1.5.4.1. Original position at 1 January 2003: Queensland

Health Act 1937 (Qld): Original legislation for doctors

At 1 January 2003, doctors were the only profession in Queensland who had any form of mandatory reporting duty. The duty was in the *Health Act 1937* (Qld) s76K(1). The provision was unlike any other in Australia. The provision required a 'medical practitioner' who suspects on reasonable grounds the 'maltreatment or neglect of a child in such a manner as to subject or be likely to subject the child to unnecessary injury, suffering or danger' to report within 24 hours to a person authorised under a regulation to be notified.[25] Apart from the stated concepts of 'unnecessary injury, suffering or danger', the terms 'maltreatment' and 'neglect' were not defined. The terms 'unnecessary injury, suffering or danger' were not otherwise defined. 'Child' was defined as a person under the age of 17 (s 76M). Immunity from proceedings was conferred by ss 76K(6) and (7). Also unusually, there was no penalty for failure to comply.

Due to the broad concepts in this reporting duty, it may be expected that doctors would be reporting substantial numbers of cases. However, the lack of a penalty may also have influenced a failure to report.

No legislation for nurses, teachers, police and other professionals

At 1 January 2003, doctors were the only profession in Queensland under any form of mandatory reporting duty.

1.5.4.2. Key changes, 2013-12: Queensland

The legislation has changed significantly in the period 2003-2012, especially for nurses and teachers. Queensland has now introduced new mandatory reporting legislation for doctors and nurses, for all four forms of child abuse and neglect. There is also mandatory reporting provisions for school staff, although this duty is very limited (applying to sexual abuse only). However, the reporting duties in Queensland are still narrower than most other jurisdictions.

Major legislative change for doctors, and applying to nurses – broader duties (commencing 31 August 2005)

The *Child Safety Legislation Amendment Act (No. 2) 2004* (No. 36)[26] amended the *Health Act 1937* to extend doctors' reporting duties and made the provisions much more specific and detailed.[27] In a major development, these provisions were also extended to nurses. These provisions imposed a wide reporting duty for all four classical forms of child abuse and neglect, provided the suspected harm reached the necessary threshold of 'significance'. The duty applied to an awareness or reasonable suspicion that abuse/neglect that had already occurred, and to suspected risk of harm.

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[25] This provision was inserted in 1978 by Act No 65 s 9 but was never proclaimed into force. It was omitted in 1980 by Act No 26 s 3. It was then inserted in 1980 by the *Health Act Amendment Act (No 26)* s 4 (commenced 14 June 1980); and was (not substantially) amended in 1995 by Act No 57 s 4 sch 1; and by Act No 58 s 4 sch 2; and in 1998 by Act No 41 s 14(1) sch 1.

[26] This Act commenced on 31 August 2005 (2005 SL No. 62).

[27] Context of the change: The Child Safety Legislation Amendment Bill 2004 (Qld) (No 2) pursuant to recommendation 6.13 of the Crime and Misconduct Commission 2004 report into sexual abuse of children in Queensland foster care, sought to amend the Health Act by extending the obligation imposed on medical practitioners to nurses.

The provisions had the following effects:

- Added a new s 76K containing new definitions of 'child' (an individual under 18), 'harm', 'professional' (a doctor or registered nurse) and 'registered nurse' (a person registered under the *Nursing Act 1992* as a registered nurse)
- **'Harm'** to a child was defined in s 76K as meaning:

  'any detrimental effect on the child's physical, psychological or emotional wellbeing (a) that is of a significant nature; and
  (b) that has been caused by
  (i) physical, psychological or emotional abuse or neglect; or
  (ii) sexual abuse or exploitation'

- Section 76KC imposed the reporting duty in the following terms:
  - This section applies if—
    - a professional becomes aware, or reasonably suspects, during the practice of his or her profession, that a child **has been, is being, or is likely to be, harmed**; and
    - as far as the professional is aware, no other professional has notified the chief executive (child safety) under this section about the harm or likely harm.
  - '(2) The professional must immediately give notice of the harm or likely harm to the chief executive (child safety)— orally; or by facsimile, email or similar communication.
  - (4) To remove any doubt, it is declared that a professional may need to seek further information about harm or likely harm to a child before forming a reasonable suspicion about the matter.
- Under s 76KD if the notification was given other than in writing, then it had to be provided in writing within 7 days.
- Under s 76KE if the notification required under 76KC or 76KD was not given, a maximum penalty was provided of 50 penalty units ($3750).
- Immunity from liability for giving information ***to a professional*** was provided by s 76KG.
- The *Child Protection Act 1999* ss 22 and 186 were expressly provided to be relevant to a professional giving a notice or other information under these provisions, by s 76KB(1). Confidentiality was also provided to notifiers by s 76KH.

Public Health Act 2005

The relevant provisions in the *Health Act 1937* were then placed into the *Public Health Act 2005 (No 48)* (Qld), which commenced 1 December 2005.[28] The PHA 2005 (No 48) Sch 1 amended the *Health Act 1937* and omitted Part 3, which contained the reporting provisions. Accordingly, since 1 December 2005 the relevant provisions for doctors and nurses have been in the *Public Health Act 2005*. The key provisions are in Chapter 5 Part 3. The provisions are unaltered from the original *Public Health Act 2005*, but are renumbered.

Section 158 defines relevant terms. Section 191 sets out the duty. The state of mind which activates the duty to report is 'aware, or reasonably suspects'. The duty applies to awareness or reasonable suspicion of past/presently occurring abuse/neglect meeting the definition of significant harm, and extends to suspected likely future abuse/risk of significant harm. The term 'harm' is defined in s 158 as 'any detrimental effect on the child's physical, psychological or emotional wellbeing (a) that is of a significant nature; and (b) that has been caused by caused by (i) physical, psychological or emotional abuse or neglect;

[28] The *Health Act 1937* (Qld) was amended by the *Child Safety Legislation Amendment Act (No 2) 2004* (Qld), with the relevant amending provisions in Pt 8 of that statute commencing on 31 August 2005 (SL 2005 No 62). The provisions in the *Health Act 1937* were later omitted and inserted into the *Public Health Act 2005* (Qld), operational on 1 March 2006.

or (ii) sexual abuse or exploitation'.[29] Section 195 provides protection for giving information to professionals. Section 196 confers confidentiality on notifiers. The *Child Protection Act 1999* ss 22 and 186 are expressly provided to be relevant to a professional giving a notice or other information under these provisions, by the *Public Health Act* s 186(2). Section 193 is the offence provision (maximum 50 penalty units; which now equates to $**5500**).

New duty for teachers to report sexual abuse by school staff (commencing 19 April 2004)

From 19 April 2004, teachers were required to report reasonable suspicions of specific circumstances of suspected sexual abuse only. The provisions were introduced into the *Education (General Provisions) Act 1989* (Qld) ss 146A-146B (applying to State and non-State schools respectively) by the *Education and Other Legislation (Student Protection) Amendment Act 2003* (Qld) (No 88 of 2003).[30]

However, even this restricted duty was limited, as the legislation restricted the duty to cases of suspected sexual abuse **perpetrated by a school staff member**.[31] The duty was also limited to suspected **past and presently** occurring abuse; it did not apply to suspected future cases. The provisions imposed an obligation on a staff member of a school who 'becomes aware, or reasonably suspects, that a student under 18 years of age attending the school has been sexually abused by someone else who is an employee of the school' to immediately give a written report about the abuse or suspected abuse to the school's principal or the principal's supervisor. It was made an offence not to give such a report (s 146A(2); s 146B(2): maximum penalty of 20 penalty units ($1500)). Reporters were granted immunity from civil and criminal liability connected with making the report (s 146A(6) and (7); s 146B(5) and (6)). Confidentiality was not expressly conferred, and was arguably not conferred by the *Child Protection Act 1999* (Qld) s 186 (see Part 1.5.4.3).

Despite the unique limitations of the duty, it is likely that this development would result in a significant increase in reports by teachers of sexual abuse from April 2004. Technically, reports under EGPA were meant to be made to police rather than the Department. However, it is possible that some of these reports were made to both police and the Department. In addition, it is unlikely that teachers would restrict their reports of sexual abuse to those cases where the suspected perpetrator was a school staff member.[32] It seems reasonable to hypothesise that the new duty, albeit limited, would have produced an increase in reports by teachers to the Department about other cases of suspected sexual abuse; that is, suspected cases beyond those specified in EGPA.

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[29] There is no clear legislative obligation to report suspected abuse or likely abuse/neglect or harm to an unborn child. The CPA s 21A and s 22 enables such reports and s 22 provides protections to those who make such reports.

[30] This Act was passed on 18 November 2003, but the provisions relevant here (in Part 4 of the amending Act) commenced on 19 April 2004. Under ss 365 and 366 (after amt from 146A and 146B, the teacher made the report to the principal; the principal was then required to report to the CE's nominee; the nominee was then required to report to the police: overall, a series of four steps in the reporting chain (s 146A). For non-State schools, there were only three steps (teacher – principal or director of school's governing body – police): s 146B.

[31] The new 2004 obligation was motivated by the findings of the 2003 Report Of The Board Of Inquiry Into Past Handling Of Complaints Of Sexual Abuse In The Anglican Church Diocese Of Brisbane (O'Callaghan and Briggs, 2003), and in substance was primarily directed at managing educational authorities' legal liability in cases of sexual abuse of students by school staff, rather than being concerned with a broader child protection agenda. The explanatory notes to the Education and Other Legislation (Student Protection) Amendment Bill 2003 state that the object of these provisions is to ensure there is an appropriate response to complaints of sexual abuse of school children by school-based employees. The Bill was motivated by the report of a Ministerial Taskforce which was formed to act on the recommendations of the Anglican Church Report (ACR). The explanatory notes observe that the ACR 'highlighted the issue of sexual abuse in schools and weaknesses in existing systems for checking and monitoring the suitability of teaching and non-teaching staff to work with children and for responding to complaints of sexual abuse perpetrated in school settings.'

[32] Research has shown that teachers almost unanimously believed they were required by legislation to report all cases of child sexual abuse: Mathews, Walsh, Butler and Farrell 2009.

Minor change to name of legislation (commencing 11 August 2006)

There was no change to this situation until 2006, when the title of legislation changed to the *Education (General Provisions) Act 2006* (No. 39) commencing 11 August 2006. The key provisions were renumbered ss 364-366, with no change to their content.

Minor change to clarify children who were the object of the legislation's concern

Sections 365 and 366 were amended by the *Education and Training Legislation Amendment Act 2009* (No 40) to clarify that the duty applied to 'any of the following' who the staff member was aware or reasonably suspected had been sexually abused by another person who is an employee of the school –

- A student under 18 years attending the school;
- A pre-preparatory age child registered in a pre-preparatory learning program at the school;
- A person with a disability who is being provided with special education at the school.

Major amendment to require reports of all cases of sexual abuse, and likely future sexual abuse (commencing 9 July 2012)

Substantial change occurred in 2012. The uniquely restricted position for teachers' reporting of child sexual abuse was amended in 2012 by the *Education and Training Legislation Amendment Act 2011* (Qld) (No 39), which commenced on 9 July 2012. The key changes, in Part 3 of the amending Act, were:

1. To define (non-exhaustively) the concept of 'sexual abuse';
2. To extend the reporting duty to all suspected cases of sexual abuse, without limiting the class of reportable cases by perpetrator;
3. To extend the reporting duty to suspected 'likely sexual abuse' (new ss 365A and 366A);
4. To create in State schools a more direct chain of reporting (teacher to principal to police officer (3 steps); previously teacher to principal to CE's nominee to police (4 steps))
5. To enable delegation of the reporting function by a non-State school's governing body director, both where the governing body has only one director (new s 366B(1) and (2)), and where there are more than one director (new s 366B(3) and (4)).

It can be expected that these changes influenced an increase in reports by teachers of child sexual abuse.

1.5.4.3. Current position: Queensland

Current position for doctors and nurses under the Public Health Act 2005

There have been no further changes since 2005, apart from the value of the penalty due to change in the definition of 'penalty unit' (see Table 6).

In sum, the changes to the *Public Health Act* can be expected to have had a major impact on reporting of all forms of abuse and neglect by doctors and nurses since 31 August 2005.

Current position for teachers

Under the current law, the key provisions are in Chapter 12 Part 10 (ss 364-366B). Section 364 defines relevant terms, including 'employee' and 'sexual abuse'. Unlike the other Queensland legislation (PHA), and in contrast to all other Australian jurisdictions except WA, 'sexual abuse' is defined in s 364 in extensive conceptual terms which do not include plain explanations of the kinds of acts included – namely:

> 'sexual abuse' includes sexual behaviour involving the relevant person and another person in the following circumstances—

(a) the other person bribes, coerces, exploits, threatens or is violent toward the relevant person;

(b) the relevant person has less power than the other person;

(c) there is a significant disparity between the relevant person and the other person in intellectual capacity or maturity.

Sections 365 and 366 set out the duty to report sexual abuse for staff members of State and non-State schools respectively. This duty applies to suspected cases of sexual abuse that have already occurred, or which are occurring. Sections 365A and 366A set out the duty for staff members of State and non-State schools respectively to report suspected ***likely*** sexual abuse. This duty applies to suspected cases of sexual abuse that have not yet occurred, but which are thought likely to occur (an example is where the suspicion arises by observing the child being groomed for abuse).

In the case of ss 365 and 366, the state of mind which activates the duty to report exists when the staff member 'becomes aware, or reasonably suspects, in the course of the staff member's employment at the school'. In the case of ss 365A and 366A, the state of mind which activates the duty to report exists when the staff member 'reasonably suspects, in the course of the staff member's employment at the school'. The report must be written, and provided immediately (365(2); 365A(2); 366(2); 366A(2)). For suspected cases of past and present abuse, a penalty for noncompliance exists of 20 penalty units ($2200).[33] However, no penalty is attached to the obligation to report suspected likely abuse.[34]

Immunity from civil, criminal and administrative proceedings in relation to a report made in good faith is conferred (ss 365(6) and (7), 365A(8) and (9), 366(5) and (6), and 366A(7) and (8)). Confidentiality of the reporter's identity is not expressly conferred by EGPA; arguably, it also is not conferred by the *Child Protection Act 1999* (Qld) s 186, which applies to those who make reports directly to police, the CEO of the Department administering the CPA, or an authorized officer.[35]

Important note

In 2014, the *Child Protection Reform Amendment Act 2014* (Qld) was passed, which will make substantial changes to Queensland's mandatory reporting legislation. These changes will shift Queensland's position towards the current position in Victoria. The changes will broaden some mandatory reporting duties, but will narrow others. The changes also will introduce a more formal statutory footing for differential response pathways.

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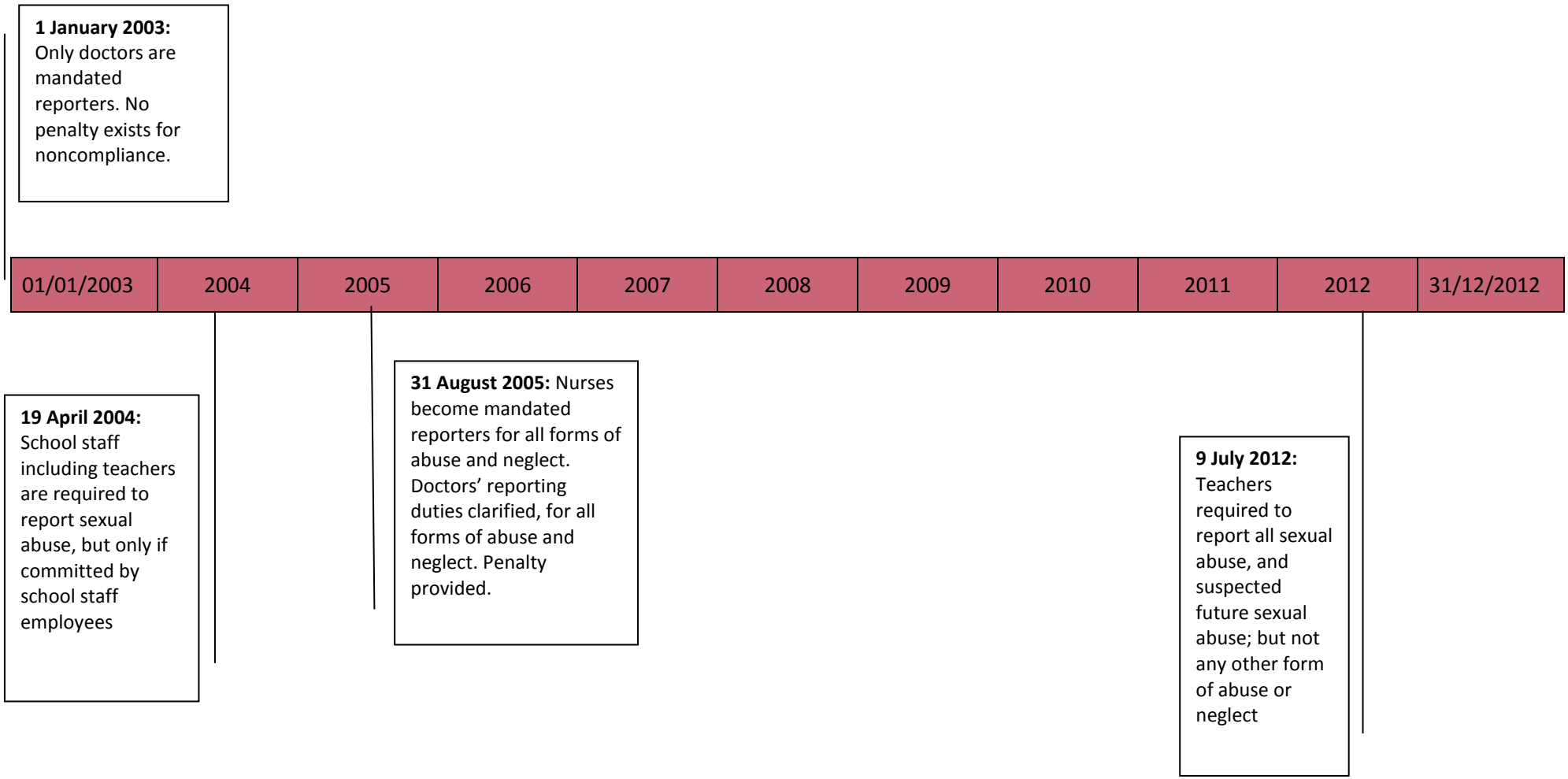
[33] Under the Penalties and Sentences Act 1992 (Qld), a penalty unit is $110: s 5(1)(d).

[34] **Reporting procedures**. Reports must contain certain details as set out in the *Education (General Provisions) Regulations 2006* (Qld) (r 68 for past/present; r 68A for suspected likely abuse). In **State schools**, for past/present and suspected likely abuse respectively, reports must be made to the principal or the principal's supervisor (365(2); 365A(2)); this person must then give a copy of that report to a police officer (365(4); 365A(5)). If the person suspecting abuse is the principal, the principal must give a written report to a police officer (365(2A); 365A(3)). If the report is about suspected abuse by a State school employee, a report must also be given to a person nominated by the chief executive (365(4A) and (5); 365A(6) and (7)). In **non-State schools,** for past/present and suspected likely abuse respectively, reports must be made to the principal or a director of the school's governing body (366(2); 366A(2)); this person must then give a copy of that report to a police officer (366(4); 366A(6)). If the person suspecting abuse is the principal, the principal must give a written report to a police officer (366(2A); 366A(3)) and to a director of the school's governing body (366(2B); 366A(4)).

[35] Technically, there may therefore be a gap in the EGPA provisions in the lack of an express provision of confidentiality. The CPA s 186 arguably does not confer confidentiality on a report made under EGPA to a school principal because under Schedule 3 of the CPA, an 'authorised officer' is defined as 'a person holding office as an authorised officer under an appointment *under this Act*' (authors' emphasis). A school principal does not hold office under the CPA and so a teacher making a report to the principal may not be satisfactorily protected.

Figure 1.4: Timeline showing key developments, Queensland, 2003-2012



1.5.5. South Australia

1.5.5.1. Original position at 1 January 2003: South Australia

Children's Protection Act 1993

In South Australia at 1 January 2003, the *Children's Protection Act 1993* (SA) s 11(1) imposed a broad range of mandatory reporting duties for all four classical forms of abuse and neglect. 'Abuse or neglect' was defined in s 6(1) to include:

(a) sexual abuse; or

(b) physical or emotional abuse, or neglect, to the extent that:

> (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or
>
> (ii) the child's physical or psychological development is in jeopardy

Therefore, there was a significance threshold for all types of abuse/neglect other than sexual abuse. Section 11(1)(a) imposed the reporting duty on a designated person who 'suspects on reasonable grounds that a child has been or is being abused or neglected'. In addition, s 10 included within the concept of 'abuse or neglect' 'a reasonable likelihood, in terms of s 6(2)(b), of the child being killed, injured, abused or neglected by a person with whom the child resides'.[36] Therefore, there was also a qualified duty to report suspected risk of future abuse/neglect.

Section 11(1) imposed the duty when the suspicion was formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties. Immunity was conferred by s 12. Confidentiality was conferred by s 13. The penalty for noncompliance was $2500.

Section 11(2) imposed the duty on a broad range of professionals:

(a) medical practitioners
(ab) pharmacists
(b) registered or enrolled nurses
(c) dentists
(d) psychologists
(e) police
(f) community corrections officers
(g) social workers
(h) teachers in any educational institution including a kindergarten
(i) approved family day care providers
(j) employees and volunteers in government departments or local government or non-government agencies providing health, welfare, education, child care or residential services wholly or partly for children, whether being a person who (i) is engaged in actual delivery of those services; or (ii) holds a management position.

[36] Section 6(2)(b) provided that 'a child is at risk if a person with whom the child resides (whether a guardian of the child or not) (i) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; **or** (ii) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person'.

1.5.5.2. Key changes, 2013-12: South Australia

There have been no substantial, significant changes to the legislation from 2003 to 2012.[37] However, some changes have occurred which may influence reporting practice, especially the addition of new mandated reporter groups.

