At the Cutting Edge

Issues in Mandatory Reporting of Child Sexual Abuse by Australian Teachers

Ben Mathews & Kerryann Walsh
Queensland University of Technology, Brisbane, Australia

Introduction

In 2000, a former student successfully sued the State of Victoria for the failure by a government school principal and deputy principal to report what was found should have amounted to a reasonable suspicion that the child had been and was being sexually abused (*AB v Victoria*, 2000;[1] Briggs & Potter, 2004). The action was in negligence, with the failure to report occurring in 1991-92, before the introduction of legislation in Victoria in 1993 which compelled teachers to report suspected child sexual abuse. The student was awarded $494,000 in damages for the contribution of the failure to report to her subsequent suffering of abuse by her stepfather and consequential injury. In 2001, the High Court of Australia delivered judgment in *Sullivan v Moody; Thompson v Connon*,[2] two cases heard together, with each involving an inaccurate report made by a mandated reporter of child sexual abuse. The court upheld the principle that a person who possesses a statutory duty to report a reasonable suspicion of child sexual abuse and who makes an inaccurate report in fulfilling that duty, owes no tortious duty of care to persons who may be wrongly suspected of being the source of the incorrectly alleged harm, and therefore cannot be liable in negligence.

These two cases illustrate parts of the legal context surrounding the detection and reporting of suspected child sexual abuse. Common law principles and statutory reporting obligations requiring members of certain professional groups to report knowledge and 'reasonable suspicion' of child sexual abuse are predicated on fulfilling a duty of care to avoid damage, and the desire for accurate reports of child sexual abuse by professionals who are well-placed and legally compelled to report it, with this desire being motivated by goals of crime prevention, health enhancement, and the saving of future economic cost to the individual, society and the state.

However, the factual postscripts of the reports made in *Sullivan* and *Thompson* evince one of the main tensions in mandatory reporting laws. In *Sullivan*, the suspicion of child sexual abuse was formed by a doctor and a psychiatric social worker. The social worker made the report, and the child's father came under suspicion as the perpetrator. The report was later found to be inaccurate and criminal charges against the father were dropped. The allegation, pursued in Family Court proceedings against the father, was also resolved in his favour. As a result of the report and events surrounding it, the child's father suffered severe consequences: his marriage broke down, and he allegedly suffered shock, distress, psychiatric injury and personal and financial loss. In *Thompson*, the initial report of child sexual abuse was made by a medical practitioner and was concurred with by government community welfare investigators. Police charged Mr Thompson with sexual

offences but these charges were later dropped. As a consequence of this series of events, Mr Thompson suffered shock, distress, psychiatric injury and personal and financial loss.

The tension is therefore between mandated reporters' failure to report deserving cases (underreporting), and their inaccurate reporting of undeserving cases (overreporting). With the exceptions of Western Australia and Queensland, laws in all Australian jurisdictions compel members of multiple professional groups to report all forms of child abuse. In these jurisdictions, members of the teaching profession form one of these professional groups, and their obligation to report extends to cases of reasonably suspected child sexual abuse.

The question that arises here is: how does this fundamental tension play out in the context of teachers' reporting of child sexual abuse? While there is ongoing debate about the justifiability of mandatory reporting legislation (Ainsworth, 2002; Harries & Clare, 2002; Mathews & Walsh, 2004), it is not the purpose of this article to add directly to that debate. Rather, this article proceeds from the basis that, while there are three different statutory models in Australia, legal frameworks do exist for the reporting by teachers of child sexual abuse in all jurisdictions, yet there remain crucial questions about whether these laws work in practice, which legal provisions are effective or ineffective, and why.

The main function of this article is therefore to identify existing gaps in the empirical research that need to be filled to provide a thorough assessment of the different Australian legislative provisions and to provide assessments of teacher preparation and practice throughout Australia. This article will first describe the relevant context by synthesising the major rationales for mandatory reporting legislation, drawing together recent evidence confirming the incidence and multiple adverse effects of child sexual abuse, and summarising the main reasons mandatory teacher reporting obligations are opposed. The article will then contribute to the knowledge base by articulating the statutory legal obligations of teachers in every Australian jurisdiction, before identifying some of the most important gaps in the research literature in this field. It will be seen that these gaps impede the evidence-based design of both the most effective legislative technique for mandatory reporting by teachers of child sexual abuse, and of the most efficient methods of teacher training and preparation to meet legal reporting obligations. Arguably, these gaps in the evidence base are not only producing significant costs to children enduring sexual abuse which could be interrupted, but are also contributing to individuals being wrongly accused of abuse, and the significant waste of state resources.

