ATTACHMENT HD 13

This is the attachment marked "**HD 13**" referred to in the witness statement of Heather Douglas dated 20 July 2015.

Chapter 23
Mandatory Reporting of Child Abuse and Marginalised Families

Heather Douglas and Tamara Walsh

Introduction

The introduction of laws requiring the mandatory reporting of serious child abuse and neglect, usually by professionals, has received significant attention, and many researchers have considered the advantages and disadvantages of mandatory reporting (Mathews and Bross 2008; Melton 2005). One advantage, it has been argued, is that the requirement sends a strong message that child abuse will not be tolerated (Takis 2008, p. 126). Other advantages include that it raises awareness of child abuse (Cashmore 2002, p. 9) and that it resolves conflict for some about whether or not to report incidents (Australian Law Reform Commission 1997, p. 435; Tomison 2002a, p. 17). Mandatory reporting laws can ensure that cases of child abuse are brought to the attention of child protection authorities so that further harm may be prevented and services can be provided, especially in cases where, without such laws, the family would remain hidden (Mathews and Bross 2008, p. 515; Cashmore 2002, p. 9). It has also been pointed out that reporting of child abuse by clinicians is consistent with other duties to report, for example, suicide risk and homicide risk (Wekerle 2013, p. 93).

At the same time, some disadvantages associated with mandatory reporting laws have been identified. It has been claimed that they lead to overreporting and greater numbers of unsubstantiated reports and that this puts unnecessary pressure on an already under-resourced child protection system (Takis 2008, p. 126; Jacob and Fanning 2006). Professionals have also raised concerns about loss of the family as clients if they report and many have expressed doubts about the benefits of contact with the child protection system for families under their care (Pietrantonio et al. 2013, p. 105). Another key concern raised about mandatory reporting laws is that

H. Douglas (✉) • T. Walsh
Law School, The University of Queensland, St Lucia, QLD, Australia
e-mail: [redacted]

B. Mathews, D.C. Bross (eds.), *Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect*, Child Maltreatment 4,
DOI 10.1007/978-94-017-9685-9_23

they may force parents and children underground and deter them from seeking help (Adler 1995, p. 194; Australian Law Reform Commission 1997, p. 2333; Stretch 2003; Melton 2005, p. 14).

In this chapter we draw on two qualitative studies we conducted in Queensland, Australia, to consider how frontline workers (both support workers in nongovernment organisations and lawyers) who work with marginalised groups, for example, with families from culturally and linguistically diverse (CALD) groups,[1] Indigenous families and families experiencing poverty and homelessness or domestic violence, view mandatory reporting of abuse to child protection authorities. Our research has suggested that workers' experiences of the interaction between their clients and child protection services are extremely negative overall (Douglas and Walsh 2009; Walsh and Douglas 2012). As a result, some workers are very reluctant to report abuse because they perceive the response of child protection services to be poor. The kinds of abuse most often referred to by participants in this research were neglect, domestic violence, physical violence and emotional or psychological abuse. Sexual abuse was not specifically discussed by our participants. Thus, our findings are most applicable to situations in which non-sexual abuse is alleged to have occurred.

We begin with a brief outline of the Australian laws that require mandatory reporting. This is followed by a discussion of some of the issues raised in our studies of child protection and the broader literature. In the final section we draw some conclusions about the potential value and risks of mandatory reporting in the context of working with marginalised families and consider possible improvements to current approaches.

Mandatory Reporting in Australian Law

All Australian states and territories have legislated to impose mandatory reporting requirements on at least some professional groups.[2] The requirements vary widely across the jurisdictions: in some states and territories, only a few classes of professionals are required to report suspicions of child maltreatment (most often doctors, nurses, teachers, child care workers and police officers), while in the Northern Territory, every adult who suspects that a child is being harmed or likely to be harmed has a legal duty to report. In Victoria and the Australian Capital Territory,

[1] This term refers to individuals and families that have come to Australia from another country; they may speak a language other than English at home, and they may have special cultural practices and customs.