Increased penalty, and new mandated reporters from religious organisations, and sporting or recreational organisations (commencing 31/12/2006)

The *Children's Protection (Miscellaneous) Amendment Act 2005* (SA) (No 76) s 10(1) increased the penalty to $10,000. It may be expected that this may produce more defensive reporting from 2007 onwards, but data analysis will indicate whether or not this appears to have occurred.

The *Children's Protection (Miscellaneous) Amendment Act 2005* s 10(2) also added new categories of mandated reporters as follows:

- (ga) a minister of religion;
- (gb) a person who is an employee of, or volunteer in, an organization formed for religious or spiritual purposes;

However, a limit was placed on clergy's mandated reporting duty by the 2005 Act s 10(5) inserting a new s 11(4) as follows:

- (4) This section **does not** require a priest or other minister of religion to divulge information communicated in the course of a confession made in accordance with the rules and usages of the relevant religion.

In addition, s 10(4) added to s 11(2)(j) **'sporting or recreational'** organisations to the list of services included in the mandatory reporting organisations.

These changes may be expected to produce an increase in reports from these groups of professionals.

1.5.5.3. Current position: South Australia

The duty applies to report reasonable suspicions of all forms of abuse and neglect (but not exposure to domestic violence) with a significance threshold applied to all forms except sexual abuse, requiring the child to have suffered, or to be likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or to the extent that the child's physical or psychological development is in jeopardy. The duty is applied to a very broad range of persons. There is a somewhat limited duty to report suspected risk of future abuse and neglect. Immunity is conferred by s 12. Confidentiality is conferred by s 13. The penalty is $10,000.

[37] Although it is interesting to note that the *Children's Protection (Implementation of Report Recommendations) Amendment Act 2009* (No 65) (commenced 31 December 2009), which made insubstantial amendments to the wording of s 11(2)(j), also inserted a new s 11(6), which makes it an offence to threaten or intimidate, or cause damage, loss or disadvantage to a mandated reporter because the person has made or proposes to make a report (maximum penalty $10,000).

Figure 1.5: Timeline showing key developments, South Australia, 2003-2012

1.5.6. Tasmania

1.5.6.1. Original position at 1 January 2003: Tasmania

At 1 January 2003, the *Children, Young Persons and Their Families Act 1997* (Tas) s 14(2) imposed a broad range of mandatory reporting duties for all four classical forms of child abuse and neglect.[38]

> **Section 3(1)** defined 'abuse or neglect' as meaning:
>
> (a) sexual abuse; or
>
> (b) physical or emotional injury or other abuse, or neglect, to the extent that:
>
> > (i) the injured, abused or neglected person has suffered, or is likely to suffer, physical or psychological harm detrimental to the person's wellbeing; or
> >
> > (ii) the injured, abused or neglected person's physical or psychological development is in jeopardy.
>
> Therefore, there was a significance threshold for all types of abuse and neglect other than sexual abuse. This was conceptualised in the same way as the South Australian provision.

Section 14(1) imposed the duty on a very broad range of professionals whether paid or voluntary (see below). Section 14(2) imposed the reporting duty on any of these designated persons who 'believes, or suspects, on reasonable grounds, or knows, (a) that a child has been or is being abused or neglected; or (b) that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides'. Section 14(2) imposed the duty when the suspicion was formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties. Immunity was conferred by s 15.[39] Confidentiality was conferred by 16. The penalty for noncompliance was 20 penalty units which at the time equated to $2000 as a penalty unit was $100 (see Appendix; this was increased in 2007 to $120; hence $2400).

> **14. Informing of concern about abuse or neglect**
>
> (1) In this section, 'prescribed person' means –
>
> (a) a registered medical practitioner; and
>
> (b) a nurse, within the meaning of the Nursing Act 1995; and
>
> (c) a person who is registered as a dentist, dental therapist or dental hygienist under the Dental Practitioners Registration Act 2001; and
>
> (d) a registered psychologist, within the meaning of the Psychologists Registration Act 1976; and
>
> (e) a police officer; and

[38] 'Child' was defined as meaning a person under 18 years of age.

[39] Section 15 was later repealed 28 June 2011; amended by Children, Young Persons and Their Families Amendment Act 2011 (No 15) comm 28 June 2011; and was replaced by the Children, Young Persons and Their Families Amendment Act 2011 (No 15) inserting s 101A, comm 28 June 2011).

(f) a departmental employee, within the meaning of the Police Regulation Act 1898; and

(g) a probation officer appointed under section 4 of the Probation of Offenders Act 1973; and

(h) a principal and a teacher in any educational institution (including a kindergarten); and

(i) a person who provides child care, or a child care service, for fee or reward; and

(j) a person concerned in the management of a child care service licensed under Part 6 of the Child Welfare Act 1960; and

(k) any other person who is employed or engaged as an employee for, of or in, or who is a volunteer in – (i) a Government Agency that provides health, welfare, education, child care or residential services wholly or partly for children; and (ii) an organisation that receives any funding from the Crown for the provision of such services; and

(l) any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons.

(2) If a prescribed person, in carrying out official duties or in the course of his or her work (whether paid or voluntary), believes, or suspects, on reasonable grounds, or knows –

(a) that a child has been or is being abused or neglected; or

(b) that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides –

the prescribed person must inform the Secretary of that belief, suspicion or knowledge as soon as practicable after he or she forms the belief or suspicion or gains the knowledge.

1.5.6.2. Key changes, 2003-12: Tasmania

Minor changes

Some features of the Tasmanian context have not changed in this period, such as the definitions in s 3. Other relatively minor changes have occurred. The penalty changed slightly in 2007 from a maximum of $2000 to $2400 (see Table 6).

Substantial changes

However, there have been some more substantial changes. These include the addition of two new types of abuse and neglect which must be reported (new duties to report exposure to domestic violence, and a duty to report prenatally that a child born is reasonably likely to suffer abuse/neglect or to require medical treatment; new reporter groups; and new report destinations.

New duty to report exposure to family violence (commencing 30 March 2005)

Schedule 2 of the *Family Violence Act 2004 (No 67)* inserted the new duty to report a belief or suspicion on reasonable grounds, or knowledge, that a child 'is an affected child within the meaning of the FVA. This duty was added to s 14(2)(a). The FVA s 4 defined an 'affected child' **very broadly** to mean:

'a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence'.

The term 'family violence' was then also defined **very broadly** in the FVA s 7 as –

(a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner:

(i) assault, including sexual assault;

(ii) threats, coercion, intimidation or verbal abuse;

(iii) abduction;

(iv) stalking within the meaning of section 192 of the Criminal Code;

(v) attempting or threatening to commit conduct referred to in subparagraph (i), (ii), (iii) or (iv); or

(b) any of the following:

(i) economic abuse;

(ii) emotional abuse or intimidation;

(iii) contravening an external family violence order, an interim FVO, an FVO or a PFVO.

This new duty, and the very wide definitions of 'affected child' and 'family violence' may reasonably be expected to have caused a substantial increase in reports in this category from 2005 onwards.

New duty to report prenatally (commencing 1 August 2009)

This amendment created another new class of abuse or neglect required to be reported. The *Children, Young Persons and Their Families Amendment Act 2009 (No. 22 of 2009)* s 6 inserted a new s 14(2)(c) requiring reports by prescribed persons who believe, or suspect, on reasonable grounds, or know -

(c) while a woman is pregnant, that there is a reasonable likelihood that after the birth of the child–

(i) the child will suffer abuse or neglect, or may be killed by a person with whom the child is likely to reside; or

(ii) the child will require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman resides or is likely to reside, **before** the birth of the child.

The first part of the duty aims to protect children from a reasonable likelihood of abuse or neglect or death after birth. The second part of the duty aims to be able to provide medical treatment or other interventions due to prenatal maternal behaviour such as substance abuse, or other prenatal behaviour by the woman or a person with whom the woman lives.

This may reasonably be expected to have caused a substantial increase in reports in this category.

Reporting to a Community-Based Intake Service (commencing 1 August 2009)

The Children, Young Persons and Their Families Amendment Act 2009 (No. 22 of 2009) s 6 made amendments to s 14(2) concerning the person or agency to whom the report must be made. According to these new provisions, reports could be made either to the Secretary, or to a Community-Based Intake Service. This change was made to facilitate the new emphasis on differential response.

This may reasonably be expected to have caused a substantial decrease in reports to the Secretary, especially for less serious cases, and especially for neglect, emotional abuse, and exposure to family violence.

Addition of midwives as a reporter group (commencing 1 July 2010)

Midwives were added as a new reporter group in 2010, when the *Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010* added a new s 14(1)(ba).

This may be expected to have had a slight influence on reporting by this group.

1.5.6.3. Current position: Tasmania

Section 14. Informing of concern about abuse or neglect

(1) In this section, 'prescribed person' means –

(a) a medical practitioner; and

(b) a registered nurse or enrolled nurse;

(ba) a person registered under the Health Practitioners Regulation National Law (Tasmania) in the midwifery profession;

(c) a person registered under the Health Practitioners Regulation National Law (Tasmania) in the dental profession as a dentist, dental therapist or dental hygienist; and

(d) a person registered under the Health Practitioners Regulation National Law (Tasmania) in the psychology profession; and

(e) a police officer; and

(g) a probation officer appointed under section 5 of the Corrections Act 1997; and

(h) a principal and a teacher in any educational institution (including a kindergarten); and

(i) a person who provides child care, or a child care service, for fee or reward; and

(j) a person concerned in the management of an approved education and care service, within the meaning of the Education and Care Services National Law (Tasmania), or a child care service licensed under the Child Care Act 2001); and

(k) any other person who is employed or engaged as an employee for, of or in, or who is a volunteer in –

(i) a Government Agency that provides health, welfare, education, child care or residential services wholly or partly for children; and

(ii) an organisation that receives any funding from the Crown for the provision of such services; and

(l) any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons.

Section 14(2) If a prescribed person, in carrying out official duties or in the course of his or her work (whether paid or voluntary), believes, or suspects, on reasonable grounds, or knows –

(a) that a child has been or is being abused or neglected or is an affected child within the meaning of the Family Violence Act 2004; or

(b) that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides; or

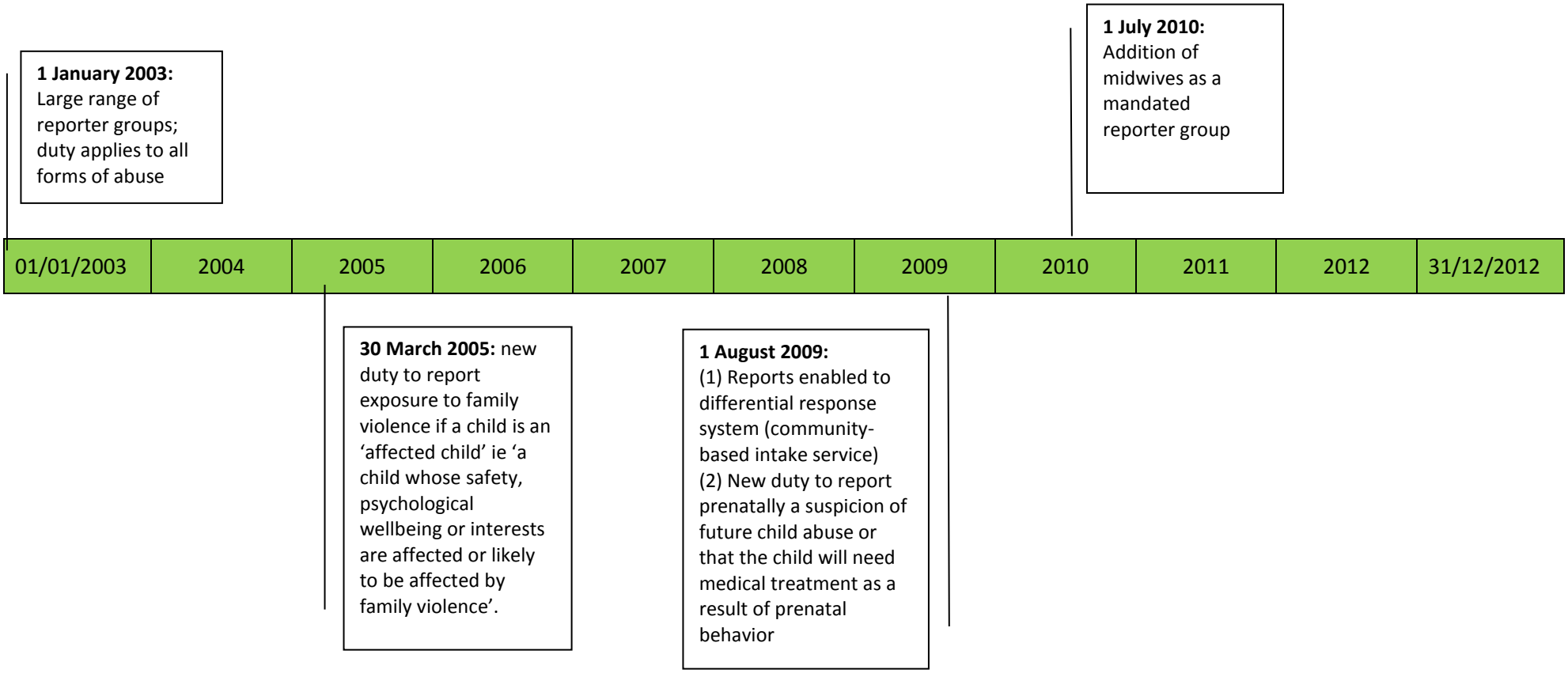
(c) while a woman is pregnant, that there is a reasonable likelihood that after the birth of the child–

(i) the child will suffer abuse or neglect, or may be killed by a person with whom the child is likely to reside; or

(ii) the child will require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman resides or is likely to reside, before the birth of the child,

the prescribed person must inform the Secretary or a Community-Based Intake Service of that belief, suspicion or knowledge as soon as practicable after he or she forms the belief or suspicion or gains the knowledge.

Figure 1.6: Timeline showing key developments, Tasmania, 2003-2012



1.5.7. Victoria

1.5.7.1. Original position at 1 January 2003: Victoria

Children and Young Persons Act 1989

At 1 January 2003, the *Children and Young Persons Act 1989* (Vic) s 64(1A) imposed an obligation to report a 'belief on reasonable grounds that a child is in need of care and protection on a ground referred to in paragraph (c) or (d) of section 63' as soon as practicable after forming the belief, *and* after each occasion on which he or she becomes aware of any further reasonable grounds for the belief. The penalty was 10 penalty units.

Section 63 set out grounds on which a child would be defined as being 'in need of protection'. Section 63(c) and (d) stated (our emphasis):

> (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;

Therefore, the duty was limited to two categories of abuse: physical 'injury' and sexual abuse. This made Victoria's reporting duty much narrower than existed in most other jurisdictions. This could be expected to produce a much lower number of reports.[40]

In addition, the duty imposed a threshold of significance of harm, which, uniquely, even applied to sexual abuse. In practice, this would not be expected to reduce reports of sexual abuse, but would have the reasonable intention to limit reports of physical abuse to sufficiently serious cases.

Victoria's parental protection clause: unique Australian provision

Further, Victoria is the only jurisdiction which has as part of its mandatory reporting provision a clause further limiting the duty to cases in which not only is the harm/abuse condition met, but the reporter must believe 'the child's parents have not protected, or are unlikely to protect, the child from harm of that type'. This clause, in the mandatory reporting context, seems redundant as if the harm or abuse has already happened, then clearly the child's parents did not protect the child from that harm or abuse. Arguably, this element of Victoria's provision is unsatisfactory. The different conceptual nature of Victoria's provisions seems to stem from these provision being grounded in situations where a child can be defined as being 'in need of protection' – and hence being able to be subject to formal court orders relating to child protection - rather than a true mandatory reporting provision, which is aimed merely at a preliminary identification by designated professionals of cases of abuse/harm, for the related subsequent purpose of government agencies assessing the child's situation and what, if anything, needs to be done to help the child, and the family, including but not limited to the making of child protection orders. The two types of provisions are therefore conceptually different: the mandatory reporting provision focuses on the identification of the child who has suffered abuse or harm. It differs from the 'in need of protection' provision which focuses on the condition required to warrant government agency intervention and hence the justifiable scope of State

[40] The effect on the number of reports is not affected by the discussion on the scope of subsection (c) in Appendix 1 below, as even if the broader view is correct, there would be relatively few cases of neglect causing such a degree of physical injury.

intervention. The 'able parent' assessment for mandated reporters is arguably not appropriate in a mandatory reporting provision. Not only does it possess a different conceptual nature; it is asking more of a mandatory reporter than is reasonably possible (at least in many cases), and is beyond their reasonable capacity, skill and appropriate professional role. In no other jurisdiction is the mandated reporter expected to undertake such an assessment.

It is unlikely that in practice, reporters would be making such assessments at all, or even if they were, to conclude that a seriously physically or sexually abused child had in fact been protected by their parents from harm or would be in future.[41] Accordingly, it is not likely that this qualification would reduce the number of reports. Nevertheless, data analysis may indicate whether this unique qualification appears to affect reporting practice.

Confidentiality was conferred by s 64(4). Immunity was conferred by s 64(3)(a) (professional ethics) and (b) (other liability).

The obligation was imposed on a **wide range of professionals, as follows:** (note that seven of the 14 subsections were operational at 1 January 2003; three had commenced on 4 November 1993; four commenced on 18 July 1994; seven **others had not commenced at 1 January 2003**).[42]

Section 64(1C): Sub-section (1A) [the duty to report] applies to a person referred to in any of the following paragraphs on and from the relevant date—

(a) a registered medical practitioner within the meaning of the Medical Practice Act 1994;

(b) a registered psychologist within the meaning of the Psychologists Registration Act 2000;

(c) a person registered under the Nurses Act 1993;

(d) a person registered as a teacher under Part III of the Education Act 1958 or permitted to teach under that Part (including by virtue of section 44(4) and (5) of that Act);

---

[41] There may be some cases where the child may have been harmed by a third party (that is, not one of the child's parents) and the child's parents are able to protect the child from future harm; but even in these cases, the reporter would need to also have knowledge of these circumstances to prevent the duty being activated. Moreover, the types of case in which these circumstances can be readily conceived are not the types of case of child physical abuse which were the target of mandatory reporting laws. An example might be a situation where a child has been physically injured by a school peer, and the child's parent knows of this, the child's parent has taken action to prevent further harm to the child, and the reporter knows all these facts. Yet, the type of case of physical injury to a child which was the target of mandatory reporting laws involves a situation of severe harm to a highly vulnerable child in which the parent is the perpetrator, and the reporter may or may not know this, and may have had no or little prior interaction with the child's parent. To impose a general limit on the activation of a mandatory reporting duty by requiring the reporter to calculate the parent's previous or future protective capacity relating to the child would defeat the purposes of a mandatory reporting provision. These are: to enable identification of severe abuse cases by professionals outside the child's family; to enable expert assessment of the child's (and the family's) situation; to determine what support the child (and family) needs; to facilitate that support; and to take any further action if necessary against the perpetrator of the serious physical or sexual abuse. It is beyond the power and capacity of mandated reporters to engage in such investigative tasks in most cases of serious physical harm, and it is also beyond parental power to undertake some of these tasks. This applies even more clearly to cases of sexual abuse. See further Table 1.7.

[42] Section 64(1C)(a), (c) and (i): Government Gazette 28 October 1993, page 2932: The Governor in Council ordered that 4 November 1993 be the date fixed for the purposes of paragraphs (a), (c) and (i) of section 64(1C) of the Act (ie applying mandatory reporting duty to medical practitioners, nurses, and police officers). Section 64(1C)(d), (da), (db) and (e): Government Gazette 14 July 1994, page 1977: The Governor in Council ordered that 18 July 1994 be the date fixed for the purposes of paragraphs (d)(da)(db) and (e) (ie applying mandatory reporting duty to teachers and school principals).

(da) a person appointed to an office in the teaching service under the Teaching Service Act 1981 or employed under Division 4 of Part II of that Act;

(db) a person employed under section 15B(1)(a)(i) of the Education Act 1958;

(e) the head teacher or principal of a State school within the meaning of the Education

Act 1958 or of a school registered under Part III of that Act;

(f) the proprietor of, or a person with a postsecondary qualification in the care, education

or minding of children who is employed by, a children's service to which the Children's

Services Act 1996 applies or a person nominated under section 16(2)(b)(iii) of that Act;

(g) a person with a post-secondary qualification in youth, social or welfare work who works

in the health, education or community or welfare services field and who is not referred to in paragraph (h);

(h) a person employed under Part 3 of the Public Sector Management and Employment Act 1998 to perform the duties of a youth and child welfare worker;

(i) a member of the police force;

(j) a probation officer;

(k) a youth parole officer;

(l) a member of a prescribed class of persons.

Some of these categories had been proclaimed, and so the following groups (essentially, doctors, nurses, police, teachers and principals) were mandated reporters at 1 January 2003:

These groups had been proclaimed effective 4 November 1993:

(a) a registered medical practitioner within the meaning of the Medical Practice Act 1994;

(c) a person registered under the Nurses Act 1993;

(i) a member of the police force;

These groups had been proclaimed effective 18 July 1994:

(d) a person registered as a teacher under Part III of the Education Act 1958 or permitted to teach under that Part (including by virtue of section 44(4) and (5) of that Act);

(da) a person appointed to an office in the teaching service under the Teaching Service Act 1981 or employed under Division 4 of Part II of that Act;[43]

(db) a person employed under section 15B(1)(a)(i) of the Education Act 1958;[44]

[43] In essence, those appointed to offices in the teaching service, and temporary employees.

[44] Under the Education Act 1958 s 5, 'non-teaching staff' are defined as teacher aides to assist teachers, teacher assistants to assist teachers in special developmental schools, and rural school aides to assist teachers in rural

(e) the head teacher or principal of a State school within the meaning of the Education

Act 1958 or of a school registered under Part III of that Act;

However, several of these categories had not been proclaimed and so the following groups were **not** mandated reporters at 1 January 2003:

(b) a registered psychologist within the meaning of the Psychologists Registration Act 2000;

(j) a probation officer;

(f) the proprietor of, or a person with a postsecondary qualification in the care, education

or minding of children who is employed by, a children's service to which the Children's

Services Act 1996 applies or a person nominated under section 16(2)(b)(iii) of that Act;

(g) a person with a post-secondary qualification in youth, social or welfare work who works

in the health, education or community or welfare services field and who is not referred to in paragraph (h);

(h) a person employed under Part 3 of the Public Sector Management and Employment Act 1998 to perform the duties of a youth and child welfare worker;

(k) a youth parole officer.