Rationales for Mandatory Reporting by Teachers

Child Protection

In 1981 the Australian Law Reform Commission recommended the enactment of mandatory reporting legislation for teachers and other professional groups (ALRC, 1981). The major reason for that recommendation was the perceived role of mandatory reporting in child protection: mandatory reporting was viewed as necessary to protect children's rights to life and health because children do not have the resources to protect themselves from abuse. This remains the primary argument of most advocates of mandatory reporting by selected professional groups, and this has been the pivotal force in the development of mandatory reporting laws throughout the United States and most jurisdictions of Canada (Foreman & Bernet, 2000) and Australia. Teachers are members of a professional group who are well-placed to report child abuse, both because of their knowledge of child development, and their frequent and close contact with children, which

facilitates the detection of behavioural changes and other indicators of sexual abuse (Best, 2001; Briggs, 1997; Abrahams et al., 1992; McIntyre, 1990).

Health and Economic Cost

Informed by two decades of developmental and health-related research, contemporary proponents of mandatory reporting also emphasise that, assuming well-framed legal provisions, adequate teacher training, good reporting practice, and properly-resourced investigative and intervention bodies, mandatory reporting is a good early intervention against child sexual abuse and its developmental and health-related effects (Mathews & Walsh, 2004; Briggs, 1997; Briggs & Hawkins, 1997). In Australia and internationally there is now substantial evidence of the multiple costs of child sexual abuse, to the individual, society and the State. Costs to the individual commonly include injury to the victim's physical health (Dunne & Legosz, 2000) and psychological health, including depression (Spataro et al., 2004; Swanston et al., 2003; Dinwiddie et al., 2000), anxiety (Dinwiddie et al., 2000; Berliner and Elliott, 1996); suicidal ideation and attempt (Martin et al., 2004; Dinwiddie et al., 2000); and post-traumatic stress disorder (Wolfe et al., 1994; McLeer et al., 1988). The sequelae of child sexual abuse often also include diminished educational performance (CREATE Foundation, 2003), substance abuse (Swanston et al., 2003; Dinwiddie et al., 2000), self-harming (Martin et al., 2004) and teenage pregnancy (Roberts et al, 2004). Sexual abuse is often a cause of adolescents running away from home (ChildWise, 2004; Rotherham-Borus et al., 1996) and evidence suggests a causal link with child criminal offending (Stewart et al., 2002; National Crime Prevention, 1999). The psychological sequelae typically continue through adulthood (Spataro et al., 2004; Horwitz et al., 2000; Kendler et al., 2000; Rodriguez et al., 1997; Silverman et al., 1996; Mullen et al., 1993), and coexist with difficulty in adult relationships (Mullen et al., 1994) and problematic parenting and offspring adjustment (Roberts et al., 2004). A proportion of victims become offenders themselves (Salter et al., 2003; Glasser et al., 2001; Smallbone & Wortley, 2001; Briggs & Hawkins, 1996). Without early intervention and support, many survivors will be unable to gain civil compensation through the courts because of the operation of statutes of limitation, especially in jurisdictions other than New South Wales and Victoria (Mathews, 2004; Mathews, 2003). Child sexual abuse therefore has immediate, short-term and long-term consequences for the survivor, and has intergenerational effects. In Australia the annual cost of child abuse and neglect to the nation through the health, legal and social security systems has been estimated at $4.9 billion (Kids First Foundation, 2003). On this view of child protection and early intervention to prevent future health and economic cost (Mustard, 2002), underreporting of child sexual abuse by mandated professionals including teachers produces multiple costs to the individual child, society and the state.