[2] *Children and Young People Act 2008* (ACT) s 356; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27; *Care and Protection of Children Act 2007* (NT) s 26; *Child Protection Act 1999* (Qld) s 148; *Public Health Act 2005* (Qld) ss 191, 192; *Education (General Provisions) Act 2006* (Qld) ss 365, 365A, 366, 366A; *Children's Protection Act 1993* (SA) s 11; *Children, Young Persons and Their Families Act 1997* (Tas) ss 13, 14; *Children, Youth and Families Act 2005* (Vic) ss 182, 184; *Children and Community Services Act 2004* (WA) s 124B.

mandatory reporters are only required to report suspicions of physical or sexual abuse. In Western Australia, only sexual abuse must be reported. In all other states and territories, the types of reportable maltreatment are broader than this. For example, suspicions of neglect and emotional or psychological abuse must be reported by mandatory reporters in New South Wales, the Northern Territory, Queensland, South Australia and Tasmania. In New South Wales, the Northern Territory and Tasmania, mandatory reporters must also report if they are aware that a child has been exposed to family violence or is living in a household where family violence is occurring, provided the required level of harm exists or is likely to occur.[3] Most statutes stipulate financial penalties if professionals fail to report when required to (Mathews et al. 2006, p. 507). Mandatory reporting does not guarantee a particular intervention; rather it operates as a notification to child protection authorities who make a decision about what needs to happen.

Specifically in Queensland, the Australian state where our research was undertaken, section 148 *Child Protection Act 1999* (Qld) (the Act) states that a 'responsible person' who:

> …becomes aware, or reasonably suspects, that harm has been caused to a child placed in the care of an entity conducting a departmental care service or a licensee, the person must, unless the person has a reasonable excuse, report the harm, or suspected harm, to the chief executive- immediately…

The Act defines 'responsible person' for the purposes of the provision as 'an authorised officer' or 'an officer or employee of the department involved in administering' the *Child Protection Act 1999* (Qld) or 'a person employed in a departmental care service or licenced care service'.[4] 'Harm' is broadly defined as 'any detrimental effect of a significant nature on a child's physical, psychological or emotional well-being' and can be caused by physical, psychological or emotional abuse or neglect or sexual abuse or exploitation resulting from a single act or series of acts.[5] 'Significant' harm is not defined in legislation; however the Department of Communities, Child Safety and Disabilities (2013) defines significant harm as harm that is substantial or serious and more than transitory; 'it must be demonstrable in the child's presentation, functioning or behaviour'. This definition is obviously open to interpretation, and in a risk-averse environment, where child protection agencies operate in a 'better safe than sorry' culture (Carmody Inquiry 2013, pp. xvii, 205), 'significant harm' may be interpreted widely. This is a particular problem for certain types of child abuse and neglect, especially exposure to domestic violence and emotional abuse (Mathews 2012). The Queensland Civil and Administrative Tribunal (QCAT) has acknowledged that witnessing domestic violence can cause harm to children (*CT v Commissioner for Children and Young People and Child Guardian* [2012] QCAT 354 at 49–50).

---

[3] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 23 (see definition of 'at risk of significant harm'); *Care and Protection of Children Act 2007* (NT) s 15 (definition of 'harm to child'); *Children, Young Persons and Their Families Act 1997* (Tas) s 14(2)(a).

[4] See *Child Protection Act 1999* (Qld) ss 6, 148.

[5] *Child Protection Act 1999* (Qld) s 9.

Further, staff of the Commission for Children and Young People and Child Guardian,[6] and doctors or registered nurses[7] who become aware, or reasonably suspect during the practice of their profession, that a child has been, is being or is likely to be harmed also have a duty to report. Staff members of state and non-state schools are required to report sexual abuse or likely sexual abuse of students under 18 years.[8] Penalties apply as a consequence of failure to report.[9]

Marginalised Mothers and the Child Protection System in Australia

It is well established that marginalised mothers, particularly those who are poor, homeless, Indigenous or victims of domestic violence, are more likely to become known to child protection authorities (Thomson 2003; Keegan Eamon and Kopels 2004; Busch et al. 2008; Marts et al. 2008). Dettlaf and colleagues (2009) suggest that there is an important relationship between race, income and risk assessment but also that disproportionality in the child welfare system is a complex phenomenon that cannot be explained by a single factor.