1.5.7.2. Key changes, 2013-12: Victoria

Children, Youth and Families Act 2005 (relevant provisions commenced 23 April 2007)

The *Children and Young Persons Act 1989* (No. 56 of 1989) was repealed on 23 April 2007 by s 601 of the *Children, Youth and Families Act 2005*, No. 96/2005. The CYFA 2005 incorporated the mandatory reporting provisions in Chapter 4 (Children in need of protection) and Part 4.4 (Reporting) (s 162, 182 ff).

The new legislation made no substantive changes to mandatory reporting provisions.[45] There was no change to the types of abuse that must be reported (provisions renumbered – now s 162(1)(c) and (d) for physical injury and sexual abuse respectively) or the nature of the reporting duty, for example, the state of mind required to activate the reporting duty.[46] The definition of 'child' as a person under 17 was not

primary schools. Section 15B(1)(a)(i) states that a council may employ any 'teaching staff' on a part-time or sessional basis. Read together, the provisions and their operation with subsection (db) of the reporting legislation **would** include as mandated reporters part-time or sessional teachers including assistant teachers, teachers on a special staff, and students in training, but **would not** include teacher aides or teacher assistants.

[45] However, note that the new s 184(4) specified that 'For the purposes of this section, a belief is a belief on reasonable grounds if a reasonable person practising the profession or carrying out the duties of the office, position or employment, as the case requires, would have formed the belief on those grounds'.

[46] The state of mind activating the reporting duty in s 184(1) was not altered by the new CYFA 2005. The provision still read: 'A mandatory reporter who, in the course of practicing his or her profession…forms the belief on reasonable grounds…must report'. Note that a new s 184(4) was inserted, stating that 'a belief is a belief on reasonable grounds if a reasonable person practising the profession…would have formed the belief on those grounds'. The explanatory memorandum to the bill states that Clause 184(4) 'clarifies the meaning of a belief on reasonable grounds in relation to mandatory reporters' (Children, Youth and Families Bill, Explanatory Memorandum, p 40). On one view (personal communication, Graham Brewster, 25 November 2013), s 184(4) introduces an objective 'reasonable person' test *to require of a reasonable practitioner that they actually form the belief in the relevant circumstances* to circumvent the problem of a reporter claiming they did not have a

amended (s 3). However, it is significant that s 31 enabled significant concerns regarding a child's wellbeing to be referred to a community-based child and family service. This was an aspect of the differential response mechanism built into the legislation at this time.[47]

There were no changes to mandated reporter groups as when enacted, no further groups were gazetted as mandated reporters. The provisions were renumbered as follows in s 182(1)(a)-(l):[48]

> (a) a registered medical practitioner;
>
> (b) a person registered under the Nurses Act 1993;
>
> (c) a person who is registered as a teacher under the Victorian Institute of Teaching Act 2001 or has been granted permission to teach under that Act;
>
> (d) the head teacher or principal of a State school within the meaning of the Education Act 1958 or of a school registered under Part III of that Act;
>
> (e) a member of the police force;
>
> (f) on and from the relevant date, the proprietor of, or a person with a post-secondary qualification in the care, education or minding of children who is employed by, a children's service to which the Children's Services Act 1996 applies or a person nominated under section 16(2)(b)(iii) of that Act;
>
> (g) on and from the relevant date, a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field and who is not referred to in paragraph (h);
>
> (h) on and from the relevant date, a person employed under Part 3 of the Public Administration Act 2004 to perform the duties of a youth and child welfare worker;
>
> (i) on and from the relevant date, a registered psychologist;
>
> (j) on and from the relevant date, a youth justice officer;
>
> (k) on and from the relevant date, a youth parole officer;

---

reasonable belief as an excuse for not reporting. But, the provision does not state this, and arguably only articulates the circumstances under which a reasonable belief that is *already formed* by a reporter will be deemed to be a reasonable belief, as opposed to one that is unreasonable. Hence, it does not appear to introduce a new, higher, requirement on the reporter to form a belief that a reasonable practitioner would, in any given circumstances.

47 The Child and Family Information, Referral and Support Teams (ChildFIRST) system enabled 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 a child being 'in need of protection' must be made to the Secretary of the Department (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 (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' (s 33(2)). Similarly, reports made to child protective services may be redirected to ChildFIRST if deemed not to require a child protection response (ss 30, 187).

48 Section 182(2) was the provision regarding the 'relevant date' and gazetting: (2) In paragraph (f), (g), (h), (i), (j), (k) or (l) of subsection (1) "the relevant date", in relation to a person or class of persons referred to in that paragraph, means the date fixed for the purposes of that paragraph by an Order made by the Governor in Council and published in the Government Gazette.

(l) on and from the relevant date, a member of a prescribed class of persons.

Therefore no change in reporting practice can be expected from this new legislative regime.

How harm may be constituted (commenced 23 April 2007)

A new s 162(2) was inserted by Children, Youth and Families (Consequential and Other Amendments) Act 2006 (No. 48/2006) to clarify that:

> 'For the purposes of subsections (1)(c) to (1)(f), the harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances.'

It may be expected that this provision clarified the circumstances in which harm can be caused, while not having a direct influence on the number of reports.

Addition of midwives as a new mandated reporter group (commencing 1 July 2010)

Several statutes have made insubstantial amendments to incorporate changes to professional regulatory mechanisms and definitions.[49] However, the *Statute Law Amendment (National Health Practitioner Regulation) Act 2010 (No. 13 of 2010)*, in amending the definition of 'nurse' to add midwives, clearly adds midwives to the list of mandated reporter groups. This Act made several insubstantial amendments to definitions.[50] The more significant amendment was in Schedule item 12, which inserted a definition of 'midwife'[51] and added midwives to s 182 as a mandated reporter group as a subset of nurses.

12.4 For section 182(1)(b) substitute—

"(b) a nurse;

(ba) a midwife;".

---

[49] The Justice Legislation Amendment Act 2010 (No 30) made consequential amendments (comm 26 June 2010) as follows:
44 Statute law revision - (1) In section 184(1) of the **Children, Youth and Families Act 2005**, for "162(c) or 162(d)" **substitute** "162(1)(c) or 162(1)(d)".
The ***Children's Services Amendment Act 2011*** (No 80) s 79 (Sch. Item 2) commencing 1 January 2012) inserted a new s 182(fa) as follows:
2.3 In section 182(1), after paragraph (f) insert—
"(fa) on and from the relevant date, the approved provider or nominated supervisor of, or a person with a post-secondary qualification in the care, education or minding of children
who is employed or engaged by an education and care service within the meaning of the
Education and Care Services National Law (Victoria)".
Similar insubstantial amendments to s 182 were made by the Health Professions Registration Act 2005, No. 97/2005, and the Education and Training Reform Act 2006, No. 24/2006.

[50] For example, item 12.2 stated that In section 3(1)— (a) for the definition of registered medical practitioner substitute—"registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student)"; (b) for the definition of registered psychologist substitute—"registered psychologist means a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student)".

[51] **12.3** In section 3(1), insert the following definitions—"midwife means a person registered under the Health Practitioner Regulation National Law—to practise in the nursing and midwifery profession as a midwife (other than as a student); and (b) in the register of midwives kept for that profession; "nurse" means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student)".

This may be expected to produce a small increase in reports by this group of professionals, perhaps especially about risk of physical injury.

Small change to penalty (commencing 1 July 2012)

In addition (see Table 6), since 1 July 2012, the penalty has been moderately raised through the combined operation of the *Sentencing Act 1991* (Vic), s 110 and the *Monetary Units Act 2004* s 11(1)(b). The value of a penalty unit for the 2012/13 financial year was $140.84. So, the maximum penalty since 1 July 2012 has been $1408. However, it is doubtful whether this increase (if reporters are even aware of it) has influenced reporting behaviour.

1.5.7.3. Current position: Victoria

There has been no substantial change to reporter groups apart from adding midwives to the existing doctors, nurses, police, teachers and principals, or expansion of the types of abuse and neglect which must be reported (still limited to physical injury and sexual abuse).

1.5.7.4. A note on the scope of s 162(1)(c) in Victoria

An issue arises as to whether the mandatory reporting duty in subsection (c) applies only to physical injury caused by *physical abuse*, or also to physical 'injury' caused by *neglect*.

This is a complex question to which there may not be a clear and indisputable answer. The provisions are somewhat ambiguous, and key terms (including, most critically, 'physical injury', but also 'physical development', 'health' and 'basic care') are not defined by the Act or by case law. Some contrasting insights are indicated here. It is ultimately a question of statutory interpretation whether the 'physical injury' reporting requirement in (c) applies to any cases of child neglect, and if so, to which cases.

To contextualise the discussion, the subsections regarding physical injury and neglectful circumstances respectively read as follows (in the original 1989 Act s 63(c) and (f), which are unchanged in the 2005 Act s 162(1)(c) and (f)):

'A child is in need of protection if any of the following grounds exist - …

(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;

(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*.'

(author's emphasis).

'Physical injury' is not confined to injury caused by physical abuse – it may include some situations of neglect, so that some instances of neglect fall within the mandatory reporting provisions

While it would be unusual to do so, and would arguably be poor drafting which needs to be remedied, it is arguable that some instances of 'physical injury' caused by neglect could also be embraced by subsection (c) which deals generally with physical injury. This argument is supported by the fact that subsection (c) uses the term 'physical injury' rather than 'physical abuse', and by a claim that this term seems logically capable of applying to cases of 'physical injury' caused by neglect where the child is suffering, or is likely to suffer, significant harm as a result of that 'physical injury'. This argument would conclude, for example, that a child suffering 'physical injury' from life-threatening malnutrition, or from failure to receive necessary medical care, would activate the reporting duty in (c).

However, as well as requiring a multiple characterisation of the consequence of the neglect as 'physical injury' under (c) in addition to the harm to 'physical development or health' as specified in subsection (f), this claim is not as strong as the alternative view.

Physical injury is confined to injury caused by physical abuse

On the alternative view, the term 'physical injury' is properly confined to physical abuse, meaning that neglect is never required to be reported under the mandatory reporting provisions, no matter what resulting physical harm may be caused to the child. This conclusion is arguably warranted due to several factors.

First, it is consistent with the legislative scheme normally adopted in child protection statutes, which is to specify which of the four classical forms of abuse and neglect (and any other categories of harm selected as objects of concern by Parliament) must be reported, and under what conditions (usually stating what extent of harm must be present). On this schematic basis, 'physical injury' equates with physical abuse and is dealt with in (c); sexual abuse is clearly designated in the next subsection (d); emotional or psychological harm is then dealt with in (e); and neglectful circumstances are addressed in (f). Since it is clearly stated that only grounds (c) and (d) are the subject of mandatory reporting, neglect would seem to be never mandated, regardless of the extent of harm, and nor would emotional abuse.

Second, this conclusion is indicated by approaches to statutory interpretation and common law rules about the construction of statutes. The starting point in statutory interpretation is to determine and give effect to the intention of Parliament as indicated by the language in the statute, and to use accepted rules of statutory interpretation, both legislative and common law, to do so (*Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355). Applying rules of construction involves identifying the statutory purpose, which can appear from express statements in the statute, by inference from its terms, and by reference to extrinsic materials (*Lacey v Attorney-General (Qld)* (2011) 242 CLR 573). Interpretation Acts in every State require an interpretation giving effect to the statute's purpose (see eg *Interpretation of Legislation Act 1984* (Vic) s 35(a); *Mills v Meeking* (1990) 169 CLR 214). Other general common law rules include that the Act must be read as a whole (that is, the words of a statute must be read in their context and not in isolation: *K & S Lake City Freighters Pty Ltd v Gordon and Gotch Ltd* (1985) 60 ALR 509; with 'context' including the mischief the statute was intended to remedy: *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 141 ALR 618 – this embodies the syntactical presumption of noscitur a sociis (the meaning of a word or phrase is to be derived from its context). In this situation, reading the section as a whole and in combination with the duty to notify in s 64 and 184 respectively, it appears that within the scheme of six different kinds of maltreatment or exigency, physical *injury* in (c) is clearly distinguishable from harm caused by neglect in (f), even if the neglect-related harm is to the child's physical *development or health*.

Third, this conclusion is supported by the extrinsic materials including Parliamentary proceedings (which may be consulted to resolve ambiguity: *Interpretation of Legislation Act 1984* (Vic) s 35(b)(ii)). The second reading speech (Mr John, Minister for Community Services, Legislative Assembly, 21 April 1993, p 1005 ff) explains the purpose of the provisions as being to require reports of sexual abuse and severe physical abuse, and makes no mention of emotional abuse or neglect. For example, the Minister states that (author's emphasis):

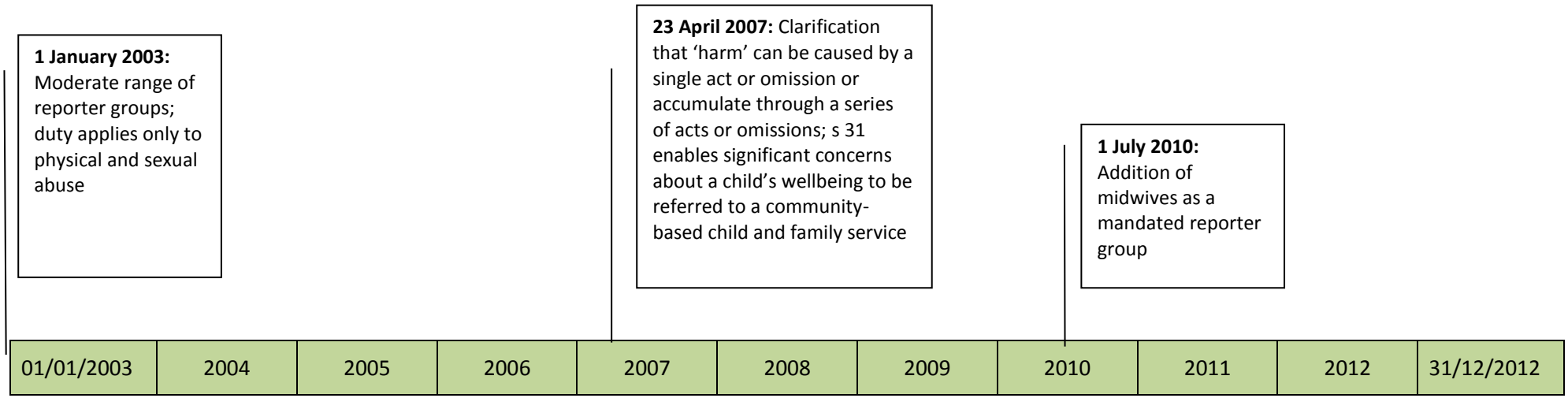
> 'the provisions are 'considered necessary in view of the extremely low reporting rates of child *sexual abuse* and to a lesser extent child *physical abuse* in this State in comparison with other States which have mandatory reporting. … Although in recent years Victoria has coped well with overall increases in child abuse reporting rates comparable to the situations in other States, these reports have largely centred on *emotional abuse and neglect* concerns. By contrast, *sexual abuse* reports, and to a lesser extent *physical abuse* reports, have not increased under the present voluntary reporting system at the same rate as they have in other States that have mandatory reporting. As sexual abuse is a hidden problem and is therefore hard to detect, a legal requirement

to report such abuse is essential. Indeed the purpose of the proposed amendment is to uncover hidden but serious abuse and to underline *the criminal nature of sexual abuse and severe physical abuse*.'

Other statements in Parliament repeatedly refer to 'physical abuse' and 'physical abuse and sexual abuse' when referring to the new provisions, their impetus, and their purpose: see for example Mrs Garbutt, Legislative Assembly, 29 April 1993, p 1384.

Fourth, this conclusion is suggested by the nature of neglect, as distinct from abuse. As indicated by the terminology in (f), neglect occurs when 'basic care' or effective medical care' is not provided, and if it reaches a sufficient extent, such neglect may harm the child's 'physical development or health'. This conception of neglect by omission is consistent with that adopted in the general body of literature on child maltreatment. 'Neglect' is usually taken to mean a failure to provide the basic necessities of life, or to provide adequate care to meet a child's basic needs such as nutrition, clothing, shelter, supervision, medical care, education and emotional nourishment (Dubowitz, Back, Starr, & Zuravin, 1993). On this view, the harms caused by neglect – even including cases such as the life-threatening malnutrition situation, and the lack of medical treatment example - are not properly termed 'physical injuries' such as those caused by acts of abuse. Rather, the harms caused by neglect are occasioned through the absence of sufficient conditions for health and development. To the extent that they produce consequences to physical health and wellbeing, they are not so much *injuries* as physical *conditions* which affect the child's physical development or health (such as malnutrition, and the lack of receipt of required medical attention). That is, the neglect has not caused an *injury*, in the same way that physical abuse causes a fracture. It is doubtful whether malnutrition, or failure to receive medical care, are properly called 'physical injuries'; a malnourished child would not normally be described as 'injured' but as suffering from a condition of malnourishment caused by neglect which either has harmed or is likely to harm development or health; similarly, a child who requires medical treatment for a severe infection and who has not received it would not be described as having been physically injured by such neglect, but as having been neglected with a consequent impact on their physical development or health. If this interpretation is correct, these situations would fall within subsection (f) and they would not need to be reported under subsection (c).

Figure 1.7: Timeline showing key developments, Victoria, 2003-2012



1.5.8. Western Australia

1.5.8.1. Original position at 1 January 2003: Western Australia

Western Australia did not have any form of mandatory reporting legislation until 1 January 2009, when the duties described below were introduced.

1.5.8.2. Key changes, 2003-12: Western Australia

New mandatory reporting legislation for child sexual abuse only: Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008 (commencing 1 January 2009)

Western Australia introduced mandatory reporting legislation for child sexual abuse only, with the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* (WA) (No 26 of 2008) commencing on 1 January 2009, inserting provisions into the *Children and Community Services Act 2004* (WA). Hence, from 2003-1 January 2009, there was no mandatory reporting legislation in WA. From 1 January 2009, there has been mandatory reporting, but of very limited scope.

The legislation only applies to child sexual abuse. The key provisions are in Division 9A (ss 124A-124H). Section 124A defines relevant terms. Section 124B(1) sets out the duty. The key reporter groups were doctors, nurses, midwives, police officers, and teachers (which included members of the teaching staff of a community kindergarten). The state of mind which activates the duty to report is 'belief on reasonable grounds'. The duty applies to a reasonable belief of past/presently occurring sexual abuse (not extending to suspected future abuse). In addition, unlike other jurisdictions except Queensland, the term 'child sexual abuse' is defined, albeit non-exhaustively.[52] The penalty for failure to report is $6000.

The report may be written or oral but if oral the reporter must make a written report as soon as practicable (s 124C) with a penalty of $3000. Reports must be made to the CEO, a person approved by the CEO, or a member of a class of persons approved by the CEO (s 124B(2)). Reports must contain certain details (s 124C). The CEO must give copies of reports to the police (124D). Confidentiality of the reporter's identity is conferred by s 124F, with a penalty of $24,000 and imprisonment for 2 years; there are specified exemptions. Immunity from civil, criminal and administrative proceedings in relation to a report made in good faith is conferred (s 129).

The legislation has been amended since commencement, but generally only incidentally to specify the provision of further information in reports made, and to harmonise the provisions with new legislation concerning professional registration.[53]

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[52] As (s 5): 'sexual behaviour in circumstances where – (a) the child is the subject of bribery, coercion, a threat, exploitation or violence; or (b) the child has less power than another person involved in the behaviour; or (c) there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour'.

[53] For example, The *Children and Community Services Amendment Act 2010* (No 49 of 2010) s 72 amended s 124C(3)(c) to delete the words "if known" and insert "if, or to the extent, known", and added the new subsection (ea) as described above, concerning the information to be provided in the report. Section 85 amended the penalty provisions in 124C(1), (2) and (4) to add the words "a fine of". The Health Practitioner Regulation National Law (WA) Act 2010 (No 35 of 2010) s 39 amends the definitions of "doctor", "nurse" and "midwife" to align those occupational definitions with the new regulatory framework of professional registration. The *Teacher Registration Act 2012* (No 16 of 2012) s 163 amends the definition of "teacher" to align its occupational definition with the new regulatory framework of professional registration.

A note on the definition of 'teacher': the original 2008 definition

In the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*, doctors, nurses, police, midwives and teachers were designated as mandated reporters. The legislation defined 'teacher' as (s 5):

> (a) a person who, under the *Western Australian College of Teaching Act 2004*, is **registered**, provisionally registered or has a limited authority to teach; or
>
> (b) a person who is appointed under the *School Education Act 1999* s 236(2) as a
>
> member of the teaching staff of a **community kindergarten**; or
>
> (c) a person who provides instruction in a course that is —
>
> (i) mentioned in the *School Education Act 1999* s 11B(1)(a), (b) or (e); and
>
> (ii) prescribed for the purposes of this definition;[54] or
>
> (d) a person who instructs or supervises a student who is participating in an activity that is—
>
> (i) part of an educational programme of a school under an arrangement mentioned in the *School Education Act 1999* s 24(1); and
>
> (ii) prescribed for the purposes of this definition;[55] or
>
> (e) a person employed by the chief executive officer as defined in the Young Offenders Act 1994 s 3 to teach detainees at a detention centre.