Crime Prevention

In addition, mandatory reporting of child sexual abuse forms a part of criminal activity detection, since every child victim of sexual abuse is a victim of a criminal offence. As well, mandatory reporting constitutes an important method of crime prevention, both since individual child victims of sexual abuse are commonly abused multiple times over long periods (Smallbone & Wortley, 2001; Fleming, 1997), and because a significant proportion of child sexual offenders abuse multiple victims (Smallbone & Wortley 2001). Therefore, in a significant number of cases, early intervention arguably has the effect of preventing not only the future infliction of sexual abuse on the particular child, but also prevents the victimisation of other children.

Incidence of Child Sexual Abuse

Unfortunately the numerical incidence of child sexual abuse demonstrates a strong justification for these arguments in favour of mandatory reporting, and sustains demands for strong legislative and practical responses. In the year 2002-03, there were 4,137 substantiated reports of child sexual abuse in Australia (AIHW, 2004). Of these substantiated reports, 2,427 occurred in New South Wales affecting 1940 children, 610 occurred in Queensland affecting 508 children, 180 occurred in South Australia affecting 167 children, 61 occurred in Tasmania affecting 59 children, 562 occurred in Victoria affecting 532 children, 243 occurred in Western Australia involving 234 children, 21 occurred in the ACT affecting 21 children, and 33 occurred in the Northern Territory affecting 32 children (AIHW, 2004). Since child sexual abuse is underreported (Fleming, 1997; Smith et al., 2000), these figures represent a conservative estimate of the real number of cases of child sexual abuse. Australian prevalence studies arguably give a more accurate picture. In a population-based survey of 1784 people, Dunne et al. (2003) found at least 12% women and 4% men experienced unwanted penetrative abuse before the age of 16. Fleming (1997) conducted a retrospective study of 710 randomly selected women and found that 144 (20%) had experienced child sexual abuse involving at least genital contact before the age of 16.

Major Problems with Mandatory Reporting

However, as is usually the case in normative debates, there are alternative views. Among other things, opponents of mandatory reporting argue that it inflates the number of inaccurate reports, and that as well as wasting resources and diverting resources from "deserving" cases, this harms those who unjustly become accused, and affects the children who are the subject of the report (Ainsworth, 2002; Mendes, 1996; Besharov, 1985; ALRC, 1981). These are forceful objections, for it is not acceptable for individuals' reputations, careers and family lives to be affected by an inaccurate report of sexual abuse, as exemplified by the cases of *Sullivan* and *Thompson*, and it is wasteful to expend time, money and resources on undeserving cases. If evidence of these objections were to be presented in a particular context of mandatory reporting, and if that evidence demonstrated that the extent of overreporting and the adverse consequences of it were greater than could reasonably be withstood, then a thorough and intellectually honest analysis would be compelled to acknowledge problems with the existing law and practice, and that those problems indicated conceptual and or practical deficiencies.

In broad terms, the statistics regarding reports of all forms of child abuse and neglect from all sources of those reports indicate that overreporting is a significant problem. In 2002-03 throughout Australia there were 198 355 notifications of child abuse and neglect, and there were 40 416 substantiations (AIHW, 2004). There is no precise breakdown available of the reports made by teachers of child sexual abuse, or of the substantiations in this class of reports. However, statistics indicate that school personnel made between 10% (Western Australia) and 20% (Tasmania) of all notifications that resulted in a finalised investigation (AIHW, 2004).

A comparison undertaken by Ainsworth (2002) of the 1999-2000 reporting and substantiation statistics from New South Wales, which has mandatory reporting legislation, and Western Australia, which does not, generated findings to support the overreporting argument. Ainsworth found that New South Wales had a much higher proportion of unsubstantiated reports than Western Australia: 25.1% (7628), compared to 45.2% (1196). There were 6477 substantiated reports in New South Wales (21.3%), as opposed to 1169 in Western Australia (44.2%). He also found that the proportion of reports investigated in New South Wales was 59.6%, whereas in Western Australia it was 97.4%. The comparative proportion of final investigations completed

was 46.4% (NSW) to 89.4% (WA). Ainsworth concluded that up to 75% of the funding of the New South Wales mandatory reporting system was wasted on unsubstantiated case investigations, which also affected unjustly suspected families. Ainsworth also surmised that at least some of these funds could be better invested in family support services. Ainsworth also was concerned at the prospect of the penalty provision for failing to report forcing mandatory reporters to become 'social policemen'.

