LEGAL STUDIES

Mandatory reporting of child abuse – a step in the right direction?

Daniel Valerio died in September 1990, after brutal abuse by his step-father, now imprisoned after a highly public trial accompanied by great media and public outcry.[1] Despite its previous support for a continuation of 'voluntary' reporting, the response of the Victorian Government to public outrage at Daniel's situation was to signal the introduction of mandatory reporting, and to announce another review of the child protection system. Interestingly, when the results of that review, undertaken by Justice Fogarty of the Family Court, were released in September 1993, the Victorian Government moved quickly to distance itself from what were serious criticisms of the resourcing and practice of the Victorian system.[2]

The Victorian legislation

Mandatory reporting of child abuse was introduced in Victoria through amendments in May 1993 to the *Children and Young Persons Act 1989* (Act No. 10/1993). The amending legislation provides that the purpose of the legislation is to:

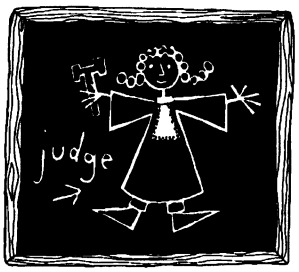
> ... to require the members of certain professional groups to report cases where they believe on reasonable grounds that a child is in need of protection because of physical injury or sexual abuse . . . [s.1(a)].

The Act introduces an amendment to s.64 of the *Children and Young Persons Act* requiring the reporting of suspected abuse by designated professional people who '. . . in the course of practising [their] profession or carrying out the duties of [their] office, position or employment . . .' form the belief *on reasonable grounds* that a child is in need of protection due to physical or sexual abuse (emphasis added). The Act by s.64(1C) encompasses various professions, including medical practitioners and nurses, psychologists, social workers, teachers, childcare workers, social workers and youth workers, although the Act will apply to each group only after being so designated by Order of the Governor in Council. To date, only police, medical and nursing professions have been mandated to report, with effect from October 1993. Proclamation in relation to the other professional groups covered by the legislation will be staged through 1994 and possibly later years. A penalty is provided by s.64(1A) for failure of a mandated professional to report.

Some limitations of the legislation

Like much legislation which attempts to designate in written form concepts which are essentially undefinable, the amending legislation contains a number of inevitable pitfalls, which will only be resolved as practice wisdom develops.

The mandated professions are designated with reference to relevant professional legislation – for instance, the medical practitioners and nurses covered by the Act are those registered under the *Medical Practitioners Act 1970* and *Nurses Act 1958* respectively – but the obligations of even such professionals are qualified by the requirement that notification is only required where the belief (that the child is in need of protection) arises *in the course of practising his or her profession* (s.64(1A). 'When is a doctor not a doctor?' might seem a naive question but it is one which will face many of the professional groups covered by the Act. For professional groups whose accreditation or registration is less well defined – such as social workers, youth workers or welfare workers (all of whom are likely to be intended as key reporting sources) whose employment classifications show great variation of terminology and industrial base – the question of scope of the legislation will be critical. This will be a major issue to be clarified by the Victorian Health and Community Services Department in its training programs before extension of the mandatory reporting requirement to other groups.



As well, like legislation elsewhere in Australia and overseas, reporting in Victoria will be predicated on the belief *on reasonable grounds* that the child is in need of protection.[3] This is, of course, as it must be – no person, professional or otherwise, should be required to report without some reasonable basis, given the implications for child and family of such a notification. The presence of the 'reasonable grounds' proviso in the legislation nevertheless leaves open the questions of 'when is belief *reasonable*?' and 'against what level of professional judgement ought *reasonableness* be measured?'. Again, these issues will need to be addressed in training if professional groups are expected to report.

Further, the legislation applies only to suspicions of physical and sexual abuse. These are but two of the several grounds under the Victorian legislation by which a child can be said to be in need of protection. Why was the obligation to report not extended to *all* grounds under the *Children and Young Persons Act* – to concerns of emotional or psychological harm, for instance? Given that these other grounds *have* been included in the legislation of some other jurisdictions, and in the absence of a clear rationale to the contrary, the conclusion open is that physical and sexual abuse are easier to identify and are more likely to raise public ire if not acted upon. Some would argue that emotional abuse and neglect concerns are also matters of great import to the child and that, if mandatory reporting is really concerned with the protection of children (as distinct from a political response to a public concern about a particular child), all dimensions of child abuse and neglect ought to have been included.

Continuing debates

There remain a number of continuing practice concerns with which Victoria will have to come to terms.