Therefore, mandated reporters among the teaching profession included registered teachers, those appointed as teaching staff at community kindergartens, instructors in vocational education programs and home schooling programmes, and those who teach in youth detention centres. However, under the original legislation, employees of child care services who do not teach at that centre were not (and still are not) mandated reporters.[56]

Arguably, the original definition would have included as mandated reporters those who were registered teachers working in child care centres. However, at the time, the Act did not expressly include childcare teachers as mandated reporters, and ambiguity arose because the WACTA regulates teaching in schools, rather than child care centres. Amendment in 2012 removed any doubt: t**hose who teach in child care services are now clearly included as mandated reporters.** Since 2012, there is no doubt that all those who teach in an 'educational venue' must be registered and so fall within the CCSA definition of 'teacher'; since child care centres are now defined as educational venues (see below), and are mandated reporters in that capacity. However, in the child care context, those who simply ***provide care*** to children are not 'teachers' and so are not mandated reporters.

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[54] Essentially, options other than school in the last two years of compulsory education, like vocational education.

[55] Essentially, home schooling.

[56] The *Child Care Services Act 2007* at the time also did not mandated childcare staff. It regulated the provision of child care (rather than education); see also s 4. The *Western Australian College of Teaching Act 2004*, which regulated teaching in schools, did not include childcare staff as 'teachers' and so did not require childcare staff to be registered. See the explanatory memorandum which appears to limit the definition and scope of 'teacher': http://www.parliament.wa.gov.au/Parliament/bills.nsf/6C1C35600F6FA450C82573A20001DFD7/$File/EM%2B-%2BBill%2B257-1.pdf

Change in the definition of 'teacher' (commencing 7 December 2012)

Provisions were enacted in the CCSA by the *Teacher Registration Act 2012* that clarify which persons registered as teachers are mandated reporters. The *Teacher Registration Act 2012* (No 16 of 2012) amended the definition of 'teacher' to **remove** the original ss (b) which included "a person who is appointed under the School Education Act 1999 s 236(2) as a member of the teaching staff of a community kindergarten". However, the relevant provisions in the *Teacher Registration Act* (see ss 4, 6, 7 discussed below) clearly still include **kindergarten teachers** (**and child care teachers**), all of whom must be registered to teach in educational venues. Hence, these classes of teachers are still mandated reporters.

2012 amendment of 'teacher'

In 2012 the *Teacher Registration Act 2012* amended the CCSA 2004 s 124A definition of 'teacher' by deleting paragraphs (a) and (b), which stated:

> 'teacher' means -
>
> (a) a person who, under the *Western Australian College of Teaching Act 2004*, is **registered**, provisionally registered or has a limited authority to **teach**; or
>
> (b) a person who is appointed under the *School Education Act 1999* s 236(2) as a member of the teaching staff of a **community kindergarten**;

and inserting a new paragraph (a) so that a 'teacher' is defined as:

> **a person who is registered under the *Teacher Registration Act 2012***.

This had the effect that any person who **'teaches'** at a school, kindergarten, child care centre, detention centre or any place prescribed as an **educational venue**, is a mandated reporter.[57]

This is because under the TRA 2012 s 6, it is an offence to '**teach** in an **educational venue** unless the person is a registered teacher'.[58] Those who had to be 'registered teachers' **include** those who **'teach'** at child care centres (but does not include those who simply ***provide care*** at a child care centre). This is because of the definitions of 'teach', 'educational venue' and 'educational programme'.[59]

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[57] Note that under the *Education and Care Services National Law (WA) Act 2012*, 'education and care service' is defined as 'any service providing or intended to provide education and care on a regular basis to children under 13 years of age other than —
(a) a school providing an educational program to school children in accordance with the School Education Act 1999; or
(b) a community kindergarten providing an educational program to children in accordance with the School Education Act 1999; or
(c) a personal arrangement; or
(d) a service principally conducted to provide instruction in a particular activity; or
Example: Instruction in sport, dance, music, culture or language or religious instruction.
(e) a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service; or
(f) care provided under a child protection law of a participating jurisdiction; or
(g) a prescribed class of disability service; or
(h) a service of a prescribed class;
Example: Education and care services to which this Law applies include long day care services, family day care services and outside school hours services, unless expressly excluded.

[58] Under s 7 it is an offence to employ an unregistered person to teach in an educational venue.

[59] 'Teach' is defined in s 4 as: 'to undertake duties in an educational venue that include —

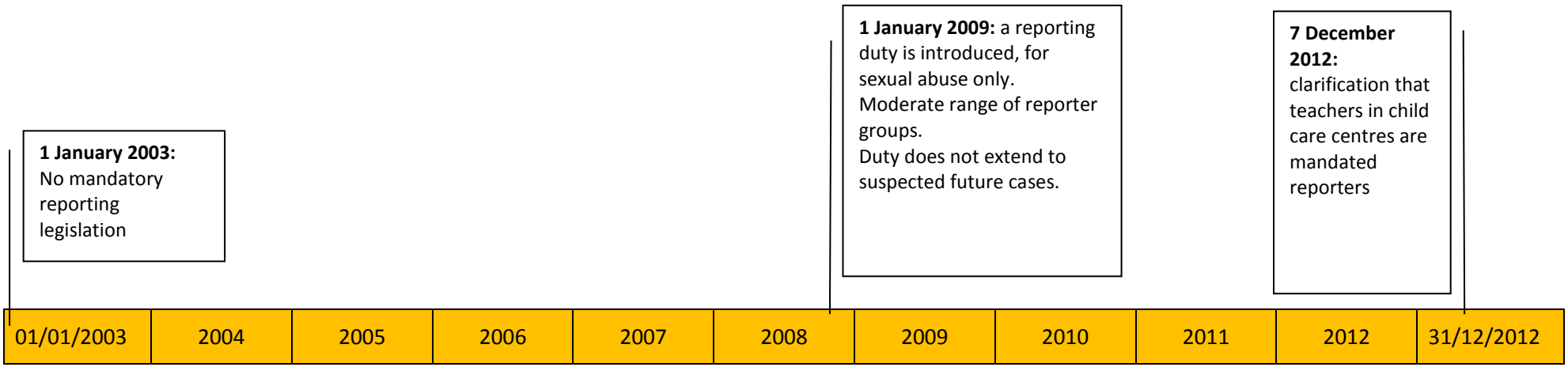
In sum, this means that among the teaching profession, mandated reporters in Western Australia are those who are registered under the *Teacher Registration Act 2012* and whose duties include delivery of an educational programme in an educational venue. Those who provide care at child care centres but who do not teach at that centre will not be mandated; nor will teacher's aides, teacher's assistants, and student teachers.

1.5.8.3. Current position: Western Australia

The duty is limited to sexual abuse, and is applied to a relatively small range of professionals. The duty is also limited by its temporal scope; it applies only to situations of past or currently-occurring sexual abuse, and does not include a requirement to report situations in which a child is believed to be likely to suffer sexual abuse.

(a) the **delivery of an educational programme designed to implement a prescribed curriculum** and the assessment of student participation in such an educational programme; or
(b) the administration of any such educational programme,
but <u>does not</u> include duties of the kind undertaken —
(c) by a teacher's aide or a teacher's assistant, or by a student teacher on practicum placement; or
(d) by a person employed or engaged **to provide care** at a child care centre but who is **not** employed or engaged to **teach** at that centre; or
(e) by an unpaid volunteer, unless the volunteer is undertaking duties of a kind, or to an extent, prescribed for the purposes of this paragraph; or
(f) by such persons, or in such circumstances, if any, as are prescribed.'
'Educational venue' is defined in s 4 as 'any of the following — (a) a school as defined in the *School Education Act 1999* s 4; (b) a kindergarten registered under the *School Education Act 1999* Part 5; (c) a **child care centre**; (d) a detention centre; (e) any other place prescribed as an educational venue'. **'Educational programme'** is defined in s 4 as 'an organised set of learning activities designed to enable a student to develop knowledge, understanding, skills and attitudes relevant to the student's individual needs'.

Figure 1.8: Timeline showing key developments, Western Australia, 2003-2012



Stage 2
Data & Analysis

STAGE 2: DATA AND ANALYSES NEW SOUTH WALES

Introduction, definitions, and notes

In Stage 2, we present data and analysis regarding the reporting over time, and each year, of different types of child abuse and neglect, by each major reporter group. We also conduct some analyses by combining the reporting practice of mandated reporter groups.

The New South Wales Department of Family and Community Services provided summary aggregate data which enabled analysis of some but not all of the research questions involved in this study. Some of this data was for a nine year period over the financial years 2004/05 to 2012/13. Other more fine-grained data involving some aspects of reporting and report outcomes by specific reporter groups of specific maltreatment types was provided for the three years 2010/11-2012/13. This explains the limits of the data presented in this section, and the numbering and ordering of the tables.

The analyses we conducted generated a range of tabular presentations of various aspects of reporting and report outcomes (see Stage 2 guide to tables, p 82). The table on p 74 entitled *Key data findings and interpretations* presents a condensed summary of key overall trends and our interpretations of these trends. The *Executive Summary* provides a further refined summary of key trends.

As explained in the description of the research project and its approach (**Appendix 1**), these data relate only to **reports by mandated and non-mandated reporters of suspected child abuse and neglect**. Accordingly, the data do **not** relate to reports of general child welfare (child concern reports), although mandated reporters do make such reports. In addition, the data on reports relate to the primary form of abuse or neglect that is the subject of the report; in any given case, a substantiated report may relate to a different type of abuse or neglect than the primary form of maltreatment reported.

A further note on nomenclature: State and Territory legislation about mandatory reporting normally use the terms 'reporting' and 'report' to denote key concepts and actions in this domain. Government data systems often use the term 'notification' to characterize a report of child abuse or neglect, to distinguish such a report from one that is simply a general contact to the agency about a child's general welfare unrelated to maltreatment. This research project is about reporting of child abuse and neglect. For simplicity, and because this project is driven by an exploration of legislative mandatory reporting duties regarding child abuse and neglect in practice, our analyses use the term 'report' to describe a report made to the Department about suspected child abuse or neglect which is classed by the government agency as a 'notification'. See further **Appendix 1**, including Table 1.

Key legislative changes and hypotheses: New South Wales

1 January 2003: Large range of reporter groups; large penalty; duty applied to concerns for safety, welfare or wellbeing of a child due to a suspicion that a child was 'at risk of harm', a broad concept which was perhaps not defined with a clear qualification of significant harm; applied to:

- 'basic physical or psychological needs' not being met;
- 'necessary' medical care not being provided;
- 'physical or sexual abuse';
- exposure to domestic violence with risk of serious physical or psychological harm;
- serious psychological harm

Hypothesise: may produce a large volume of reports, especially of exposure to domestic violence, psychological abuse and neglect

30 March 2007: New duty to report prenatally where a birth mother the subject of a prenatal report does not engage with services – Hypothesise: not likely to have a large numerical impact on reporting

24 January 2010: several major changes to the mandatory reporting law:

- Added clearer requirement of significant harm to activate reporting duty; designed to lift threshold – Hypothesise: Reduction of reports by all groups, especially of emotional abuse and neglect
- Duty to report failure to attend education facility – Hypothesise: Some increase in reports by education personnel (teachers, principals, counsellors, youth workers aboriginal workers) and police of neglect
- Removal of penalty – Hypothesise: Reduction of reports by all groups, especially of exposure to domestic violence, psychological abuse and neglect
- Reports by mandated reporters enabled to be made to child wellbeing units – Hypothesise: Substantial decrease in reports to the Department, especially of exposure to domestic violence, psychological abuse, neglect, and even physical abuse

Definitions and notes: New South Wales

Analyses used only the data on reports, and outcomes (where available), for the major specified maltreatment categories in the NSW data system, consistent with the research questions in this study: physical abuse, sexual abuse, psychological abuse (classed by us as emotional abuse), and neglect. Because the NSW data system also included a specific category of domestic violence, and because reporting of this phenomenon presented an important context and hypothesis for the NSW context, we also included some analyses using that classification, but in some other analyses we aggregated domestic violence reporting with neglect. For consistency with our approach in other jurisdictions, we excluded from all analyses the reporting data recorded in NSW under other classifications: drug/alcohol use by carer; carer: mental issues; child inappropriate sexual behaviour; suicide risk for child; drug/alcohol use by child; carer: other issues; runaway child; other issues; no risk or harm issues.

The data has been analysed using the following data categories and or definitions as used or provided by the Department:

Health personnel: Doctors, nurses and reporters from similar professional groups.

Police: Police (NSW) and Police (CWU).

School personnel: For analyses in Stage 2 Part 1A of the nine year period, the form in which the Department provided the aggregate data required the combination of school and childcare reporters. For analyses in Stage 2 Part 1B and Stage 2 Part 2 specific to the three year period 2010/11-2012/13, we were able to isolate the reporting of school personnel only.

Major reporter groups combined: For the purpose of this research study, and to provide meaningful findings about the proportional contribution to reporting made collectively by the major occupational reporter groups for the New South Wales government, we conducted some analyses by combining the reporting practice of the major mandated reporter groups. In doing this, we adopted a similar approach to that used for other jurisdictions (see Appendix 1 Research Approach). Accordingly, in some analyses, the reporting practices of the major groups of mandated reporters (police, health personnel, and school personnel and childcare personnel combined) have been combined to indicate the practice of the major mandated reporter groups in New South Wales. As noted above (see 'School personnel'), for the years 2010/11-2012/13, more detailed data were provided enabling the isolation of reports by school personnel; accordingly the detailed tables for these years do not include reports by childcare personnel.

Other reporter groups combined: In some analyses, the reporting practices of the other groups of reporters are combined to indicate the practice of these groups as a whole, in comparison to the major

mandated reporter groups. These 'Other reporter groups' in New South Wales includes all non-mandated reporters, and some groups of mandated reporters who make fewer reports.

Not substantiated: Taken to be all notifications investigated by the Department and not found to have sufficient evidence that a child had been abused, or was at risk of being abused, and represented by data coded as 'investigation – no outcome possible' or 'investigated – unsubstantiated'.

Substantiated: Taken to be all notifications investigated by the Department and found to have sufficient evidence that a child was being abused, or was at risk of being abused, and represented by data coded as 'investigated – substantiated'.

Emotional abuse: For consistency across jurisdictions we used this term to categorise *psychological abuse*, which is the term used in New South Wales. Normally refers to acts by caregivers causing the child to suffer significant emotional deprivation or trauma involving the necessary level of harm (see eg the definitions in the Australian Institute of Health and Welfare's *Child protection Australia* annual report).

Domestic violence: Exposure of a child to domestic violence involving the necessary level of harm.

Neglect: The major category named 'neglect' in the NSW data system, which would include caregivers failing to provide minimum conditions necessary for the child's health and physical and emotional development, involving the necessary level of harm. In NSW this clearly included medical neglect, educational neglect, supervisory neglect, and failure to provide necessaries. We excluded other categories recorded in the data which could possibly be included in this category, such as drug/alcohol use by carer.

Physical abuse: The major category named 'physical abuse' in the NSW data system. Normally refers to caregivers inflicting intentional physical harm on the child, beyond lawful corporal punishment, involving the necessary level of harm.

Sexual abuse: The major category named 'sexual abuse' in the NSW data system. Normally refers to the involvement of a child who cannot give true consent in sexual activity with an adult or a more powerful person, for the other person's sexual gratification or gain.

Further details on the methodology and research project are in Appendix 1.

Key data findings and interpretations: New South Wales

Key legislative changes and hypotheses	**1 January 2003**: Large range of reporter groups; large penalty; duty applied to concerns for safety, welfare or wellbeing of a child due to a suspicion that a child was 'at risk of harm', a broad concept which was perhaps not defined with a clear qualification of significant harm; applied to: • 'basic physical or psychological needs' not being met; • 'necessary' medical care not being provided; • 'physical or sexual abuse'; • exposure to domestic violence with risk of serious physical or psychological harm; • serious psychological harm Hypothesise: may produce a large volume of reports, especially of exposure to domestic violence, psychological abuse and neglect **30 March 2007**: New duty to report prenatally where a birth mother the subject of a prenatal report does not engage with services – Hypothesise: not likely to have a large numerical impact on reporting **24 January 2010**: several major changes to the mandatory reporting law: • Added clearer requirement of significant harm to activate reporting duty; designed to lift threshold – Hypothesise: Reduction of reports by all groups, especially of emotional abuse and neglect • Duty to report failure to attend education facility – Hypothesise: Some increase in reports by education personnel (teachers, principals, counsellors, youth workers aboriginal workers) and police of neglect • Removal of penalty – Hypothesise: Reduction of reports by all groups, especially of exposure to domestic violence, psychological abuse and neglect • Reports by mandated reporters enabled to be made to child wellbeing units – Hypothesise: Substantial decrease in reports to the Department, especially of exposure to domestic violence, psychological abuse, neglect, and even physical abuse *NB also: 1998 Children and Young Persons (Care and Protection) Act (broad reporting provision and high penalty); Wood Inquiry into Child Protection Services 2008 (which led to the 2010 legislative change)* **Key and definitions of terms** used below: DR: differential response (child wellbeing units) Major reporter groups: health, nurses, police, school and childcare personnel Other reporter groups: other reporter groups combined eg NGO, other mandated reporters, nonmandated reporters including family and neighbours ROSH: risk of significant harm SR: substantiation rate

GLOBAL TRENDS 2004/05-2012/13			
Table	**Subject**	**Key findings**	**Interpretation**
1.2	Number of ROSH/reports referred by year, by abuse type (all reporter groups combined)	• For all types except Sexual Abuse, ROSH/reports referred increase substantially and steadily through 2008/09 before substantial decline from 2010. Emotional Abuse, Domestic Violence and neglect undergo the most notable increases and declines. • Domestic Violence was the most frequently reported issue every year through to 2009/10. For three years from 2006/07 to 2008/09, there were over 50,000 ROSH/reports referred of Domestic Violence each year. After 2009/10, neglect and physical abuse are the most frequently reported issues. • Domestic Violence ROSH/reports referred fell from a peak of 51,630 in 2008/09 to 13-14,000 in the last 3 years from 2010/11 to 2012/13. • Over the nine year period from 2004/05 to 2012/13, Domestic Violence was by far the most frequently primary reported issue (299,860) • Neglect is the second most frequently reported issue (247,176), followed by physical abuse (244,879). Sexual Abuse was reported 125,169 times. Emotional Abuse was reported 105,402 times. • In the three year period 2010/11-2012/13, reporting patterns have changed markedly. Roughly the same number of ROSH reports are made for Emotional Abuse, Neglect and Physical Abuse (20,000-22,000 p.a) with Sexual Abuse ROSH reports lower (12,000-16,000 p.a)	Increase until 2010 likely due to nature of Mandatory Reporting legislation and other agency factors. Decline from 2010, likely due to massive impact of legislative changes from 24 January 2010. Domestic Violence was likely most frequently reported by police from 2004/05 to 2009/10. Domestic Violence and neglect are by far the most frequently reported issues over the nine year period from 2004/05 to 2012/13. Physical Abuse was also frequently reported, in a somewhat different pattern to other jurisdictions. Changed patterns in three year period 2010/11-2012/13 indicate major impact of the 2010 legislative changes. As well, the creation of the *Mandatory Reporter Guide* which informed reporters of alternative reporting pathways (ie to DR path: child wellbeing units) would likely have supported these changes.
1.3	Number of ROSH reports by year, by reporter group (all	Police are by far the largest reporter group, almost doubling the next	Police reporting in NSW even more pronounced

	abuse types combined)	highest reporting group (Health). Education and families are next highest.	than in other jurisdictions. High proportion of ROSH reports by families an interesting phenomenon.
1.8	Number of ROSH/reports referred by all major reporter groups combined, compared with other reporter groups combined	Major mandated reporter groups reported much more than other reporter groups combined from 2004/05 to 2008/09, with close to double the number of reports referred. This then changed from 2009/10; and in the last three years, the proportion has been approaching parity.	Change in respective reporting proportions also shows dramatic impact of 2010 legislative changes on reporting practices of mandated reporters.
REPORTS BY TYPE OF ABUSE/NEGLECT 2010/11-2012/13			
Table	**Subject**	**Key findings**	**Interpretation**
1.18	Number of ROSH reports of emotional abuse (including exposure to domestic violence) by year, by reporter group (2010/11-2012/13)	• ROSH report numbers annually are stable over this period (19,000-21,000 p.a). • Police report by far the highest number of Emotional Abuse cases (26,074), with the next most frequently reporting group being health practitioners (8,255). • ROSH reports by major mandated reporter groups (41,911) are double those made by other reporter groups (18,888).	Police reporting indicates reports of exposure to domestic violence are still being made to the Department rather than to DR, although much less than pre-2010. Stabilisation of Domestic Violence ROSH report numbers, and at a much lower level than pre-2010, indicates major impact of 2010 changes including DR.
1.19	Number of ROSH reports of neglect by year, by reporter group, (2010/11-2012/13)	• ROSH report numbers annually are stable over this period (21,000-22,000 p.a). • Education personnel report the highest number of Neglect cases (12,950), closely followed by police. • ROSH reports of Neglect are almost equal between major mandated reporter groups (32,674), and other reporter groups (33,856).	Stabilisation of Neglect ROSH report numbers, and at a much lower level than pre-2010, indicates major impact of 2010 changes including DR. Reporting pattern by other reporter groups indicates relatively high level of reporting of Neglect by the public
1.20	Number of ROSH reports of physical abuse by year, by reporter group, (2010/11-2012/13)	• ROSH report numbers annually are stable over this period (21,000-23,000 p.a).	Stabilisation of Physical Abuse ROSH report numbers, and at a lower level than pre-2010, indicates substantial