These findings are significant and it would be interesting to undertake comparisons of more recent data. It must be noted that Ainsworth's analysis sheds no light on the specific context addressed by this article, the reporting of child sexual abuse by teachers. However, if there is a problem with overreporting by teachers of child sexual abuse, then the point stands that it may be producing the same adverse consequences alluded to by Ainsworth including economic waste and damage to individuals and families who are the subject of an inaccurate report (Ainsworth, 2002).

A finegrained analysis of the extent of overreporting of child sexual abuse by teachers has not been conducted in Australia. Although, as this article will discuss later, there have been some small-scale intra-jurisdictional studies of teacher reporting practice regarding child sexual abuse (Lamond, 1989; Hawkins & McCallum, 2001a; Walsh et al., 2004), there is no large-scale cross-jurisdictional empirical research into teacher reporting of child sexual abuse, and this constitutes a significant gap in the research literature, with others that this article will identify later.

What Are Teachers' Legal Reporting Obligations Across Australia?

Australian jurisdictions have enacted general mandatory reporting legislation at different times, and it is only recently that anything like consistency has been approached. Several jurisdictions appear to have enacted some form of mandatory reporting, typically confining the obligation to medical practitioners before subsequent amendments extended the obligation to other professional groups including teachers. This progressive extension to different professional groups has occurred either by the original legislation extending the obligation only to certain groups, with subsequent amendments adding other professional groups to the list of mandated reporters, or by the same legislative provision detailing multiple groups including teachers, but having different commencement dates (that is, different dates when the legal obligation began to operate) for different groups. For example, South Australia's *Community Welfare Act 1972* s 73(3) initially compelled medical practitioners to report, before amendments commencing in 1977 added teachers to the list of professionals compelled to report. New South Wales initially imposed a mandatory reporting obligation on medical practitioners in 1977 with the *Child Welfare (Amendment) Act 1977* Schedule 5 inserting s 148B into the *Child Welfare Act 1939*. Queensland initially imposed a mandatory reporting obligation on medical practitioners in 1980, through the *Health Act Amendment Act 1980* (Qld) inserting s 76K into the *Health Act 1937*, before its partial extension to teachers in 2004. Victoria's 1993 amendments first commenced for medical practitioners and subsequently commenced for teachers, to allow time for the establishment of training and administrative requirements.

The enactment of provisions extending the reporting obligation to school principals and or teachers has therefore occurred at different times. In 1975, Tasmania was the first jurisdiction to introduce a reporting requirement on any category of school personnel. The combined effect of the *Child Protection Act 1974* (Tas) s 8(1) and the *Child Protection Order (No 2) 1975* (Tas) was

to compel the reporting by primary school principals (but not teachers) of 'injury through cruel treatment' to children under the age of 12.

More sophisticated and extensive provisions were gradually introduced throughout the country, and these were extended to all teachers. The first jurisdiction to extend the reporting obligation to teachers was South Australia in 1977. Other jurisdictions followed: the Northern Territory in 1984, New South Wales in 1988, and Victoria in 1994. The ACT first enacted a mandatory reporting provision in 1986 (*Children's Services Act 1986* (ACT) s 103(2) which applied to medical practitioners, teachers and other groups), but this provision never commenced and so remained dormant. The ACT subsequently enacted mandatory reporting provisions in 1999 which commenced in 2000. Tasmania extended the reporting obligation to teachers in a 1997 provision but this too only commenced in 2000. Queensland enacted its partial provisions in 2004. Western Australia has no statutory reporting obligation for teachers but has a reporting protocol between the Education Department and the Department of Community Development (Harries & Clare, 2002).

In all the jurisdictions having mandatory reporting laws, except Queensland, the obligation is similar but not identical. In effect, a teacher is compelled to report a reasonable suspicion or belief that a child has been or is being sexually abused. In some jurisdictions, such as New South Wales and the Northern Territory, the obligation extends to cases where the teacher has a reasonable suspicion that the child is likely to be abused, or is at risk of being abused. All statutes stipulate monetary penalties for failure to report, but the amount differs, and the ACT penalty provision includes the possibility of imprisonment. All statutes also confer immunity for mandatory reporters from legal liability in any proceedings brought concerning the report, provided the report is made in good faith.