Poverty has long been associated with child maltreatment but the causal effect of poverty on child maltreatment has received limited attention (Walsh and Douglas 2008). Studies undertaken in Missouri, by Drake and colleagues (2009, p. 315, 2011, p. 471), concluded that there is no evidence that visibility to mandated reporters causes higher reporting rates among the poor whatever their race. In contrast, and drawing on a number of empirical studies undertaken in the United States, Roberts (2012, p. 1478) focuses on the intersectional nature of race and poverty and argues that foster care 'is only one example of the many forms of over policing that overlap and converge in the lives of poor women of colour'. She observes that mothers involved in the child welfare system in the United States are disproportionately poor women of colour (Roberts 2007, 2008), a situation that is mirrored in Australia (Douglas and Walsh 2013). Aboriginal and Torres Strait Islander children in Australia are increasingly on child protection orders; in 2011–2012 they were almost ten times more likely than other children to be subject to a child protection order and to be in out of home care, with the most common type of abuse reported

[6] *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 20.

[7] *Public Health Act 2005* (Qld) ss 191 and 192. Pursuant to the *Family Law Act 1975* (Cth), s 67ZA, family court personnel and counsellors are also required to report.

[8] *Education (General Provisions) Act 2006* (Qld) ss 365, 365A, 366, 366A. The reporting requirements differ depending whether the report emanates from a state or non-state school.

[9] For employees of the Child safety Department, those employed in a departmental care service or licensed care service 20 penalty units: *Child Protection Act 1999* (Qld) s 148. For doctors and registered nurses 50 penalty units – *Public Health Act* (Qld) s 193. A penalty unit is currently $110; see *Penalties and Sentences Act 1992* (Qld) s 5(1)(d).

being neglect.[10] Of course, neglect is often directly associated with poverty. The conflation of harm and neglect is questionable because an inability to materially provide for a child does not mean the child lacks nurturing or protection. It would seem cruel and inhuman to punish a mother and child with removal for reasons of neglect resulting from poverty, when supports and less invasive interventions through differential response approaches could remedy the situation (Walsh and Douglas 2009; Mathews and Kenny 2008; Mathews 2012). However in Australia, few child protection statutes explicitly mandate against removal on the basis of neglect even if the neglect is the result of poverty.[11] Recent United States research has found that poverty is associated with reports of child abuse but that ensuring that mothers receive all eligible child support for their children significantly reduces the reporting of child maltreatment (Cancian et al. 2009, p. 14).

American studies have also noted the disproportionate representation of ethnic minorities in out of home care. For example, in a study in Indiana, Hispanic and black children were disproportionately encountered in out of home placements compared with white children (Busch et al. 2008, pp. 256–257). In Australia there are no reliable figures on the numbers of children from culturally and linguistically diverse (CALD) backgrounds in the child protection system (Kaur 2012, p. 17). However misunderstandings of cultural differences in child rearing practices may contribute to a finding of child abuse.[12] For example, such misunderstandings might include different approaches to physical discipline in other cultures (Brophy 2008, p. 82).

Studies in the United States have also noted that there are broader 'treatment disparities', with black and Hispanic children much slower to exit care than their white counterparts (Busch et al. 2008, p. 256; Derezotes 2009, p. 44; Church 2006). Racial bias in decision-making has been found to be an important consideration in decision-making about child protection responses (Dettlaff et al. 2009, p. 1635). The United States policies such as reducing in-home support for families, focussing increasingly on out-of-home care and emphasising adoption as a solution to the rising foster care population, reflect, according to Roberts (2012, p. 1485), an increasingly punitive approach to child welfare and that it has been a political choice to fund punitive rather than supportive programmes. These punitive approaches also feature in Australia's child protection environment. Increasingly, some child protection advocates are pushing for long-term guardianship orders and adoption, and child protection services are focussed on tertiary intervention rather than focussing on building the strengths of families (Betts 2013; Rath 2001). Roberts (2012, p. 1486) maintains that this punitive response is justified by 'stereotypes of black

[10] See Australian Institute of Health and Welfare (2013) at 16–17, 32, 34 and 41. The second most common abuse was emotional abuse.

[11] One exception is NSW where legislation prevents the Children's Court from concluding that the basic needs of a child are not likely to be met because of poverty; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 71(2)(b).