		• Education personnel report by far the highest number of Physical Abuse cases, double those of police and health practitioners. • ROSH reports by major mandated reporter groups (38,021) are one third higher than those made by other reporter groups (29,982).	impact of 2010 changes including DR. Reporting pattern by other reporter groups indicates relatively high level of reporting of Physical Abuse by the public
1.21	Number of ROSH reports of sexual abuse by year, by reporter group (2010/11-2012/13)	• ROSH report numbers slightly increase over this period, from 12,757 to 16,376. • Police are the highest mandated reporter group (8,021), closely followed by Education personnel (7,773) and health practitioners (6,513). • Reports are almost equal between major mandated reporter groups (22,307), and other reporter groups (20,933).	Pattern of increased Sexual Abuse ROSH reports over this three year period is different to other reported issues. Suggests Sexual Abuse ROSH reports are, appropriately, not made to DR. Perhaps also indicates heightened awareness of Sexual Abuse and possible impact of other contextual factors eg awareness-raising post-2010 changes
1.22	Number of ROSH reports of emotional abuse by year, and number of substantiations (all reporter groups combined)	Over the three year period (2010/11-2012/13): • ROSH report numbers are stable (19,681-21,100) • Total of 60,799 ROSH reports • 9,649 substantiated reports • substantiation numbers double (2,208-4,180)	SR is 16%, the lowest of all four types. Increased substantiation numbers over the period may be a product of more resources being available for investigations, but further research is necessary to explore the contributing factors.
1.23	Number of ROSH reports of neglect by year, and number of substantiations (all reporter groups combined)	Over the three year period (2010/11-2012/13): • ROSH report numbers are stable (21,904-22,442) • Total of 66,530 ROSH reports • 16,261 substantiated reports • substantiation numbers increase by one third (4,586-6,150)	SR is 24%. Increased substantiation numbers over the period may be a product of more resources being available for investigations, but further research is necessary to explore the contributing factors.
1.24	Number of ROSH reports of physical abuse by year, and	Over the three year period (2010/11-2012/13):	SR is 22%.

	number of substantiations (all reporter groups combined)	• ROSH report numbers are stable (21,138-23,878) • Total of 68,003 ROSH reports • 14,818 substantiated reports • substantiation numbers increase by one half (3,980-5,692)	Increased substantiation numbers over the period may be a product of more resources being available for investigations, but further research is necessary to explore the contributing factors.
1.25	Number of ROSH reports of sexual abuse by year, and number of substantiations (all reporter groups combined)	Over the three year period (2010/11-2012/13): • ROSH report numbers increase slightly (12,757-16,376) • Total of 43,240 ROSH reports • 12,374 substantiated reports • substantiation numbers increase by one quarter (3,739-4,559)	SR is 29%, the highest of all four types. Increased substantiation numbers over the period may be a product of more resources being available for investigations, but further research is necessary to explore the contributing factors. In addition, the Joint Investigation Response teams (JIRT) review in 2006-7 resulted in improved processes (including the presence of health personnel as well as police and community services), which may have contributed to higher substantiation rates.
DETAILED YEARLY ANALYSIS 2010/11-2012/13			
Table	**Subject**	**Key findings**	**Interpretation**
2.6.1	Number of ROSH reports by major reporter groups combined, by year, abuse type, and outcome (2010/11-2012/13)	ROSH reports by major mandated reporter groups generally stable over three year period for all types, but with an increase in Sexual Abuse reports: • **Emotional Abuse** reports slight decline (14,488 to 13,915); • **Neglect** reports slight increase (10,682 to 11,567); • **Physical Abuse** reports slight increase (11,671 to 13,431); • **Sexual Abuse** reports increase (6,769 to 8,508).	Stability in reports overall suggests positive impact of legislative change on reporting by major mandated reporter groups and DR mechanism Increase in Sexual Abuse reports suggests ongoing awareness Substantiation increases are positive and may be a product of more resources being available for investigations, but further

		Substantiations increased over the three year period: **Emotional Abuse** (1,396 to 2,712); **Neglect** (2,302 to 3,105); **Physical Abuse** (2,081 to 3,011), **Sexual Abuse** (2,126 to 2,394).	research is necessary to explore the contributing factors.
2.6.2	Number of ROSH reports by other reporter groups combined, by year, abuse type, and outcome (2010/11-2012/13)	ROSH reports by other reporter groups generally stable over three year period for all types, but with an increase in Sexual Abuse reports: • **Emotional Abuse** ROSH reports slight decline (6,612 to 6,103); • **Neglect** ROSH reports slight decline (11,502 to 10,875); • **Physical Abuse** ROSH reports slight increase (9,467 to 10,447); • **Sexual Abuse** ROSH reports increase (5,988 to 7,868). Substantiations increased over the three year period: **Emotional Abuse** (812 to 1,468); **Neglect** (2,284 to 3,045); **Physical Abuse** (1,899 to 2,681), **Sexual Abuse** (1,613 to 2,165).	Stability in ROSH reports overall suggests positive impact of legislative change and DR mechanism Increase in Sexual Abuse reports suggests ongoing awareness among the public Substantiation increases are positive and may be a product of more resources being available for investigations, but further research is necessary to explore the contributing factors.
2.6.5	Number of ROSH reports by police, by year, abuse type, and outcome (2010/11-2012/13)	ROSH reports by police generally stable over three year period for all types, but with an increase in Sexual Abuse reports: • **Emotional Abuse** reports slight decline (9,044 to 8,720); • **Neglect** reports slight increase (3,689 to 4,344); • **Physical Abuse** reports stable (3,155 to 3,333);	Stability in police ROSH reports overall suggests positive impact of legislative change and DR mechanism, and reporter awareness. Slight increase in Neglect reports is of interest and invites further research to explore reasons. Substantiations increased markedly for Emotional Abuse, Neglect, Physical Abuse and remained

		• **Sexual Abuse** reports slight increase (2,534 to 2,894). Substantiations increased over the three year period: **Emotional Abuse** (792 to 1,599); **Neglect** (1,046 to 1,301); **Physical Abuse** (499 to 725), **Sexual Abuse** (931 to 970).	stable for Sexual Abuse. Substantiation increases are positive and may indicate more resources available for investigations, and possibly improved reporter practice (further research required to explore reasons).
2.6.6	Number of ROSH reports by Education personnel, by year, abuse type, and outcome (2010/11-2012/13)	ROSH reports by Education personnel generally stable over three year period for all types, but with an increase in Physical Abuse and Sexual Abuse reports: • **Emotional Abuse** reports stable (2,425 to 2,587); • **Neglect** reports stable (4,325 to 4,634); • **Physical Abuse** reports marked increase (4,325 to 6,817); • **Sexual Abuse** reports increase (2,268 to 3,079). Substantiations increased over the three year period: **Emotional Abuse** (299 to 563); **Neglect** (608 to 1,007); **Physical Abuse** (946 to 1,315), **Sexual Abuse** (632 to 714).	Stability in Education personnel reports overall suggests positive impact of legislative change and DR mechanism, and reporter awareness. Slight increase in Neglect ROSH reports is of interest and invites further research to explore reasons. Substantiations increased markedly for Emotional Abuse, Neglect, Physical Abuse and remained stable for Sexual Abuse. Substantiation increases are positive and may indicate more resources available for investigations, and possibly improved reporter practice (further research required to explore reasons). The duty to report failure to attend an education facility gave a higher profile to educational neglect. More active engagement between schools and the Department regarding educational neglect may be associated with the increase in substantiations of neglect in this period.

Stage 2
Data & Analysis

Stage 2 guide to tables: New South Wales

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Stage 2

STAGE 2 PART 1A: NINE YEAR ANALYSIS OF NUMBERS OF REPORTS

In Stage 2, we present data and analysis regarding the reporting over time, and each year, of different types of child abuse and neglect, by each major reporter group. We also conduct some analyses by combining the reporting practice of mandated reporter groups.

Analysis of the data provided enabled us to generate a range of tabular presentations of various aspects of reporting (see Stage 2 guide to tables, p 82). The table on p 74 *Key data findings and interpretations* presents a condensed summary of key overall trends and our interpretations of these trends. The *Executive Summary* provides a further refined summary of key trends.

The tables in this first section, Part 1A, provide a broad overview of major aspects of reporting, but not of report outcomes, in the nine years from 2004/05 to 2012/13.

1.1 Number of reports by year, all abuse types combined, all reporter groups combined, 2004/5–2012/13

2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	Totals
101,697	**117,089**	**144,940**	**147,440**	**156,992**	**115,704**	**77,179**	**78,731**	**82,714**	**1,022,486**

1.2 Number of reports by year, by abuse type, all reporter groups combined, 2004/05–2012/13

	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	Totals
Emotional abuse	9818	12,138	16,003	15,644	19,068	14,255	6710	6008	5758	**105,402**
Neglect	22,783	25,674	32,109	34,885	36,275	28,868	22,184	21,956	22,442	**247,176**
Physical abuse	23,698	26,584	31,263	32,617	35,271	27,443	21,138	22,987	23,878	**244,879**
Sexual abuse	11,865	12,578	14,584	14,287	14,748	13,867	12,757	14,107	16,376	**125,169**
Domestic violence	33,533	40,115	50,981	50,007	51,630	31,271	14,390	13,673	14,260	**299,860**
Totals:	**101,697**	**117,089**	**144,940**	**147,440**	**156,992**	**115,704**	**77,179**	**78,731**	**82,714**	**1,022,486**

1.3 Number of reports by year, by reporter group, all abuse types combined,** 2004/05–2012/13[60]

	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	Totals
Police	40,747	48,656	63,137	64,428	69,866	43,725	20,730	20,097	21,820	**393,206**
Health	23,880	28,679	33,604	35,236	38,639	26,751	16,368	15,389	16,749	**235,295**
School/ childcare	23,865	23,805	26,882	28,906	31,232	24,641	19,149	20,283	22,613	**221,376**
NGO	8712	10,615	13,517	14,924	17,376	13,091	7969	8581	9799	**104,584**
Other mandated reporter	7605	9464	12,350	12,796	14,690	12,227	10,174	11,222	9874	**100,402**
Family	20,480	22,920	29,819	29,958	30,981	23,578	12,737	12,545	12,432	**195,450**
Friend/ neighbour	5381	5631	7235	7017	7147	6297	5241	5591	5109	**54,649**
Other non-mandated reporter	8986	11,013	14,662	15,746	17014	12,889	6477	6175	6421	**99,383**
Totals:	**139,656**	**160,783**	**201,206**	**209,011**	**226,945**	**163,199**	**98,845**	**99,883**	**104,817**	**1,404,345**

** As this table includes other categories of conduct beyond the five major areas, these figures are higher than those in the preceding tables

60 For the years 2004-05 to 2009-10, annual totals in Table 1.3 exclude reports where the reporter was coded as 'Not stated', i.e. 2004/5: 528 listed as ‘not stated’; 2005/6: 59 listed as ‘not stated’; 2006/7 to 2009/10: very small numbers listed as ‘not stated’ (compare Table 1.8)

1.8 Number of reports by all major reporter groups combined, compared with other reporter groups combined, 2004/5–2012/13[61]

	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	Totals
Major reporter groups combined	88,492	101,140	123,623	128,570	139,737	95,117	54,202	53,679	58,781	**843,341**
Other reporter groups combined*	51,692	59,702	77,585	80,445	87,209	68,083	44,643	45,604	46,036	**560,999**
Totals	**140,184**	**160,842**	**201,208**	**209,015**	**226,946**	**163,200**	**98,845**	**99,283**	**104,817**	**1,404,340**

* Other reporter groups include Childcare/preschool, Non-government organisations (NGOs), Family and Community Services, other mandatory reporters and non-mandatory reporters.

[61] For the years 2004-05 to 2009-10, annual totals in Table 1.8 include additional reports where the reporter was coded as 'Not stated' (compare Table 1.3).

PART 1B: REPORTS OF INDIVIDUAL ABUSE TYPES BY DIFFERENT REPORTER GROUPS OVER THREE YEAR PERIOD 2010/11-2012/13

In Part 1B, Tables 1.18 to 1.21 show trends in numbers of reports of each type of abuse and neglect by individual reporter groups, over the three year period 2010/11 to 2012/13.

Tables 1.22 to 1.25 show trends in outcomes of reports of each type of abuse and neglect.

Note that in these Tables, reports of exposure to domestic violence are included in the emotional abuse category.

1.18 Number of reports of emotional abuse, by year, by reporter group, 2010/11-2012/13

	2010/11	2011/12	2012/13	Totals
Health	3019	2628	2608	**8255**
Police	9044	8310	8720	**26,074**
School	2425	2570	2587	**7582**
Major reporter groups combined	14,488	13,508	13,915	**41,911**
Other reporter groups	6612	6173	6103	**18,888**
Totals:	**21,100**	**19,681**	**20,018**	**60,799**

1.19 Number of reports of neglect, by year, by reporter group, 2010/11-2012/13

	2010/11	2011/12	2012/13	Totals
Health	2659	2607	2589	**7855**
Police	3698	3827	4344	**11,869**
School	4325	3991	4634	**12,950**
Major reporter groups combined	10,682	10,425	11,567	**32,674**
Other reporter groups	11,502	11,479	10,875	**33,856**
Totals:	**22,184**	**21,904**	**22,442**	**66,530**

1.20 Number of reports of physical abuse, by year, by reporter group, 2010/11-2012/13

	2010/11	2011/12	2012/13	Totals
Health	3008	2993	3281	**9282**
Police	3155	3412	3333	**9900**
School	5508	6514	6817	**18,839**
Major reporter groups combined	11,671	12,919	13,431	**38,021**
Other reporter groups	9467	10,068	10,447	**29,982**
Totals:	**21,138**	**22,987**	**23,878**	**68,003**

1.21 Number of reports of sexual abuse, by year, by reporter group, 2010/11-2012/13

	2010/11	2011/12	2012/13	Totals
Health	1967	2011	2535	**6513**
Police	2534	2593	2894	**8021**
School	2268	2426	3079	**7773**
Major reporter groups combined	6769	7030	8508	**22,307**
Other reporter groups	5988	7077	7868	**20,933**
Totals:	**12,757**	**14,107**	**16,376**	**43,240**

1.22 Number of reports of emotional abuse, by year, and number of substantiations (all reporter groups combined), 2010/11-2012/13

	Number of reports	Number substantiated
2010/11	21,100	2208
2011/12	19,681	3261
2012/13	20,018	4180
Totals:	**60,799**	**9649**

1.23 Number of reports of neglect by year, and number of substantiations (all reporter groups combined), 2010/11-2012/13

	Number of reports	Number substantiated
2010/11	22,184	4586
2011/12	21,904	5525
2012/13	22,442	6150
Totals:	**66,530**	**16,261**

1.24 Number of reports of physical abuse by year, and number of substantiations (all reporter groups combined), 2010/11-2012/13

	Number of reports	Number substantiated
2010/11	21,138	3980
2011/12	22,987	5146
2012/13	23,878	5692
Totals:	**68,003**	**14,818**

1.25 Number of reports of sexual abuse, by year, and number of substantiations (all reporter groups combined), 2010/11-2012/13

	Number of reports	Number substantiated
2010/11	12,757	3739
2011/12	14,107	4076
2012/13	16,376	4559
Totals:	**43,240**	**12,374**

Stage 2

Part 2: Detailed yearly analyses 2010/11-2012/13

STAGE 2 PART 2: DETAILED YEARLY ANALYSES 2010/11-2012/13

In Stage 2 Part 2, we provide detailed tables presenting data about the reporting practices of the major mandated reporting groups in the three year period 2010/11-2012/13.

Tables 2.6.1 to 2.6.7 detail data about reporting by different reporter groups, by abuse type, outcome of report, and year.

Note that in these Tables, reports of exposure to domestic violence are included in the emotional abuse category.

2.6.1 Number of reports by major reporter groups combined, by year, abuse type, and number substantiated, 2010/11-2012/13

	2010/11	2011/12	2012/13
Emotional Abuse			
Substantiated	1396	2113	2712
Not Substantiated	13,092	11,395	11,203
Total reports:	**14,488**	**13,508**	**13,915**
Neglect			
Substantiated	2302	2662	3105
Not Substantiated	8380	7763	8462
Total reports:	**10,682**	**10,425**	**11,567**
Physical Abuse			
Substantiated	2081	2709	3011
Not Substantiated	9590	10,210	10,420
Total reports:	**11,671**	**12,919**	**13,431**
Sexual Abuse			
Substantiated	2126	2176	2394
Not Substantiated	4643	4854	6114
Total reports:	**6769**	**7030**	**8508**

2.6.2 Number of reports by other reporter groups combined, by year, abuse type, and number substantiated, 2010/11-2012/13

	2010/11	2011/12	2012/13
Emotional Abuse			
Substantiated	812	1148	1468
Not Substantiated	5800	5025	4635
Total reports:	**6612**	**6173**	**6103**
Neglect			
Substantiated	2284	2863	3045
Not Substantiated	9218	8616	7830
Total reports:	**11,502**	**11,479**	**10,875**
Physical Abuse			
Substantiated	1899	2437	2681
Not Substantiated	7568	7631	7766
Total reports:	**9467**	**10,068**	**10,447**
Sexual Abuse			
Substantiated	1613	1900	2165
Not Substantiated	4375	5177	5703
Total reports:	**5988**	**7077**	**7868**

2.6.5 Number of reports by police, by year, abuse type, and number substantiated, 2010/11-2012/13

	2010/11	2011/12	2012/13
Emotional Abuse			
Substantiated	792	1218	1599
Not Substantiated	8252	7092	7121
Total reports:	**9044**	**8310**	**8720**
Neglect			
Substantiated	1046	1164	1301
Not Substantiated	2652	2663	3043
Total reports:	**3698**	**3827**	**4344**
Physical Abuse			
Substantiated	499	683	725
Not Substantiated	2656	2729	2608
Total reports:	**3155**	**3412**	**3333**
Sexual Abuse			
Substantiated	931	952	970
Not Substantiated	1603	1641	1924
Total reports:	**2534**	**2593**	**2894**

2.6.6 Number of reports by school personnel, by year, abuse type, and number substantiated, 2010/11-2012/13

	2010/11	2011/12	2012/13
Emotional Abuse			
Substantiated	299	415	563
Not Substantiated	2126	2155	2024
Total reports:	**2425**	**2570**	**2587**
Neglect			
Substantiated	608	731	1007
Not Substantiated	3717	3260	3627
Total reports:	**4325**	**3991**	**4634**
Physical Abuse			
Substantiated	946	1296	1315
Not Substantiated	4562	5218	5502
Total reports:	**4325**	**6514**	**6817**
Sexual Abuse			
Substantiated	632	636	714
Not Substantiated	1636	1790	2365
Total reports:	**2268**	**2426**	**3079**

2.6.7 Number of reports by health personnel, by year, abuse type, and number substantiated, 2010/11-2012/13

	2010/11	2011/12	2012/13
Emotional Abuse			
Substantiated	305	480	550
Not Substantiated	2714	2148	2058
Total reports:	**3019**	**2628**	**2608**
Neglect			
Substantiated	648	767	797
Not Substantiated	2011	1840	1792
Total reports:	**2659**	**2607**	**2589**
Physical Abuse			
Substantiated	636	730	971
Not Substantiated	2372	2263	2310
Total reports:	**3008**	**2993**	**3281**
Sexual Abuse			
Substantiated	563	588	710
Not Substantiated	1404	1423	1825
Total reports:	**1967**	**2011**	**2535**

STAGE 2 APPENDIX 1

NUMBERS OF CHILDREN AGED 16 YEARS AND UNDER, BY STATE AND TERRITORY, BY YEAR (2003-2012)

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUS.
30 June 2003	**1,510,357**	1,089,156	**897,280**	328,317	**455,280**	111,057	**56,373**	73,028	**4,521,754**
30 June 2004	**1,503,923**	1,090,079	**908,157**	326,107	**455,570**	110,761	**56,272**	72,106	**4,523,855**
30 June 2005	**1,498,148**	1,093,003	**921,796**	324,903	**457,585**	110,482	**56,499**	71,549	**4,534,816**
30 June 2006	**1,517,997**	1,112,123	**950,777**	328,980	**468,946**	110,501	**58,149**	71,661	**4,619,744**
30 June 2007	**1,519,709**	1,119,696	**964,327**	329,464	**475,801**	110,459	**58,348**	72,317	**4,650,728**
30 June 2008	**1,524,136**	1,133,638	**988,276**	331,525	**487,786**	110,948	**59,053**	72,960	**4,708,927**
30 June 2009	**1,531,324**	1,147,242	**1,009,698**	332,841	**499,540**	111,597	**59,365**	73,836	**4,766,307**
30 June 2010	**1,532,503**	1,139,649	**1,002,900**	331,039	**503,776**	109,963	**59,316**	74,411	**4,754,126**
30 June 2011	**1,549,483**	1,152,251	**1,012,373**	332,141	**513,985**	109,760	**59,153**	75,694	**4,805,414**
30 June 2012	**1,562,381**	1,168,144	**1,029,397**	334,271	**529,249**	108,838	**59,520**	77,409	**4,869,756**

[Source: Australian Bureau of Statistics]

Stage 3
Two Literature Reviews

STAGE 3: TWO LITERATURE REVIEWS

Overview

Stage 3 was described broadly in the project brief as: "a documentary analysis of Australian and overseas literature on legal and contextual factors affecting reporting of child abuse and neglect" (p.2).

Two literature reviews were conducted:

Literature review 1: Contextual factors influencing mandatory reporting of child abuse and neglect; and

Literature review 2: Theoretical critiques of mandatory reporting laws.

Stage 3 therefore contributes to the *identification of opportunities to harmonise the various statutory regimes*. More specifically, findings from the review of factors influencing mandatory reporting may inform further work in developing strategies for policy and practice which can optimise the conditions for mandatory reporting; for example, in enhancing reporter training for specific professional groups and in specific domains. Findings from the review of theoretical critiques may shed light on the nature, presence and strength of theoretical underpinnings for mandatory reporting law, both generally, and for specific maltreatment types. However, decisions on whether, how, and to what extent to harmonise the statutory regimes require policy deliberations and decisions by various government departments.

The reviews are in the form of *systematized reviews* (Grant et al 2009) with *rapid evidence synthesis* (Gannan, Ciliska, & Thomas, 2010; Khangura, Konnyu, Cushman, Grimshaw, & Moher, 2012). These are literature reviews which approach the rigour of traditional systematic reviews, while being less comprehensive due to constraints of time, personnel and finance. Like systematic reviews, they have as their purpose: the comprehensive searching for relevant literature across multiple databases using a carefully constructed search strategy; a narrative, thematic synthesis of results; and analysis of results, areas of uncertainty, and implications (Grant et al 2009). Unlike systematic reviews, they do not include a comprehensive evaluation of the methodological quality of studies and potential sources of bias (Gannan et al., 2010). Informed by our experience conducting reviews for the *Cochrane Database of Systematic Reviews*, our approach comprised the following 5 steps: (i) question development and refinement, (ii) systematic literature search, (iii) screening and selection of studies, (iv) narrative synthesis of included studies, and (v) report production.