Queensland has a unique provision which, in relation to teachers, confines the obligations to cases of child sexual abuse only, and imposes a highly significant further restriction by confining the obligation to report to instances where the teacher suspects the wrongdoer is a school employee. In Queensland, therefore, if a child expressly disclosed to a teacher that he or she was being sexually abused by a family member, the teacher would not be compelled by statute to report it. In contrast, if that same teacher developed on subjectively 'reasonable' grounds a suspicion that a member of the school staff was committing sexual abuse, even if of less severe form (for example, displaying a pornographic picture to a student), the teacher would be compelled by statute to report that belief. This incongruous situation appears to be settled since Queensland's Minister for Education, Anna Bligh, has indicated that there is no intention of extending Queensland's teacher reporting obligation (Welch, 2003).

Details of the provisions in each jurisdiction are set out in Table 1.

Gaps in the Research Literature: What Evidence Exists About Teachers and Mandatory Reporting in Australia?

Bearing in mind the arguments for mandatory reporting by teachers of child sexual abuse (child protection, early intervention for health and economic reasons, crime prevention), and those against (economic waste, diversion of resources from deserving cases, potential damage to undeserving suspects and children), and in light of the legal obligation operating in most Australian jurisdictions to report not just knowledge of child sexual abuse, but reasonable suspicion of child sexual abuse, an important question arises. Do we know that Australian mandatory reporting laws for teacher reporting of child sexual abuse are working well?

TABLE 1: Australian legislative requirements concerning teacher reporting of child sexual abuse

Jurisdiction; and date obligation first imposed on teachers	Current teacher reporting obligation	Including child sexual abuse	Reasonable suspicion provision	Maximum penalty for non-reporting	Immunity from suit
New South Wales (first applied to teachers in 1988 via *Children (Care and Protection) Act 1987* s 22 and *Children (Care and Protection - General) Regulation 1988*	*Children and Young Persons (Care and Protection) Act 1998* ss 23, 27.	s 23(c)	'Reasonable grounds to suspect': s 27(2)(a) – either that the child 'has been, or is at risk of being, sexually abused or ill-treated': s 23(c).	200 penalty units: s 27(2). Penalty unit is $110: *Crimes (Sentencing Procedure) Act 1999* s 17. ($22000).	s 29
Queensland (first applied in partial form to teachers in 2004 via *Education and Other Legislation (Student Protection) Amendment Act 2003)*	*Education (General Provisions) Act 1989 ss* 146A, 146B.	Limited to sexual abuse; and to cases where wrongdoer is a school employee: ss 146A(1), 146B(1)	'Becomes aware, or reasonably suspects, that a student…has been sexually abused': s 146A(1); 146B(1)	20 penalty units: s 146A(2); 146B(2) – nb penalty unit is $75: *Penalties and Sentences Act 1992 s* 5(1)(b) . ($1500).	s 146A(6) and (7); s 146B(5) and (6)).
South Australia (first applied to teachers in 1977 via *Community Welfare Act Amendment Act 1976* s 16 , amending the *Community Welfare Act 1972*).	*Children's Protection Act 1993* ss 11(1), 11(2)(h).	s 6	'Suspects on reasonable grounds that a child has been or is being abused': s 11(1)(a) – but includes reasonable suspicion of reasonable likelihood of the child being abused by a person with whom the child lives: s 10.	$2500: s 11(1)	s 12(b)
Tasmania (first applied to teachers in 2000 via *Children, Young Persons and Their Families Act 1997*).	*Children, Young Persons and Their Families Act 1997* ss 14(1)(h), 14(2)(a).	s 3(1)(a)	'Believes, or suspects, on reasonable grounds, or knows that a child has been or is being abused': s 14(2) – extends to belief of reasonable likelihood of a child being abused by a person living with the child: s 14(2)(b).	20 penalty units: s 14(2)(b). Penalty unit is $100: *Penalty Units and Other Penalties Act 1987* s 4. ($2000).	s 15(b)