The removal of Victoria's dual 'track' system of reporting (to either police or designated State welfare staff) has taken place, but concerns remain about the readiness and capacity of the Health and Community Services Department (the designated recipient of child protection notifications) to cover

demand across the whole State. The complementary roles of social workers and police also need to be clarified, especially as even a well-resourced welfare-based child protection system will not be able to respond alone to, for instance, notifications where the threat of violence to worker or family member is apparent. Further, the interface of child protection concerns and criminal issues – especially in areas of physical or sexual abuse – means that, despite the adoption of a 'single' track system, both of the previous players will continue to be actively involved in the field. Given continued public uncertainty about the capabilities of the welfare-based child protection system, as is continuing to be the case in Victoria, ownership of the 'territory' of child protection arguably remains in dispute.

Should child protection systems be characterised by an interventionist or non-interventionist approach? Put another way, how much should the focus be on strong, visible child protection services (which operate largely at a tertiary, non-preventive level), and how much on the provision of community education and support services to enable families to get help before child protection concerns arise? In the context of an overall reduction in funding for health and community services in Victoria, this is of great concern. Tertiary interventionist child protection systems rely on accessible, relevant services and supports to maintain families within their communities. Yet the clear direction in funding and policy in Victoria and across Australia is toward reductions in such services and supports, despite policy and political commitments to the contrary.[4]

In addition, it must (regrettably) be asked whether the intervention by the 'system' is, at least at times, worse than the abuse to be prevented? As a community we ought to be concerned about the effects on children of the Children's Court and post-court planning procedures, the trauma for children and family members associated with any prosecution in the adult courts in relation to abuse, and the limited evidence that our substitute care system enables children to develop adequately into adulthood. This is not to say that, for some children, care in an alternative environment to parents is not essential, but we need to ask what damage long-term substitute care, particularly where neither parent nor child knows with certainty what future care arrangements are going to be, does to the child.

Finally, there remains the question as to whether mandatory reporting is really a key element in an adequate child protection system at all. That it is so is by no means an unquestioned notion.[5] There has been a considerable increase in notifications since mandatory reporting was introduced in Victoria,[6] but the philosophical issues remain – will mandatory reporting tend to deter families from using community supports (for fear of being reported)? Will mandatory reporting further encourage a focus (of planning, policy, and finances) on intervention services rather than on provision of accessible community supports? Does mandatory reporting oblige the community (that is, the government) to ensure adequate provision of pre- and post-reporting intervention and support services?

In the context of reduced government support for non-interventionist services at pre-and post-court levels, these issues may prove critical in determining whether mandatory reporting 'works' to the betterment of children, or is merely a convenient salve to community and political consciences.

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References

1. Goddard, C. and Liddell, M., 'Child Abuse and the Media: Victoria Introduces Mandatory Reporting after an Intensive Media Campaign' (1993) 18(3) *Children Australia* 23.
2. Refer to the *Age* reports of 24.9.93, 28.9.93.
3. For a useful summary of the various Australian States' legislation and child protection systems, see 'Child Protection in the States and Territories', (1990) 15(3) *Children Australia* 25-30.
4. Brewer, G. and Swain, P., *Where Rights are Wronged – A Critique of Australia's compliance with the United Nations Convention on the Rights of the Child*, National Children's Bureau of Australia, Melbourne, March 1993, pp.7-8.
5. Refer *Child Welfare Legislation and Practice Review*, Melbourne, 1984, Vol I, pp. 220-221; Carter, J., Burston, O., Floyd, F. and Stewart, J., *Mandatory Reporting and Child Abuse*, Brotherhood of St Lawrence, Melbourne, 1988; Swain, P., 'Vale Daniel – Is the system "failing to thrive"?' (1993) 18(1) *Children Australia* 20.
6. The *Age* 3.3.94 reports a 52% increase in notifications statewide since the introduction of mandatory reporting.

Mandatory Reporting Further resource

In December 1993 a conference on *Mandatory Reporting: A Practical Guide* was run by the Federation of Community Legal Centres (Vic.).

Printed material from this conference is available. It includes items from the Department of Health and Community Services, the Legal Aid Commission of Victoria, the Youth Affairs Council of Victoria and the Children's Welfare Association of Victoria.

To order, send $20 to:
John Myers
C/- Federation of CLCs
35 May St
North Fitzroy 3068
tel (03) 489 3389

The conference is being run again in Ballarat:
Monday, 23 May 1994
Speakers include the Hon. Justice John Fogarty, AM and legal and health experts, police and community workers.

To receive a flyer or to book telephone (053) 31 5999.