3.1 Literature review 1: Factors influencing mandatory reporting of child abuse and neglect

Purpose

The purpose of literature review 1 was to identify and synthesise the published literature on the factors influencing mandatory reporting of child abuse and neglect.

Background

Among the many challenges in mandatory reporting of child abuse and neglect is understanding what influences reporting practice (or behaviour). Gaining a better understanding of the factors responsible for reporting tendency can inform the design, content and methods for potential interventions to improve reporting practices among mandatory reporters. Many of the factors influencing mandatory reporting will be malleable, for example, via interventions targeting: legislative reform (e.g., in the wording of the statutes); institutional policy reform (e.g., internal procedures and guidelines for reporting); education and training; mentoring schemes; and organisational cultures.

There is no definitive model that has yet been developed to conceptually depict the multitude of factors potentially affecting mandatory reporting of child abuse and neglect. In its simplest form, the process of reporting child maltreatment to statutory child protection authorities is conceptualised as a two-part process in which reporters must (i) detect child abuse and/or neglect, and then (ii) report it.

Approach

Preliminary scoping of the evidence revealed no prior systematic reviews had been conducted on factors influencing mandatory reporting of child abuse and neglect. We located two previous narrative reviews: one of professionals' reporting of suspected child abuse (Brosig & Kalichman, 1992) and another on barriers to reporting and educational interventions aiding reporting of child maltreatment (Alvarez, Kenny, Donohue, & Carpin, 2004).

This systematized review (Grant at al., 2009) comprises a systematic search strategy and rapid evidence synthesis. It provides a guide to the state of the current evidence base rather than a full systematic review and evaluation.

Inclusion and exclusion criteria

Literature was included or excluded based on six criteria: (i) publication type (we included only primary research reports published in peer-reviewed journals and excluded books, book chapters, and theses); (ii) publication topic (we included only studies of factors affecting/ predicting/ determining/ associated with/ correlated with/ contributing to the reporting of child abuse and/or neglect by professionals required to report child abuse and neglect, including report barriers and facilitators); (iii) study type (we included only primary studies reporting original data and excluded other reviews and commentary); (iv) definitions ("mandatory reporting" was defined as the legislative obligation to report physical abuse, emotional abuse, sexual abuse, or neglect to statutory child protection authorities and "mandatory reporter" was defined as professionals required by law to report); (v) participant populations (we included studies with sub-populations of mandatory reporters: e.g. nurses, physicians, teachers and excluded studies with non-mandatory reporters and students); and (vi) outcomes (we included studies where reporting practice, behaviour, or tendency was investigated and reported).

Only narrative synthesis was undertaken. Statistical data synthesis was not conducted.

Overview of studies

Seventy-two studies met the inclusion criteria. Most of the studies were conducted in the USA (n=48). Studies were also conducted in Australia (n=10), Taiwan (n=6), Canada (n=3), Israel (n=3), Sweden (n=2), Brazil (n=1) and Denmark (n=1). The first study was conducted in 1981 with US nurses and paediatricians (Nelpka, O'Toole & Turbett, 1981).

Fifty of the 72 studies focused broadly on factors influencing reporting of child abuse or neglect/child maltreatment generally or as an undifferentiated phenomenon without specifying factors influencing reporting of specific maltreatment subtypes. Twenty-two studies focused on reporting for distinct maltreatment subtypes (physical abuse n=17; sexual abuse n=4; and exposure to intimate partner violence n=1). No studies focused solely on mandatory reporting of emotional abuse or neglect.

Of the 72 studies, 63 were quantitative, 5 were qualitative, 3 were mixed methods studies combining quantitative and qualitative methods, and 1 study employed an experimental design. The predominant study type was a cross-sectional survey providing a snapshot of reporting practice at one point in time. Participant self-report questionnaires and/or interviews were used in the majority of studies. Data on reporting practice were gathered in two ways: (i) actual reporting, by asking participants to indicate whether, and how many cases of child abuse and neglect they had reported; and (ii) hypothetical reporting, by providing vignettes or scenarios and asking participants to indicate how likely they would be to report each case.

Studies sampled teachers (n=16), doctors (n=15), nurses (n=10), psychologists (n=7), school counsellors (n=3), dentists (n=2), child care workers (n=2), social workers (n=1), and police (n=1). Multiple professional groups (e.g. mental health practitioners, family therapists) were studied concurrently 15 studies. In total, over 24 000 mandated reporters participated in the 72 studies. Study sample sizes ranged from 10 participants in a small scale qualitative study (Nayda, 2002) to 1412 participants in a large scale quantitative study (Crenshaw, Lichtenberg, & Bartell, 1993). Response rates ranged from 11% (Herendeen et al., 2014) to 95% (Turbett & O'Toole, 1983). Response rates were not reported in 16 of the studies. Purposive samples were reported in 6 studies. Typically in the quantitative studies, random samples were drawn from mailing lists of professional associations, or from records of professionals employed in departments/districts/regions.

Key findings

The 72 studies identified factors influencing mandatory reporting of child abuse and neglect. These factors were categorised into 4 factor themes:

- **case factors** (child factors; family factors);
- **reporter factors** (socio-demographics, attitudes, knowledge, education/training, fears/concerns, beliefs, self-efficacy, and previous CPS experience);
- **organisational factors** (private v public, perceived social support, time pressure, and location); and
- **jurisdictional factors** (wording of reporting law).

These factor themes, relevant study findings, study authors, and study frequencies are shown in Table 3.1.

Apart from case characteristics, the major factors that appear to influence mandatory reporting are ***reporter attitudes***, ***reporter knowledge*** (encompassing education and training), ***reporter fears and concerns*** about the effects of mandatory reporting, and ***reporter experience with and confidence in child protection services*** (CPS). Emerging areas of research also point to the importance of workplace support for reporting, and the wording of the reporting statute.

There is a lack of research on factors influencing mandatory reporting, especially for the professional groups whose reporting has been most problematic (e.g. police). No studies have focused explicitly on factors influencing mandatory reporting of emotional abuse or neglect.

Case factors

Case factors (child factors) influencing mandatory reporting include: (i) the type of maltreatment; (ii) the seriousness/severity of the maltreatment: (iii) the observed effects of maltreatment on the child; (iv) certainty that maltreatment had occurred; (v) direct disclosure from the child; (vi) child age; (vii) the veracity of the child; and (viii) child ethnicity/race. More studies focused on maltreatment type and seriousness than other case characteristics. Physical and sexual abuse and more serious maltreatment were more likely to be reported than neglect and emotional abuse and less serious maltreatment by most professional groups studied. The importance of these case characteristics to reporting decisions points to a clear need for professional education and training about the use of case-related information in the formulation of professional judgements and actions.

Case factors (family factors) influencing mandatory reporting include: (i) family hostility, disinterest, or resistance; (ii) family SES; (iii) family ethnicity; (iv) maltreatment co-occurrence with intimate partner violence; and (v) maltreatment co-occurrence with substance abuse. Family case variables were less frequently studied than child case variables. Family cooperativeness as indicated by the presence of parental hostility, resistance or disinterest is a significant influence on mandatory reporting of child abuse and neglect. The importance of these case characteristics to reporting decisions points to a clear need for professional education and training specific to reporter groups based on their "vantage point" (Giovannoni, 1995, p.494) to observe children, parent(s), and families.

Reporter factors

Research reveals mixed findings with respect to the influence of reporter ***socio demographic characteristics*** on mandatory reporting practice (including age, gender, ethnic background, parental status, qualifications and years of experience). In various studies, these factors were found to have a positive effect, negative effect, or no effect at all, indicating the influence of these variables may be more sensitive than other factors to reporter group membership and/or study location. The only Australian study included in this group of papers investigated factors influencing mandatory reporting with Queensland nurses (Fraser et al., 2010). This study found no association between likelihood to report and years of nursing experience, and a positive association between reporting of child sexual abuse and parental status.

Reporter ***attitudes*** towards mandatory reporting were the most frequently studied factor influencing reporting practice with twenty studies investigating this variable, typically alongside numerous other variables. Unlike the ambiguity found for socio-demographic characteristics, there was no ambiguity in these study findings. More positive attitudes towards the reporting duty significantly increased the likelihood that mandatory reporters would comply with their duty to report. This tendency has been reported in studies of both actual reporting practice (by asking participants to indicate whether they had reported cases of child abuse and neglect), and hypothetical reporting (by providing vignettes or scenarios and asking participants to indicate how likely they would be to report each case). It is clear that positive attitudes towards mandatory reporting act as facilitators to reporting. Cultivating positive attitudes towards mandatory reporting obligations, therefore, should be part of reporter induction. Many studies showed, for example, that mandatory reporters were keen to fulfil their mandatory reporting obligations, showed awareness of moral and ethical principles, and saw it as an important component of their professionalism.

Reporter ***knowledge*** of warning signs and indicators and of the reporting law and procedures has been shown to influence mandatory reporting. Unambiguous findings suggest that reporting is associated with higher levels of knowledge.

The influence of reporter ***education and training*** has yielded mixed findings with three studies finding positive associations with reporting practice, one finding no association, and one finding an association only for neglect. This variable requires further investigation in future research as the inclusion criteria for this review did not easily fit studies of interventions for mandatory reporters; only one experimental intervention study was included (Hawkins & McCallum, 2001). A full systematic review of the effectiveness of training interventions for mandatory reporters would shed further light on the role of this variable in shaping reporting practice, including detailing the contents and methods for the most effective education and training initiatives for specific reporter groups, and specific maltreatment sub-types.

Reporter ***fears and concerns*** featured heavily in the studies as a barrier to reporting in at least 14 studies. Fears and concerns can be categorised into four groups: (i) child-oriented fears/concerns; (ii) family-oriented fears/concerns; (iii) legal fears/concerns; and (iv) self-oriented fears/concerns. Child-oriented fears and concerns were about reprisal against child from the family or alleged perpetrator, of altering the reporter's relationship with the child, and that report would be negative for child. Family-oriented fears and concerns were about damage incurred by making inaccurate report or wrongly accusing the family, of intrusion into family privacy, of parental denial or disapproval of reports, of offending parent(s), of damage to relationships with parent(s), and of the negative consequences for the family. Legal fears and concerns included those relating to charges or possible legal suit, of court proceedings generally, of appearing as a witness in court, of legal ramifications for false reports. Self-oriented fears and concerns were about protection of their identity as a reporter, the confidentiality of reports, about retribution to themselves as reporters, and of danger to their personal safety. Only two of these studies were conducted in Australia (Nayda, 2002; Van Haeringen et al., 1998). These studies were conducted more than a decade ago, with data drawn from relatively small samples of South Australian nurses (Nayda, 2002), and Queensland doctors (Van Haeringen et al., 1998). Further investigation of the specific fears/concerns of a broader range of mandatory reporters in Australian contexts, including for different geographical locations may be warranted given findings from another small scale Australian study of rural practitioners in Victoria which found rural placement was a barrier to reporting. Fears and concerns could then be more explicitly addressed during reporter induction and further education and training, and targeted for greatest effect.

Reporters' deeply held underlying ***beliefs*** were also found to influence reporting practice. This was particularly evident in studies with participants from diverse cultures (e.g. Ben Natan et al., 2010; Haj-Yahia & Attar Schwartz, 2008). Underlying beliefs about parental rights, cultural differences, preserving harmonious relationships, loyalty to parents, and deferral to professional hierarchies in reporting are some examples of these beliefs. Although less malleable, beliefs are thought to contribute to attitude formation and the strength of beliefs can be correlated with intention to perform a behaviour (such as reporting) (see for example Ajzen, 2005). Only one of these studies was conducted in Australia (Schweitzer et al., 2006). This study, with Queensland doctors, found their belief that abuse was a once-off incident and unlikely to be repeated was a significant predictor of failure to report.

Reporter ***self-efficacy*** with respect to reporting was also studied with higher reporting self-efficacy linked to greater likelihood of reporting. The link between reporting self-efficacy and education and training has not been explored.

Previous ***experience with and confidence in the child protection system*** (CPS) is a significant barrier to and facilitator of reporting. Negative experiences and lack of confidence in authorities as barriers to reporting were detailed in at least 13 studies. Specific issues identified included lack confidence in CPS, distrust of CPS, perceived inadequate or inappropriate responses from CPS including over-reactions, view that CPS would not investigate or would not take prompt action, delay in taking a report on the CPS hotline, feeling that CPS does not generally offer help, views of CPS inefficient, incompetent, slow, busy, underfunded, lack of feedback from CPS about reports, and lack of follow-up. Many of these issues relate to reporters' perceptions of CPS roles and effectiveness. None of the included studies specifically investigated the impact of more effective communication between CPS and mandatory reporters and thus we do not know whether improving communication and collaboration could influence reporter perceptions of and

confidence in CPS. Feedback mechanisms for mandatory reporters may be one way to create a communicative/collaborative alliance. Outside the field of child protection, the education literature indicates clearly and strongly the effectiveness of feedback (see for example Hattie, 2009). Feedback is linked to expectations, motivation, and task performance. Correctional review, focused on goals, and two-way feedback appear to be most effective. Extrinsic rewards are least effective.

Organisational/workplace factors

Organisational factors are characteristics of reporters' workplaces that may facilitate or inhibit reporting. Factors identified included the public or private nature of the context (reported specifically in studies of doctors and dentists), aspects of workplace culture such as perceived social support for reporting, time constraints of an office visit (reported in studies of doctors) and the "hassle" involved in making reports (also reported in studies of doctors). Rural location was identified in an Australian study (Francis et al., 2012) as a barrier to reporting on account of living and working in a small community.

Jurisdictional factors

Only one study included in this review investigated jurisdictional factors influencing mandatory reporting (Brosig & Kalichman, 1992). This study with psychologists in the USA, found direct effects of statutory wording on clinicians' hypothetical reporting practice as measured in vignettes. This study is part of a broader suite of studies conducted in the USA that have explored the effects of statutory wording on clinical practice. These studies were not included in the review as they did not meet inclusion criteria, but are mentioned here for completeness (see for example Brosig & Kalichman, 1992; Levi & Brown, 2005; Levi et al., 2006; Crowell & Levi, 2012).

Summary

There is a lack of rigorous Australian research on factors influencing mandatory reporting, especially for the professional groups whose reporting has on occasion presented challenges (e.g., police). There is little research generally that differentiates factors influencing mandatory reporting of specific maltreatment sub-types. To our knowledge, there are no studies that have been conducted anywhere in the world, focusing solely on factors influencing mandatory reporting of emotional abuse or neglect. This is highly relevant given the rise in reports for emotional abuse and potential for systems burden.

Mandatory reporting of child abuse and neglect is multiply determined by numerous interacting factors. Professionals' reporting of child abuse and neglect is not only dependent upon what they can "see": what has been described as their "vantage points" (Giovannoni, 1995, p.494) or what they have the opportunity to observe, that is, case characteristics. Professionals' reporting is also related to their own characteristics (such as socio-demographic features, knowledge, attitudes, and experiences), the characteristics of the organisations in which they work, and jurisdictional characteristics such as the wording of the statutes under which they work. The factors influencing reporting practice identified in this review suggest a complex and nuanced situation; mandatory reporting is clearly more complex than it is often depicted. Yet many of the factors may be malleable via legislative reform, reworking of institutional reporting procedures and guidelines, improving education and training and enhancing organisational cultures.

Table 3.1: Literature review 1: Factors influencing mandatory reporting of child abuse and neglect

Factor theme	Findings	Number of studies	Authors
Case factors (child)			
	Type of maltreatment (physical and/or sexual abuse more likely to be reported)	10	Beck & Ogloff (1995); Beck et al., (1994); Bryant & Milsom (2005); Bryant (2009); Eisbach & Driessnack (2010); O'Toole et al., (1994); O'Toole et al., (1999); Rindfleisch & Bean (1988); Saulisbury & Campbell (1985); Webster et al., (2005)
	Seriousness/severity of maltreatment (more serious/severe abuse more likely to be reported)	13	Ashton (1999); Crenshaw et al., (1995) Egu & Weiss (2003); Flaherty et al., (2008); Hawkins & McCallum (2001); O'Toole et al., (1994); O'Toole et al., (1999); Rindfleisch & Bean (1988); Saulisbury & Campbell (1985); Turbett & O'Toole (1983); Willis & Wells (1988); Zellman (1992); Zellman (1990a)
	Observed effects of maltreatment (clear negative effects more likely to be reported)	6	Azevedo et al., (2012); Eisbach & Driessnack (2010); Finlayson & Koocher (1991); Flaherty et al., (2008); Sundell (1997); Turbett & O'Toole (1983)
	Certainty of maltreatment (greater certainty of occurrence more likely to be reported)	8	Beck & Ogloff (1995); Crenshaw et al., (1993); Holland (1999); Kalichman et al., (1988); Kalichman et al., (1990); Saulsbury & Campbell (1985); Sundell (1997); Van Haeringen et al (1998)
	Disclosure of maltreatment (direct child disclosure more likely to be reported)	5	Crenshaw et al., (1995); Finlayson & Koocher (1991); Kalichman & Craig (1991); Kalichman & Craig (1993); Kalichman et al., (1988)
	Age of child (younger children more likely to be reported)	4	Janowski & Martin (2003); Kalichman & Craig (1991); O'Toole et al., (1994); Webster et al., (2005)
	Veracity of child (more likely to be reported)	2	Crenshaw et al., (1995); Eisbach & Briessnack (2010)
	Ethnicity/race (children of colour not more likely to be reported)	2	Egu & Weiss (2003); Willis & Wells (1988)

Case factors (family)			
	Family hostility/disinterest/resistance (more likely to be reported)	7	Azevedo et al., (2012); Crenshaw et al., (1995); Janowski & Martin (2003); Kalichman & Craig (1991); Kalichman et al., (1989); O'Toole et al., (1994); Sundell (1997)
	Family SES (generally, lower SES more likely to be reported)	3	Lane & Dubowitz (2007); Nelpka et al., (1981) – positive & negative assoc; Turbett & O'Toole, (1983)
	Family ethnicity/race (families of colour not more likely to be reported)	2	Nelpka et al., (1981); Turbett & O'Toole, (1983)
	Co-occurrence with intimate partner violence (more likely to be reported)	1	Davidov et al., (2012)
	Co-occurrence with substance abuse (more likely to be reported)	1	Sundell (1997)
Reporter factors			
Socio-demographics	Age (no association)	4	Ashton (1999) – no assoc; Bryant & Milsom (2005) – no assoc; O;Toole et al., (1994) – no assoc; Saulsbury & Campbell (1985) – no assoc
	Gender (mixed findings)	6	Ashton (1999) – no assoc; Bryant & Milsom (2005) – no assoc; Gunn et al., (2005) – male; Kenny (2001) – female; O'Toole et al (1994) – no assoc; O'Toole et al., (1999) – male;
	Ethnic background (mixed findings)	3	Ben Natan et al., (2012) – Jewish; O;Toole et al., (1994) – no assoc; O'Toole et al., (1999) – non-white
	Parental status (mixed findings)	5	Ashton (1999) – no assoc; Ben Natan et al., (2012) – positive assoc; Fraser et al., (2010) – sexual abuse only; Nightingale & Walker (1986) – positive assoc; O'Toole et al., (1999) – negative assoc

	Qualifications (mixed findings)	2	Haj-Yahia & Attar Schwartz (2008) – lower qualifications; O'Toole et al., (1994) – no assoc
	Years of experience (mixed findings)	15	Bryant & Milsom (2005); Bryant (2009) – no assoc; Fraser et al., (2010) – no assoc; Goldman & Padayachi (2005) – no assoc; Gunn et al., (2005) – more years; Haj-Yahia & Attar Schwartz (2008) – fewer years; Kenny (2001) – more years; Nightingale & Walker (1986) – more years; O'Toole et al., (1994) – no assoc; Saulsbury & Campbell (1985) – no assoc
Attitudes	Attitudes towards mandatory reporting (more positive attitudes, more likely to report)	20	Beck & Ogloff (1995); Ben Natan et al., (2012); Crenshaw et al., (1995); Crenshaw et al., (1993); Feng & Levine (2005); Feng & Wu (2005); Feng et al., (2010); Finlayson & Koocher (1991); Flaherty et al., (2006); Fraser et al., (2010) – emotional abuse, sexual abuse & neglect only; Goebbels et al., (2008); Haj-Yahia & Attar Schwartz (2008); Hawkins & McCallum (2001); Kalichman & Brosig (1993); King et al., (1998); Lee et al., (2007); Renniger et al., (2002); Rindfleish & Bean (1988); Zellman (1990a); Zellman (1990b)
	Attitudes towards physical/corporal punishment (more positive attitudes, less likely to report)	3	Feng & Levine (2005); Feng et al., (2010); Kenny (2004)
Knowledge	Knowledge of warning signs & indicators (greater knowledge more likely to report)	7	Beck et al., (1994); Eisbach & Driessnack (2010); Haj-Yahia & Attar Schwartz (2008) – physical abuse, emotional abuse, neglect only; Hawkins & McCallum (2001); Janowski & Martin (2003); Kenny (2004); Lee et al., (2007)
	Knowledge of reporting law / requirements / procedures (greater knowledge, more likely to report)	4	Feng & Levine (2005); Gunn et al., (2005); Kenny (2004); Renniger et al., (2002)
Education/training	Specific child protection training (more likely to report)	5	Fraser et al., (2010) – neglect only; Goldman & Padayachi (2005) – no association; Hawkins & McCallum (2001); King et al., (1998); Nightingale & Walker (1986)

	Expertise/speciality (e.g. paediatrician v general practitioner; school counsellor v teacher) (greater expertise more likely to report)	5	Kenny & McEachern (2002); Rindfleisch & Bean (1988); Uldum et al., (2010); Van Haeringen et al., (1998); Webster et al., (2005)
Fears/concerns	Fears/concerns: e.g. of inaccurate report; repercussions for child and/or family; damage to relationship with family; reporter identity disclosure; court proceedings/lawsuit; (more fears, less likely to report)	14	Abrahams et al., (1989); Blaskett & Taylor (2003); Borres & Haag (2007); Crenshaw et al., (1995); Flaherty et al., (2004); Gunn et al., (2005); Hinson & Fossey (2000); Hansen et al, (1997); Kalichman & Brosig (1993); Kenny (2001); Morris et al., (1985); Nayda (2002); Uldum et al., (2010); Van Haeringen et al., (1998)
Beliefs	Beliefs: e.g. violating parent rights; cultural differences; abuse as a single incident; other professionals should report; therapy/treatment better than reporting (less likely to report)	6	Ben Natan et al, (2010); Haj-Yahia & Attar Schwartz (2008); Hansen et al, (1997); Holland (1999); Renniger et al., (2002); Schweitzer et al., 2006
Self-efficacy	Perceived self-efficacy in reporting (higher self-efficacy, more likely to report)	6	Feng & Wu (2005); Feng & Levine (2005); Feng et al., (2010); Flaherty et al., (2006); Goebbels et al., (2008); Herendeen et al, (2014)
Previous CPS experience	Previous experience of reporting / failing to report to CPS / confidence in CPS (negative experiences/lower confidence, less likely to report)	13	Eisbach & Driessnack (2010); Finlayson & Koocher (1991); Flaherty et al., (2004); Flaherty et al., (2008); Gunn et al.,(2005); Hansen et al., (1997); Holland (1999); Jones et al., (2008); Kalichman et al., (1989); Nayda (2002); Sundell (1997); Webster et al., (2005); Zellman (1990b)
Organisational/workplace factors			
	Private vs public (public, more likely to report)	2	Morris et al., (1985); Uldum et al., (2010)
	Perceived social support for reporting (greater support, more likely to report)	1	Flaherty et al., (2008); Feng & Wu (2005); Feng & Levine (2005)
	Time pressure and limitations (barrier to reporting)	3	Borres & Haag (2007); Flaherty et al., (2004); Gunn et al., (2005)

	Location (rural location, barrier to reporting)	3	Francis et al., (2012); O'Toole et al., (1999); Webster et al., (2005)
Jurisdictional factors	Wording of reporting law (greater clarity)	1	Brosig & Kalichman (1992)

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3.2 Literature review 2: Theoretical critiques of mandatory reporting laws

Purpose

The purpose of this review was to identify and synthesise critical assessments or analyses of mandatory laws which were premised on or informed by a theoretical perspective. Theoretical perspectives offer a way of illuminating the phenomenon of child abuse and neglect, and of the nature and consequences of social and legal strategies developed to respond to it, principally in this context the strategy of mandatory reporting legislation. Informed by a theoretical perspective, critical analyses of the policy measure which is the subject of the critique can produce conclusions which occupy various points on a spectrum of support or opposition to the measure; for example:

- very strong support of the measure;
- mostly supportive of the measure while identifying some problems with it (conceptual, legal, ethical, clinical, practical);
- partial opposition to the measure in general while partly endorsing it in some form;
- complete opposition to the measure.