Victoria (first applied to teachers in 1994 via *Children and Young Persons (Further Amendment) Act 1993*).	*Children and Young Persons Act 1989* ss 64 (1A), 64(1C)(d).	s 63(d)	Forms a 'belief on reasonable grounds': s 64(1A) – that a child 'has suffered, or is likely to suffer, significant harm as a result of sexual abuse': s 63(d).	10 penalty units: s 64(1A). Penalty unit is $100: *Sentencing Act 1991* s 110. ($1000).	s 64(3)(b)
Australian Capital Territory (first applied to teachers in 2000 via *Children and Young People's Act 1999*)	*Children and Young People Act 1999* s 159(1)(d)	s 151(1)(b)	'Reasonably suspects that a child…has suffered, or is suffering, sexual abuse': s 159(2)(a).	s 159(2): 50 penalty units, 6 months prison or both. Penalty unit is $100: *Legislation Act 2001* s 133(1)(b)(i). ($5000).	s 163; NB s 160 - must not make a report other than in good faith: penalty 50 penalty units, 6 months prison or both.
Northern Territory (first applied to teachers in 1984 via *Community Welfare Act 1983*)	*Community Welfare Act 1983* s 14	s 4(3)(d)	'Believes on reasonable grounds that a child has suffered or is suffering maltreatment': s 14(1) – and extends via s 4(3)(d) to cases of reasonable belief of 'a substantial risk' of abuse occurring.	200 penalty units - s 14(1): nb penalty unit is $110: *Penalty Units Act* s 3(1). ($22000).	s 14(2)

This is an important question because if the reporting laws are working well, in the sense that a high proportion of accurate reports are being made, and a low proportion of inaccurate reports are being made, then it would seem that teachers are playing a valuable role in child protection and early intervention, with all the benefits that flow from these reports. If the laws are working well, this might also indicate, depending on teacher practice in the jurisdictions without a reporting provision, that a reporting provision is desirable in those jurisdictions also. It might also indicate that the methods of teacher training operating in jurisdictions having the obligation are to be recommended. Further, it might also suggest that the post-report administrative, investigative and responsive practices adopted in a particular jurisdiction are to be commended and learnt from.

On the other hand, if the reporting provisions are not working well – if, for example, teachers in jurisdictions having the obligation are refusing to report even when having knowledge or reasonable suspicion of sexual abuse, or, if teachers are failing to report deserving cases because they are not adequately prepared to meet their legal obligations, or, if teachers are inaccurately reporting an unacceptable number of cases, or, if teachers are reporting deserving cases but many of those cases are not being investigated and responded to by the bodies with that responsibility

– then this has implications for legislative and practical responses to improve the design and implementation of the legislative and associated administrative, investigative and responsive practices.

To examine the question of whether the legal obligations imposed (or not imposed) on teachers are working, at least in the sense of whether teachers are reporting accurately and not unreasonably reporting inaccurately, three broad questions about teacher reporting practice immediately arise that appear to lack empirical investigation in Australia.

Teacher Reporting Practice

The first broad question is: in jurisdictions having mandatory reporting, and in those that do not, do teachers report when they have knowledge or reasonable suspicion of child sexual abuse? Associated questions in this inquiry include: do teachers fail to report even when legally compelled to report and when having knowledge or reasonable suspicion, and if so, to what extent and why?

The Australian Institute of Health and Welfare reports on child protection tabulate data obtained from State and Territory government departments. This data indicates that school personnel make a significant proportion of reports of child abuse, and, of professional groups, are the second most prolific contributor of reports behind police. For example, in 2002-03, school personnel in New South Wales, Queensland and Western Australia made 17%, 14% and 13% respectively of reports of child abuse and neglect (AIHW, 2004). In 2001-02 these figures were 23%, 13% and 11% respectively (AIHW, 2003). However, there is no large-scale empirical research into whether teachers in Australia comply with the legal obligation to report when possessing knowledge or reasonable suspicion of child sexual abuse. Research in the USA has indicated that teachers may not report knowledge or suspicion of child sexual abuse even if they know it is their legal obligation to do so (Zellman, 1990). This evidence of compliance with the legal obligation is very important because failure to report, despite presence of knowledge or sufficient evidence on which reasonable suspicion should exist, could have grave legal consequences. It is important to ensure that teachers conform to their legal obligations as closely and as accurately as possible, and it is also important to protect teachers, schools and governments from liability in negligence.

If it is found that teachers are failing to comply with the legal obligation to report, then the reasons for this non-compliance are also significant and need to be ascertained to inform practical responses. Failure to report, despite presence of the legal obligation, can occur for many reasons including inadequate knowledge of the indicators of child sexual abuse, a perception that reporting is not in the child's best interest or would not be responded to appropriately by investigative bodies, and fear of the consequences of an inaccurate report. From a child protection perspective it is important to determine if teachers are not reporting when there is little doubt that a report should be made, and if so, why. Other questions arise in this context, such as, for example, whether the Queensland and Western Australian legal provisions allow cases of child sexual abuse to go unreported to a greater extent than jurisdictions having mandatory reporting; and whether teachers in different jurisdictions underreport for different or similar reasons.

Effect of Mandatory Reporting on Inflation of Inaccurate Reports

The second broad question is whether in jurisdictions having the obligation, the legal obligation to report reasonable suspicion of child sexual abuse inflates the number of inaccurate reports by

teachers, and if so, to what extent. Further, it is significant to ascertain how the rates of inaccurate reporting compare between jurisdictions having mandatory reporting and those that do not. This requires an investigation into the number of inaccurate reports made by teachers, and identifying the major reasons – individual, local and systemic – for inaccurate reports.

From the AIHW data it is clear that a large number of reports of child abuse and neglect, presumably including child sexual abuse, are reported by teachers. However, it is not clear how many reports of child sexual abuse were made by teachers, nor is it evident how many of these reports were accurate and inaccurate. Research from the USA has indicated that the ambiguous concept of 'reasonable suspicion' in mandatory reporting provisions is problematic and causes much overreporting (Foreman & Bernet, 2000; Crenshaw et al., 1995; Zellman & Bell, 1990; Besharov, 1987), and the operation of this clause in Australian jurisdictions needs to be researched. Although there seems to be consistency between the 'reasonable suspicion' and 'reasonable belief' obligations in the six Australian jurisdictions having similar provisions, in fact this may not be so in practice, given the "blurriness" of the concepts (Sandor, 1994) and the difference in teacher training and practice between jurisdictions. It is not known what effect the obligation to report based on 'reasonable suspicion' has on teachers' reporting thresholds. If the threshold of reporting is too low, this is plainly a significant causal factor behind rates of inaccurate reports. In one of the few published Australian studies on teacher reporting practice regarding child sexual abuse, Lamond (1989) found that after the introduction of the reporting law for teachers in New South Wales, the number of reports made by teachers of child sexual abuse almost trebled (98 to 273), yet the substantiation rate remained stable (62 (63.3%) to 165 (60.4%)), despite delivery of a training program. Therefore, with a threefold number of accurate reports that enabled intervention, there was also a threefold number of inaccurate reports (29 to 85).

Training

The investigation of both of these first two broad questions, which pertain to teachers' practice of reporting child sexual abuse and the accuracy of those reports, must involve an exploration of the training that teachers receive about their legal obligations, the indicators of child sexual abuse, and the procedural requirements of child sexual abuse reporting. This is therefore the third major area requiring Australian research and evidence: are teachers adequately trained and prepared to meet their legal obligations?

There is evidence from overseas studies demonstrating that without good training, many teachers who are legally compelled to report child sexual abuse remain unaware of the true extent of their legal obligation (Beck, 1994). In addition, international research shows that without good training, teachers are not confident about their ability to recognise indicators of child sexual abuse (Abrahams et al 1992; Zellman & Bell, 1990; McIntyre, 1987; Briggs & Potter, 2004[3]).

If Australian teachers are uninformed about the precise reach of their legal obligation to report child sexual abuse, and if they display a lack of confidence in concerning the detection of child sexual abuse, then these factors would almost certainly affect the accurate fulfilment of the legal reporting obligations. However, there does not appear to be a substantial record of peer-reviewed Australian empirical research investigating the nature and effect of teacher training regarding the reporting of child sexual abuse. One exception is a relatively small-scale study (n = 145) of the South Australian training package (Hawkins & McCallum, 2001a). Hawkins and

McCallum made a number of highly significant findings, including that, compared to teachers with recent or prior training, teachers without training were:

- significantly less knowledgeable about the true extent of their legal obligation;
- far less confident in their ability to recognise indicators of child sexual abuse;[4]
- less aware of what constitutes reasonable grounds for suspecting child sexual abuse;
- less likely to respond appropriately to a child's disclosure; and
- less accepting of children's rights and of their own responsibility in child protection, indicating that sound training enhanced accurate reporting.