Definitions

The nature of a 'theoretical perspective' can be explained as one which is more than a mere personal perspective; it is an analysis based on an established theoretical framework or approach. In general, such theoretical perspectives draw on the disciplines of ethics and philosophy, and their sub-fields. The relevant perspective is used to inform a normative argument about whether a particular social policy ought to exist, or ought not to, based on a particular theoretical perspective. Hence, these kinds of critique are exercises in *normative ethics*.

Examples of the theories that may inform analyses of mandatory reporting laws include:

- Philosophical theories such as liberalism and its elements (e.g., by Locke, Mill), rights theories (including children's rights), feminism;
- Bioethics (concepts of beneficence, nonmaleficence, justice, autonomy), whether with the child, parent, family, clinician or community as the locus of concern;
- Ethical theories/moral philosophy such as:
    - *deontological ethics* i.e., that decisions should only be made informed by assessing one's duties and the rights of others (e.g., Kant; Rawls and social contractualism and its variations e.g., Okin, Nussbaum);
    - *consequentialism* i.e., a teleological approach which posits that the morality of a policy or act depends on its actual outcome; examples are utilitarian theory (a policy is justifiable if it produces the most happiness for the most people), and welfarism (a policy is justifiable if it maximises economic welfare);

- *relational ethics* i.e., the morality of a policy depends on whether it promotes interdependence and relationships in achieving ethical goals;

- *pragmatism* i.e., the morality of a policy depends on whether it works to promote social goods and beneficial social reform.

Inclusion and exclusion criteria

Literature was included or excluded based on three criteria: (i) publication type; (ii) publication topic; and (iii) approach adopted. The majority of the literature included in this review of analyses of mandatory reporting laws did not explicitly state its adopted theoretical basis, explain it, and apply it to a carefully articulated context of child maltreatment. Therefore, from a theoretical standpoint, this area of the field is relatively underdeveloped. Instead, much work explored the context and developed an argument based on an unarticulated theoretical position, which was usually a pragmatic or consequentialist argument about the asserted or real outcomes of mandatory reporting. The shortcoming of such an approach is that it rests on less thoroughly explored assumptions and principles, and does not fully explore or apply the quasi-theoretical principles to the entire situation. However, this work can still present some useful insights, and accordingly we decided to include scholarly refereed work which adopted such an approach. This decision also resulted in the review not being so small as to be unhelpful.

Included papers

- Publication type: scholarly peer-reviewed works including journal articles, book chapters

- Publication topic: paper was about mandatory reporting legislation concerning child abuse and neglect (either child abuse and neglect generally, or any specified type or types of abuse or neglect); that is, legislation that has as its specific nature and purpose the reporting of child abuse and neglect

- Approach adopted: (a) papers that explicitly or implicitly used one or more modes of 'big T' Theory (e.g., an expressly stated liberal critique, rights-based critique, feminist critique, or economic critique) to conduct a normative or theoretical critique of the laws; (b) papers that explicitly or implicitly used one or more modes of 'little T' theory (e.g., arguments based on the practical results or consequences of the laws, which implicitly relate to a 'Big T' theory but without expressly using such a framework) to conduct a normative or theoretical critique of the laws.

Excluded papers

- Publication type: non-peer reviewed works including conference papers, professional opinion

- Publication topic: papers about reporting policy, procedures or guidelines as distinct from mandatory reporting legislation

- Approach adopted: (a) papers that simply made assertions about the laws and/or their effects without being either explicitly or implicitly underpinned by a theoretical basis; (b) papers about empirical studies of reporting, attitudes, experiences, training etc; (c) mere replication or adoption of a theory without exploration or argumentation (e.g. papers that made only a bare comment on mandatory reporting legislation).

Thematic analysis of theoretical critiques: Key findings

Thematic outlines of theoretical analyses in favour of the laws, and opposing the laws, are depicted in Tables 2 and 3 respectively. The tables list authors of key works in the field, identify the theoretical perspective/s adopted in these works, and detail the key themes or arguments embodied in the works. Full citations are presented in the reference list.

Five key findings were identified from the analysis of theoretical critiques in the included works.

1. Lack of true theoretical critiques

Our review revealed a dearth of true theoretical critiques of mandatory reporting laws, either as a whole phenomenon of study, or as applied to specified types of child abuse or neglect, or in relation to specific reporter groups.

2. Other weaknesses in the literature

Much of the literature – both supporting and opposing mandatory reporting laws - does not distinguish between maltreatment types, or extents of harm, or age of the child. Further, most of the work in this field does not distinguish between reporting by different mandated reporter groups, and between mandated reporters and non-mandated reporters. As well, a good deal of the scholarship was situated in the USA and the Australian State of New South Wales in particular contexts at particular times when mandatory reporting laws were conceptually broader than at other times, applying to a broader concept of harm or risk of harm. Some work develops an argument around one theme and draws a broad generalised conclusion about the laws. Finally, much work using a pragmatic or consequentialist approach operated on an assumption that all unsubstantiated reports are unwarranted reports; an assumption that has since been cogently criticised and shown to be misconceived.

3. Major key themes/arguments in favour of the laws either in whole or in part

These arguments have been based primarily on grounds regarding children's rights to safety, bioethics and consequentialism. Key arguments are that the most serious abuse affects very young children who cannot help themselves; reporting is a method of intervening in these cases to protect the child and without these reports, the cases will not come to the attention of welfare and protective agencies. It is argued that child abuse remains underreported and mandatory reporting increases case identification, enables health rehabilitation to be provided to the child, and can prevent the escalation of abuse and subsequent cost. Mandatory reporting increases awareness of child maltreatment and increases reports and case identification; a system of non-mandatory reporting does not produce comparable compliance. Child abuse is both a matter requiring intervention to assist the child and a State/public concern which legitimizes a necessary level of intrusion in the private sphere. Mandatory reporting of serious child abuse and neglect is consistent with multiple strands of political philosophy and normative ethics. Both older and more recent work accepts that mandatory reporting laws are a beneficial approach which contributes to child protection but must be appropriately drafted, reporters must be properly trained, and child protection systems must be properly resourced to respond to reports.

Studies relevant to the major key themes/arguments in favour of the laws are shown in Table 3.2.

4. Major key themes/arguments opposing the laws either in whole or in part

These arguments have been based primarily on consequential grounds regarding the alleged effect of mandatory reporting laws on child protection systems as a whole, if those systems are not adequately resourced. The concern behind these arguments is that mandatory reporting of child abuse and neglect results in a large increase in reported cases, most of which are unwarranted, with which the child protection system – on the assumption that it is under-resourced, and will remain so – is unable to cope.

The argument proceeds that these additional reports divert scarce resources, so that there are fewer resources available to deal with already known cases. In addition, with added resources being allocated to mandatory reporting and responses to it – a form of tertiary and secondary prevention - there are fewer resources available for primary prevention. A distinct body of work opposes the laws when applied to existing therapeutic relationships. Further work focuses on the argument that investigations of unsubstantiated reports cause trauma to the family and violate parental privacy and autonomy.

Studies relevant to the major key themes/arguments opposing the laws are shown in Table 3.3.

5. Presence/absence of overall consensus

The literature reveals theoretical and quasi-theoretical arguments in favour of the laws, and against them. Hence, there is a lack of consensus in the field about the overall theoretically-based merits of mandatory reporting laws, and about specific themes in relation to them. Often, directly opposing arguments can be found on the same theme. However, there appears to be more support overall for reporting laws regarding physical and sexual abuse; and more opposition to reporting laws regarding emotional abuse, neglect, and exposure to domestic violence.

Table 3.2: Studies including theoretical analyses in favour of mandatory reporting laws

Authors	Theoretical perspective(s)	Key themes/arguments
Kempe et al 1962; Birrell et al 1966; Paulsen 1966; Paulsen et al 1967	Children's rights to safety; bioethics	A duty to report cases of suspected serious child physical abuse is required to bring previously unknown cases to the attention of welfare agencies. Medical practitioners are skilled professionals who can recognize child abuse, but generally do not know how to deal with serious child physical abuse, or choose to ignore it because of discomfort and non-recognition of the child's right to safety; a duty to report it is required to overcome this gaze aversion
Besharov 2005; Colclough 1972; Finkelhor 1990, 2005; Kempe et al 1962; Maidment 1978; Mathews & Bross 2008; Mathews 2012; Mathews 2014a; Paulsen 1966; Takis 2008; Yelas 1992	Bioethics, consequentialism, pragmatism, children's rights; Mill; Locke	Mandatory reporting enables protection to be provided to children in situations of life-threatening harm and other serious harm; a system of non-mandatory reporting does not produce appropriate compliance
Al-Eissa et al 2010; Bell & Tooman 1994; Besharov 1985; Lamond 1987; Mathews 2014a; Paulsen 1966; Tomison 2002; Webberley 1985	Bioethics, consequentialism, children's rights	Mandatory reporting increases awareness of child maltreatment and increases reports and case identification
Drake & Jonson-Reid 2007; Finkelhor 1990; Giovannoni 1995; Maidment 1978; Mathews 2012; Mathews 2014a	Bioethics, consequentialism, children's rights	Child abuse remains underreported and mandatory reporting increases case identification
Kempe et al 1962; Maidment 1978; Mathews 2012; Mathews & Bross 2008; Mathews 2014a; Paulsen 1966; Paulsen et al 1967; Van Dokkum 1996; Yelas 1992	Children's rights; bioethics; pragmatism; consequentialism	The most serious abuse affects very young children who cannot help themselves; reporting is a method of intervening in these cases to protect the child; without these reports, the cases will not come to the attention of welfare/protective agencies
Kempe et al 1962; Mathews & Bross 2008; Mathews 2012; Meriwether 1986	Bioethics, consequentialism, children's rights	Reporting enables health rehabilitation to be provided to the child, and can prevent the escalation of abuse and subsequent cost

Finkelhor 1990, 2005; Mathews & Bross 2008; Mathews 2012; Mendes 1996; Meriwether 1986	Bioethics; pragmatism; consequentialism	Mandatory reporting laws are a beneficial approach which contributes to child protection but must be appropriately drafted, reporters must be properly trained, and child protection systems must be properly resourced to respond to reports
Mathews et al 2009; Paulsen 1967	Pragmatism	A legislative reporting duty protects the professional reporter, who in any event is complying with an ethical duty, in a way a policy duty or a voluntary duty cannot
Besharov 1990	Pragmatism; consequentialism	Mandatory reporting duties have reduced child fatalities
Greipp 1997; Katner et al 2012; Kim et al 2012; Mathews 2012; Walters 1995	Bioethics, deontology	Mandatory reporting is consistent with ethical professional duties
Bala et al 1986; Finlayson et al 1991; Yelas 1992	Children's rights, liberalism, feminism	Child abuse is both a matter requiring intervention to assist the child and a State/public concern which legitimizes a necessary level of intrusion in the private sphere
Mathews 2014b	Children's rights, liberalism, Mill, Locke, feminism, Rawls's revised social contract theory, Nussbaum's Capabilities Approach	Mandatory reporting of serious child abuse and neglect is consistent with multiple strands of political philosophy and normative ethics
Anderson et al 1993; Harper & Irvin 1985; Kalichman & Craig 1991; Levine & Doueck 1995; Watson & Levine 1989	Bioethics; pragmatism; consequentialism	Reporting does not necessarily affect existing therapeutic relationships; it can even assist in therapy and strengthen the alliance between patient and therapist

Drake 1996; Drake & Jonson-Reid 2007; Hussey et al 2005; Kohl et al 2009	Bioethics; pragmatism; consequentialism	Little difference exists in service need between substantiated and unsubstantiated cases and reporting enables assistance to be provided to a large group of children and families in need of protection/assistance
Barth 2013; Finkelhor 1990, 2005; Mathews 2012	Bioethics; pragmatism; consequentialism	Legislative reporting duties do not cause intolerable overreporting; much 'overreporting' involves multiple reports about the same children, and reporting of some kinds of abuse by some groups of reporters
Drake & Jonson-Reid 2007; Finkelhor 1990, 2005; Dalziel et al 2007	Economics; consequentialism	Legislative reporting duty does not diminish the available resources for child protection
English et al 2002; Finkelhor 1990, 2005; Fryer et al 1990	Bioethics; pragmatism; consequentialism	Inappropriate reports do not cause intolerable or unduly traumatic investigations of the family and child
Rankin & Ornstein 2009	Bioethics; children's rights	Legislative reporting duties are a necessary response in situations of children's exposure to domestic violence to enable case identification, service provision, rehabilitation and prevention
Besharov 1985; Smith et al 1985; Mathews 2012; Melton & Davidson 1987	Bioethics; pragmatism; consequentialism	Mandatory reporting laws should be restricted to cases of serious harm and should not apply to all cases of harm
Wald 2013	Bioethics; children's rights; relational ethics; pragmatism; consequentialism	Legislative reporting duties (and the child protection system) are suitable for physical abuse and sexual abuse to assist child protection; but not for emotional abuse and neglect, which are better and more efficiently addressed through other measures

Table 3.3: Studies including theoretical analyses opposing mandatory reporting laws

Authors	Theoretical perspective/s	Key themes/arguments
Ainsworth 2002; Ainsworth & Hansen 2006; Besharov 2005; Fraser 1978; Hansen & Ainsworth 2013; Hutchison 1993; Lonne et al 2009; Lukens 2007; Melton 2005; Thompson-Cooper et al 1993; Van Voorhis et al 1998; Wald 2013	Pragmatism; consequentialism	Legislative reporting duties (especially/simply when not appropriately restricted to cases of sufficiently serious harm) cause overreporting, which causes strain on the under-resourced CPS system, which diminishes the resources available for child protection
Besharov 1993; Davies 2010; Dumbrill 2006; Hutchison 1993; Lukens 2007; Thompson-Cooper et al 1993; Wald 1975	Parental autonomy; parental privacy; bioethics	Inappropriate reports can lead to welfare agency investigations of the family and child, which can cause trauma to the family
Anderson et al 1993; Appelbaum 1999; Brown et al 2004; Geidermann 2012; Levine & Doueck 1995; Thompson-Cooper et al 1993	Bioethics	Reporting by a clinical therapist can undermine or jeopardise an existing therapeutic relationship
Berlin et al 1991	Pragmatism; consequentialism	Parental knowledge of a professional's reporting duty reduces the likelihood of parental help-seeking
Ainsworth 2002	Pragmatism; consequentialism	Mandatory reporting does not reduce the overall prevalence of child maltreatment
Lindsey 1994	Pragmatism; consequentialism	Mandatory reporting has not reduced fatalities
Pelton 1989	Consequentialism; economics; social class; social justice	Mandatory reporting is an unjustified and coercive social control measure which imposes middle class values on the poor

Smith et al 1985	Bioethics	The reporting duty can breach the professional's duty of confidentiality to the patient
Melton 2005; Worley & Melton 2014	Pragmatism; consequentialism	Mandatory reporting was a strategy designed to respond to a group of cases which was anticipated to be much smaller than actually exists
Cross et al 2012; Humphreys 2008	Women's rights and autonomy; pragmatism; consequentialism	Apart from cases that are clearly seriously harmful for the child, legislative reporting of children exposed to domestic violence is not justified or efficient theoretically, conceptually or practically

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Appendix 1
Research Approach

APPENDIX 1: RESEARCH APPROACH

Overview

The research project entitled *Child Abuse and Neglect: A Socio-legal study of mandatory reporting in Australia* was funded by the Commonwealth Department of Social Services, and administered through the Victorian Department of Human Services in 2013-2014. The project arose as a result of two coinciding events. First, the *Protecting Victoria's Vulnerable Children Inquiry* in 2012 had made a recommendation that the Victorian Government obtain the agreement of all jurisdictions to undertake a national evaluation of mandatory reporting schemes with a view to *identifying opportunities to harmonise the various statutory regimes* (Cummins, Scott, & Scales, 2012, recommendation 46, p 349). Second, an approach had been made by the research team[62] to the Victorian Government to conduct a very similar research project, which in some ways was broader than the funded project,[63] and in other ways narrower.

The research project and its central questions were designed through liaison and negotiation between the research team and the Victorian Department to meet the needs of the Victorian Department and the recommendation in the Inquiry. **The essence of the research project is to explore in every Australian State and Territory the reporting by different reporter groups of different types of suspected child abuse and neglect**. Accordingly, the research project is *not* aimed at exploring reports of family support issues or low-level child welfare issues which are normally termed 'child concern reports'.

Stage 1: Legal doctrinal and historical analysis of legislative mandatory reporting duties in each Australian State and Territory

Stage 1 of the project conducted a legal doctrinal and historical analysis of legislative mandatory reporting duties in each of Australia's eight States and Territories, and changes in those duties, over a decade. This part of the project identified which persons were mandated reporters, for which types of child abuse and neglect, in each jurisdiction, at 1 January 2003, and every change in the legislative reporting duties over the decade 2003-2012. This analysis enabled the research team to identify the nature and precise timing of

[62] Initially, by Ben Mathews, Leah Bromfield and Kerryann Walsh. Graham Vimpani was subsequently added to the team. The team combine their diverse *disciplinary backgrounds* (Mathews: law; Bromfield: psychology; Walsh: education; Vimpani: medicine) and *jurisdictional locations* (Mathews and Walsh: Queensland; Bromfield: South Australia; Vimpani: New South Wales). The team are: Associate Professor Ben Mathews (QUT Faculty of Law, Australian Centre for Health Law Research), Associate Professor Leah Bromfield (University of South Australia, Australian Centre for Child Protection), Associate Professor Kerryann Walsh (QUT Faculty of Education, Children and Youth Research Centre), Professor Graham Vimpani (University of Newcastle).

[63] The second part of the initially proposed study, which complements the funded project, broadened the project as it would explore the influence of *contextual factors* (e.g. reporter training and knowledge, child's ethnicity, gender) on mandatory reporting, including failure to report, and unjustifiable reports, with a focus on four key reporter groups (police, nurses, doctors, and teachers). Key questions explored in this second part of the study, using qualitative and quantitative methods would be: (1) What contextual factors influence the failure to report child abuse and neglect, and the making of unjustifiable reports, and to what extent? (2) How effective are current mandatory reporter training models? (3) Are barriers to effective reporting modifiable through reporter training? The initially proposed study was narrower in only focusing on three selected jurisdictions rather than including all eight States and Territories.

significant changes in the mandatory reporting duties, and to identify at every point in time over the decade within each jurisdiction which persons were mandated reporters, and for which maltreatment types. It also enabled a comparative analysis across jurisdictions of which reporter groups were and were not mandated reporters, and for which maltreatment types.

This legal doctrinal and historical analysis provides the Victorian Government with information about differences across jurisdictions in the mandatory reporter groups, and the types of abuse and neglect they are required to report. It therefore *identifies opportunities to harmonise the various statutory regimes* in mandated reporter groups and types of maltreatment which these groups are required to report. However, decisions on whether, how, and to what extent to harmonise the statutory regimes require policy deliberations and decisions by various government departments.