Because of the lack of published research, it is therefore unknown if teachers in other Australian jurisdictions are assisted or hindered by their training or lack of it, and if this affects overreporting and underreporting. Hawkins and McCallum (2001b) concluded that 'appropriate training' of mandated reporters is likely to increase willingness to report and so better achieve the law's child protection aim. Arguably, good training would also help teachers to deal with any workload and personal pressures accompanying the obligations. It would also instil an accurate understanding of what constitutes acceptable pedagogical (and legal) conduct between teachers and students, including the benefits of touching students in appropriate ways. The provision of this information is vital to ensure ongoing sound pedagogy and avoid the moral panic said to afflict contemporary teachers (Jones, 2001) and to avoid the risk of unjustified reports by overzealous and undiscerning colleagues (Welch, 2003).

Conclusion

Six out of eight Australian jurisdictions now legally compel Australian teachers to report knowledge and reasonable suspicion of child sexual abuse. The fundamental tension in mandatory reporting remains, and debate continues about the justifiability of imposing mandatory reporting obligations on teachers. Every year, it is possible that significant economic resources are wasted on unsubstantiated reports made by teachers. Every year, it is possible that significant numbers of sexually-abused children attend school, with their suffering undetected, or, perhaps, detected but unreported. Quite probably, teachers are placed under stress, and may not be adequately trained and supported to be able to properly meet their obligations. Schools and educational authorities may not be adequately protecting themselves from potential future legal liability.

Of necessity, these are hypotheses rather than statements, because insufficient evidence exists to inform statements describing the Australian context of teacher reporting of child sexual abuse. In 1997 the Australian Law Reform Commission urged the performance of cross-jurisdictional research into the impact and effectiveness of mandatory reporting (Australian Law Reform Commission, 1997). Researchers such as Lamond (1989) have urged the ongoing development of attempts to improve the substantiation rate of reports made by mandated reporters, including the review of teacher training programs. Yet, despite such calls, and despite the imposition of mandatory reporting obligations on teachers having now spread across most of the country, there remains a lack of Australian research into the effectiveness of the laws, the accuracy of teachers' reporting, and the impact of teacher training.

It seems likely that several benefits would flow from the generation of detailed, accurate information about current teacher reporting practice under mandatory reporting laws. Primarily, such research would ascertain whether the current laws are working well enough, and if they are not, the reasons for them not working would be identified. From this research, secondary benefits

could then be gained. In particular, the evidence could be used to inform the optimum design of both mandatory reporting provisions, and of teacher training.

Given evidence-based and efficient legal provisions and training, the real benefits could then accrue. These benefits would include, through reducing the number of inaccurate reports, the saving of significant amounts of public funds, and the prevention of damage to unjustifiably suspected perpetrators. The benefits might also extend, through increasing the number of accurate reports, to enhancing early intervention in cases of child sexual abuse, and the minimisation of the worst effects of child sexual abuse in later life. Because the effects of child sexual abuse can be of such severity and of such long duration, these benefits would continue to flow for many years. A thorough understanding of teacher reporting law and practice needs to be gained to protect and advance the interests of all concerned parties. As long as an accurate picture of current practice remains undeveloped, the risk of prolonging undesirable practice remains, and opportunities for systemic enhancement remain ignored.

Address for correspondence: Dr Ben Mathews, Faculty of Law, Queensland University of Technology, GPO Box 2434, Brisbane, Qld 4001, Australia. Email: b.mathews@qut.edu.au

Endnotes

1. Unreported, Supreme Court of Victoria, Gillard J, 15 June 2000.
2. (2001) 207 CLR 562.
3. Briggs and Potter's study was of early childhood and kindergarten teachers in Singapore, which does not have mandatory reporting by teachers, although all citizens are enable to make such reports: *Children and Young Person Act 1993* c 38, s 87(1) and ss 4 and 5(2).
4. A recent Queensland study confirms the two findings about lack of knowledge of the legal obligation and of the indicators of child sexual abuse (Walsh et al., 2005).

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