Stage 2: Numbers and outcomes of notifications of each type of child abuse and neglect: Descriptive analysis and data mining

Stage 2 of the project explored numbers and outcomes of 'notifications' of each type of child abuse and neglect (physical abuse, sexual abuse, psychological or emotional abuse, and neglect) made by mandated reporter groups and other reporter groups, in each jurisdiction, for each year over the decade 2003-2012. The purpose of this aspect of the project was to use data mining and summary descriptive statistics to identify the reporting practice of different reporter groups for different types of child abuse and neglect, to identify significant trends in reporting within jurisdictions over time, and to compare reporting practices with legislative requirements and changes in legislative mandatory reporting laws over the decade.

Access to data

This stage of the project relied on each jurisdiction providing unit record data regarding notifications of child abuse and neglect over the decade. Jurisdictions in Australia have differences in the process by which they receive 'reports' of suspected abuse and neglect (these are termed **'child protection notifications'** for other data recording purposes eg the annual Australian Institute of Health and Welfare Child Protection Australia report, and its 'counting rule' for child protection notifications), and of other matters concerning children's welfare (these are termed **'child concern reports'** for the AIHW data recording purposes). They also have differences in their classification and treatment of these initial intakes. Because of the parameters of our research project, our focus was on reports of suspected child abuse and neglect (classed as 'notifications'); we did not seek to explore *all* reports of *any* matters concerning children (ie those concerning children's welfare as well as those relating to suspected abuse or neglect). Further information in this regard is depicted in Appendix 1 Table 1 (*Comparative table of child protection system intake processes and our data collection approach*) and Appendix 1 Figure 1 (*Key points in the child protection system intake process*).

Data collection

Requests to provide data were made to each State and Territory government department responsible for receiving intakes concerning suspected child abuse and neglect. Data were provided to the research team at various times over the period 21 October 2013 to 25 July 2014, often with further discussions and negotiations required to facilitate complete submission of data and to clarify other aspects of the data provided. Four jurisdictions provided data exactly as requested (Australian Capital Territory, Queensland, Victoria, Western Australia). One jurisdiction, Tasmania, provided data as requested but only for nine rather than 10 years (i.e. 2004-2012). Two jurisdictions (Northern Territory and South Australia) provided aggregate summary data for the decade rather than unit record data. One jurisdiction (New South Wales)

provided summary aggregate data only for the years 2010-2012, and some other aggregate data for prior years, which enabled only partial exploration of the research questions for that jurisdiction.

Data analysis

Data mining, also termed *knowledge discovery*, refers to the process of analysing large datasets to isolate significant or noteworthy patterns and trends. The process includes *cluster analysis* (identifying groups of data records), *anomaly detection* (identifying unusual patterns or outlier trends), *association rule learning* (identifying relationships between variables), and *summarisation* (generating a more concise representation of the dataset including creation of reports and summaries) (Han & Kamber 2012; Stephens et al 2006).

Key steps in the data mining process adopted in this project were:

(1) *selection of data and obtaining data* (research project conceptualisation informing the nature of the request for data; requesting the relevant data in useable form from government child protection departments in each of the eight jurisdictions; receiving the data in excel spreadsheets containing unit record data, or for two jurisdictions, aggregate summary data, and for one jurisdiction, some aggregate tables);

(2) *data pre-processing*, which includes data cleaning, including removing missing and irrelevant data (this included removing data where the coded maltreatment category was 'not stated' or 'other'), and collation of the data;

(3) *data mining*, which includes:

- *cluster analysis*: for example, identifying groups of records about reports by specific reporter groups, about specific types of abuse and neglect;
- *anomaly detection*: for example, identifying shifts in numbers and or outcomes of reports of a specific type of abuse, or by a specific reporter group, in any given year or as a sustained trend over an extended period;
- *association rule learning*: for example, identifying relationships between a particular reporter group and their reports of a specific type of abuse, and between the reports made by a particular report group and the outcomes of those reports; and
- *summarisation*: generation of full data reports, as well as executive summaries and policy briefs.

Interpretation of data

The patterns and trends identified in the data mining process then must be interpreted by situating them in the context of relevant legal and other contextual factors. Due to the scope of the project (for example, noting the limitation produced by the fourth qualitative stage not being funded), it was not possible for the research team to identify and evaluate the impact of *all* factors impacting reporting practice generally, separated by reporter group, or by type of abuse or neglect.

However, major **legal factors** were able to be considered, namely the presence and nature of mandatory reporting duties, and the timing of the introduction of new legislative mandatory reporting duties. As well, we were also able to consider major known **contextual factors** which would also likely influence trends in numbers and outcomes of reports. Some of these are factors identified in previous analyses of the approaches adopted by respective State and Territory systems such as agency intake methods, nomenclature, and the processing of intakes (Holzer & Bromfield, 2008). For example, the characterisation of an intake as a '**notification'** is affected by factors including whether the caller or the agency defines the intake. In the ACT and Tasmania, intakes are *caller-defined*, producing higher numbers of 'notifications', and Victoria has a similar but more rigorous approach; in contrast, in other jurisdictions the intake is

agency-defined: that is, the agency determines whether the intake is a 'notification' regarding suspected child abuse or neglect, or is a less serious 'child concern' report regarding a child's overall welfare). Agency decisions about whether to **investigate** a notification or not are influenced by multiple factors including: differences in the availability of alternative diversionary services, and different levels of resources available to support investigations. An agency finding that an investigated notification is '**substantiated'** is influenced by multiple factors including:

- differences in the availability of alternative diversionary services (where a notification is referred to such a service, this will not be counted as a substantiated notification);
- different thresholds for reaching a finding of 'substantiated';
- availability of evidence of harm in any given case even where there is sufficient evidence of abuse or neglect;
- availability of evidence of abuse or neglect in any given case even where there is sufficient evidence of harm;
- whether the jurisdiction focuses on evaluating substantiation of existing harm, or risk of harm occurring in the future.

Other important contextual factors affecting numbers of notifications and responses to them would include locally-situated events. These could include events and developments such as:

- the presence of child protection inquiries or reports;
- high levels of media attention on particular cases or departmental processes;
- introduction of a new industry-based reporting policy such as a standard operating procedure for police;
- changes to child protection agencies (such as an influx of funding or staff) and their approaches;
- heightened reporter education via awareness-building by professional education, media campaigns or other strategies; and heightened sensitivity of the general public to a particular form of child abuse or neglect created by policy, media or social discourse.

To gain a more nuanced appreciation of the kinds of contextual factors that may have influenced the data in this study, and to supplement their own knowledge of contextual factors, the research team invited and held meetings with senior staff in State and Territory departments as critical friends to elicit their views about what might underpin key findings from the data. Their accounts were informed by their knowledge of local contexts and agency developments. These were noted and carefully considered by the research team in their interpretations of the data.

Contributions to knowledge

Despite these multiple complexities, the descriptive statistics and data mining facilitate understandings of important elements of the context, especially *within jurisdictions* annually and over the decade. This is important because it provides more nuanced insights into the reporting practices of different reporter groups for different types of abuse and neglect, rather than simply aggregating all reports of all kinds of abuse and neglect by all reporter groups, and drawing undifferentiated conclusions about the nature and outcomes of 'reporting of child abuse and neglect'.

This approach has been urged in research by the lead investigator, based on the notion of a *differentiation thesis* (Mathews, 2014; Mathews, 2012). It proceeds from the basis that heterogeneity exists across both reporter groups, and types of abuse and neglect. It proposes that because of the differential nature of various reporter groups, and the differentiation between types of child abuse and neglect, there are likely to be significant differences amongst various reporter groups' reporting practices for different types of child abuse and neglect. Gaining a detailed understanding of specific components of different reporter groups' reporting practices regarding different types of abuse and neglect provides more sophisticated insights into:

- the nature of reporting trends;

- where reporting appears to be more and less effective; and
- where efforts to improve practice may be best directed.

Systemic differences between jurisdictions limit the extent to which *cross-jurisdictional* comparisons can be made. However, some comparisons may be possible where sufficient similarities exist, and/or where clear and significant trends are identified in the data. This is especially so where, by all accounts, there appears to be only one significant differentiating variable, such as the presence or absence of a mandatory reporting duty.

Effectiveness of reporting practices

This part of the project could also assist in informing government departments in their assessments of the *effectiveness* of reporting practices. While there are challenges in conceptualising how 'effectiveness' of reporting may be evaluated, it seems reasonable to proceed on the basis that identification of trends in *numbers* of reports and in *outcomes* of reports, placed in the context of legislative mandatory reporting duties and changes in them, could provide some useful information contributing to any assessment of the effectiveness of reporting practice.

Accordingly, the research project provides detailed data in each jurisdiction specific to the reporting practices of key reporter groups, about specific types of abuse and neglect, over time. In addition, to provide meaningful findings for individual State and Territory governments (but not for strict cross-jurisdictional comparison) about the proportional contribution to reporting made collectively by their jurisdiction's major occupational reporter groups, we conducted some analyses by combining the reporting practice of the 'major mandated reporter groups' in the State/Territory. In doing this, we adopted a similar approach for all jurisdictions, presenting the combined practice of four key groups who collectively make the vast majority of all reports by mandated reporters: police, teachers, doctors and nurses. These groups were chosen because generally they were: (1) clearly defined occupational/professional reporter groups; (2) groups who make a significant contribution to reporting; (3) groups designated as mandated reporters under the legislation; (4) designated as mandated reporters for the whole decade; and (5) data was individually available for analysis regarding these groups. For some jurisdictions (Qld, WA), one or more of the four groups had not always been mandated by law, but they were selected because they nevertheless made a large contribution to reporting practice. For four jurisdictions (ACT, NT, SA, Tas), one variation was necessary to this approach, including two additional groups (social workers and childcare workers) because they met the five conditions stated above.

The substantiated report caveat. A caveat must be noted about interpreting data on the outcomes of reports for this purpose, as it has been consistently concluded that 'unsubstantiated' notifications do not differ markedly from 'substantiated' notifications in service need (Drake, 1996; Hussey, et al., 2005; Kohl, Jonson-Reid, & Drake, 2009). However, where enabled by the data obtained, some tentative conclusions may be drawn concerning ***measures of effectiveness*** based on the following assessments per annum and over time, for different maltreatment types, of:

- the contribution of mandated reporter groups and other reporter groups to total numbers of notifications and total numbers of substantiated notifications;
- comparison of numbers and outcomes of notifications across jurisdictions where only one jurisdiction had mandatory reporting;
- exploration of changes in numbers and outcomes of notifications after introduction of the legislative mandatory reporting duty;
- number of notifications by mandated reporters which were screened out at intake;
- extent of the growth in the number of children involved in reports by mandated reporters;
- other notable trends in reporting practice.

This stage of the project therefore generates evidence in each jurisdiction about the reporting practice of different reporter groups regarding different types of abuse and neglect, which can inform the *identification of opportunities to harmonise the various statutory regimes*. However, decisions on whether, how, and to what extent to harmonise the statutory regimes require policy deliberations and decisions by various government departments.

Stage 3: Literature reviews

Stage 3 of the project conducted two systematized reviews (Grant et al 2009) with rapid evidence synthesis (Gannan, Ciliska, & Thomas, 2010; Khangura, Konnyu, Cushman, Grimshaw, & Moher, 2012). The first review concerned factors influencing mandatory reporting of child abuse and neglect. The second review concerned theoretical critiques of mandatory reporting laws. A selection of databases was generated and lists of search terms were developed. Inclusion and exclusion criteria were developed, informed by the focus of the reviews and the standard of evidence and scholarship required.

This stage of the project therefore contributes to the *identification of opportunities to harmonise the various statutory regimes*. More specifically, the findings in this stage of the project from the review of factors influencing reporting may also inform further work in developing strategies for policy and practice which can optimise the conditions for mandatory reporting; for example, in enhancing reporter training for specific professional groups and in specific domains. Findings in this stage of the project from the review of theoretical critiques may shed light on the nature, presence and strength of theoretical underpinnings for mandatory reporting law, both generally, and for specific maltreatment types. However, decisions on whether, how, and to what extent to harmonise the statutory regimes require policy deliberations and decisions by various government departments.

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Appendix 1 Table 1 and Figure 1

Appendix 1 Table 1 provides a comparative table of child protection system processes regarding 'reports' or 'intakes' and responses to them, and our data collection approach. Three jurisdictions have caller-defined approaches (ACT, Tasmania and Victoria) and the other five jurisdictions have agency-defined approaches.

Appendix 1 Figure 1 depicts key points in the child protection system intake process: receipt and processing of reports/intakes regarding child abuse and neglect, and child welfare.

Appendix 1 Table 1: Comparative table of child protection system intake processes and our data collection approach

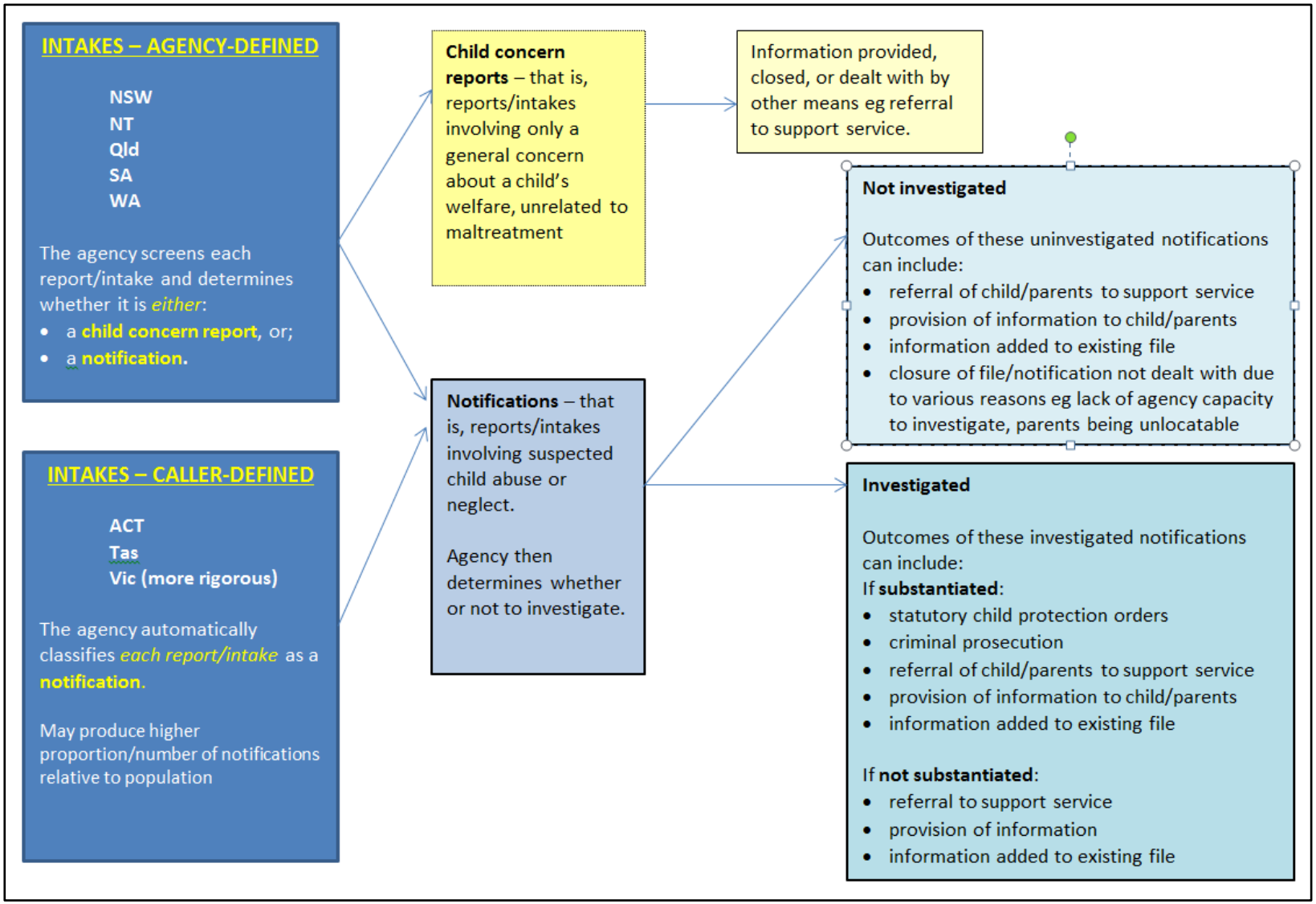
Jurisdiction	Child protection system intake and response processes	Outline of data collection approach
ACT	In the ACT, initial 'reports' or 'intakes' are **'caller-defined'** meaning that nearly all intakes will be initially classified as 'notifications'. This has the effect, relative to other jurisdictions which do not employ this approach, of inflating the number of 'notifications'. The agency then determines whether the 'notification' has sufficient information to require an investigation.	We requested only data on notifications of child abuse and neglect. Because of the approach taken in the ACT to defining 'notifications', we received this data, but it will reflect an inflated number of initial notifications.
TAS	In Tasmania, 'reports' or 'intakes' are **'caller-defined'** meaning that nearly all intakes will be initially classified as 'notifications'. This has the effect, relative to other jurisdictions which do not employ this approach, of inflating the number of 'notifications'. The agency then determines whether the 'notification' has sufficient information to require an investigation.	We requested only data on notifications of child abuse and neglect. Because of the approach taken in Tasmania to defining 'notifications', we received this data, but it will reflect an inflated number of initial notifications. We did not request data on reports made under Tasmania's differential response system (Gateways) as the study is focused on reports of child abuse and neglect of a higher level of seriousness. Data was provided for the years 2004-2012.

Jurisdiction	Child protection system intake and response processes	Outline of data collection approach
VIC	In Victoria, 'reports' or 'intakes' are **'caller-defined'** meaning that most intakes will be initially classified as 'notifications'. However, Victoria adopts a more stringent approach to this than in Tasmania and the ACT. Intakes are recorded as 'notifications' when the reporter *either* expresses significant concern for the wellbeing of a child, or believes that a child is in need of protection. This may have the effect, relative to other jurisdictions which do not employ this approach, of somewhat inflating the number of 'notifications'. The agency then determines whether the 'notification' has sufficient information to require an investigation.	We requested only data on notifications of child abuse and neglect. Because of the approach taken in Victoria to defining 'notifications', we received this data, but it will reflect an inflated number of initial notifications. We did not request data on reports made under Victoria's differential response system (ChildFIRST) as the study is focused on reports of child abuse and neglect of a higher level of seriousness.
NSW	In NSW, all initial 'reports' or 'intakes' are first screened by the agency to determine if they meet the threshold of 'risk of significant harm'. These reports are the NSW 'notifications'; those that do not meet the threshold are classed as 'child concern reports'. Hence, 'reports' or 'intakes' are **'agency-defined'**: the child protection agency determines at intake whether the intake is a child concern report or a child protection notification. The agency then determines whether the 'notification' has sufficient information to require an investigation.	We requested only data on notifications of child abuse and neglect. We did not request data on reports made under New South Wales's differential response system (child wellbeing units) as the study is focused on reports of child abuse and neglect of a higher level of seriousness. We were provided only with data on reports of significant harm for 2010-2012, and earlier summary tables showing partial data on reports of significant harm.
NT	In the Northern Territory, 'reports' or 'intakes' are **'agency-defined'**: the child protection agency determines at intake whether the intake is a child concern report or a child protection notification. The agency then determines whether the 'notification' has sufficient information to require an investigation.	We requested and obtained only data on 'reports of child abuse and neglect' and therefore obtained data on notifications.

Jurisdiction	Child protection system intake and response processes	Outline of data collection approach
QLD	In Queensland, all matters reported to Child Safety are classed as '**intakes'**. An intake is then screened and can be classed as either being (1) a **child concern report** (if it is simply a general low-level concern about a child's welfare re the home environment or the standard of care the child is receiving); or (2) a **child protection notification** (if it is assessed as meeting the threshold of being related to child abuse or neglect). Hence, intakes are **'agency-defined'**: the child protection agency determines at intake whether the intake is a child concern report or a child protection notification. The agency then determines whether the 'notification' has sufficient information to require an investigation.	We requested and obtained only data on 'reports of child abuse and neglect' and therefore obtained data on notifications.
SA	In South Australia, 'reports' or 'intakes' are **'agency-defined'**: the child protection agency determines at intake whether the intake is a child concern report or a child protection notification. The agency then determines whether the 'notification' has sufficient information to require an investigation.	We requested and obtained only data on 'reports of child abuse and neglect' and therefore obtained data on notifications.

Jurisdiction	Child protection system intake and response processes	Outline of data collection approach
WA	**From 2003-2005**, all 'reports' or 'intakes' were initially classed by the agency as 'child concern reports' and were then screened by the agency. After screening, an intake was classed as either being (1) a **child concern report** (if it is simply a general low-level concern about a child's welfare re the home environment or the standard of care the child is receiving); or (2) a **child maltreatment allegation** (akin to a 'child protection notification') if it is assessed as meeting the threshold of being related to child abuse or neglect. • In Western Australia in this period, virtually all intakes classed as child maltreatment allegations were investigated. From **1 March 2006 to 6 March 2010**, all intakes were classed initially as 'concerns for a child's wellbeing' (akin to a 'child concern report'). The agency then screened the intakes and classed them as either being (1) a **child concern report** (if it is simply a general low-level concern about a child's welfare re the home environment or the standard of care the child is receiving); or (2) a **child protection notification** (if it is assessed as meeting the threshold of being related to child abuse or neglect). • The agency then determines whether the 'notification' has sufficient information to require an investigation. From **6 March 2010**, all intakes were classed initially as 'initial inquiries for child concern' (akin to a 'child concern report'). The agency then screened the intakes and classed them as either being (1) a **child concern report** (if it is simply a general low-level concern about a child's welfare re the home environment or the standard of care the child is receiving); or (2) a **child protection notification** (if it is assessed as meeting the threshold of being related to child abuse or neglect). • The agency then determines whether the 'notification' has sufficient information to require an investigation. Hence, intakes are **'agency-defined'**: the child protection agency determines at intake whether the intake is a child concern report or a child protection notification.	We requested and obtained only data on 'reports of child abuse and neglect' and therefore obtained data on notifications. Because of the change in the recording system, our analysis of the WA data is focused on reporting from 2006 onwards.

Appendix 1 Figure 1: Key points in the child protection system intake process: receipt and processing of reports/intakes regarding child abuse and neglect, and child welfare



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