[12] Kaur (2012, p. 11) cites differences in child discipline, physical displays of affection, educational attainment expectations, respect for elders and use of natural remedies.

maternal unfitness'. She argues that in some United States communities the spatial concentration of child welfare supervision and removal creates an expectation of supervision and removal and it has become normalised. This is also occurring in some Australian communities with, in some cases, five generations of Indigenous children being placed in care (see McGlade 2012). Given the history the removal of Indigenous children from their families, many Indigenous people perceive current child protection interventions as an ongoing process of removal (Bamblett et al. 2010, p. 19). Roberts (2012, p. 1491) describes how the child welfare system in the United States operates to discipline and control poor women and poor black women. Such a claim could also be made about Australian approaches to child protection. In the Australian child protection context, there have been concerns expressed about the lack of cultural competency among child protection workers and the very limited number of Aboriginal people employed as child protection workers (Kaur 2012, p. 15; Bessarab and Crawford 2010, p. 190).

There is a risk that, in this environment, mandatory reporting requirements are likely to further entrench the disproportionate representation of poor and Indigenous or ethnic families in the child protection system.[13] Also, if professionals who work with children and families are not able to collaborate effectively with child protection authorities and there is a context of mutual distrust, there is a risk that professionals may not comply with their reporting obligations.

Empirical Research in Brisbane, Australia

Methodology

We undertook two studies in Brisbane, Australia. The aim of both studies was to investigate professionals' views on the nature of mothers' experiences within the child protection system in Queensland. In the first study, five focus groups were held at community organisations in Brisbane involving 32 workers (hereafter referred to as 'community service providers').[14] The community organisations that participated are all engaged in direct service delivery and have a client base which consists, at least in part, of mothers of children either in the care of, or 'known' to, child protection authorities. They provide services to a wide range of female clients including poor and homeless women, women experiencing domestic violence, Aboriginal women and women from CALD communities.[15] The second study involved 21 interviews with 26 lawyers with substantial experience in child protection

[13] In Australia Aboriginal and Torres Strait Islander children were almost eight times more likely than non-Indigenous children to be the subject of substantiated reports of harm/risk of harm with neglect and emotional abuse the most commonly substantiated maltreatment; see Scott (2013).

[14] The results of this research are reported in Douglas et al. (2009).

[15] See Kidd and Parshall (2000) at 294 and Kitzinger (1994) at 105 for a discussion of the pros and cons of focus group research.

law (in five of the interviews there were two participants). A snowball sampling method was employed whereby interviewed lawyers recommended other child protection lawyers for interview (Doreian and Woodard 1992). All of the lawyers we interviewed commonly represented parents or children in child protection matters, either in private practice or within a legal organisation such as Legal Aid or a community legal centre.[16] Three had previously worked within child protection departments. Both studies focused on the experiences of mothers as they are more likely to have care responsibilities for children particularly in those cases where there is child protection intervention (see Lewis and Welsh 2005). Neither study focused on mandatory reporting, but the issue of mandatory reporting was raised and discussed in the focus groups and interviews.

Based on a literature review, a semi-structured interview guide was created for each study. The guides focused on facilitating in-depth discussion and analysis of current practices and challenges associated with working in the child protection field. Ethical approval was obtained from the Ethics Committee at the University of Queensland. Each focus group and interview ran for between 60 and 90 min. Focus groups and interviews were recorded and transcribed, and the qualitative data yielded was pattern coded (Miles and Huberman 1994, pp. 69–72). The limitations of our approach are conceded. The findings reported on here are based on accounts of lawyers and community service providers who advocate for and represent mainly parents within the child protection system in Queensland. It cannot be understood as a literal description of the system as a whole or of the workings of the child protection systems in other states (Dingwall 1997, p. 54).

Results

Our research participants identified a number of concerns regarding mandatory reporting. The concern most commonly noted was that mothers might choose not to seek help and support for medical issues, housing or police intervention in response to domestic violence as examples, if they are fearful that they might be reported to child protection authorities and their children could be removed.

Some of our participants said that their clients avoid social services altogether, including family support services and homelessness services, because they fear being referred to child protection authorities. In one of our focus groups, the following comments were made:

> There are those family crisis centres, but that's where they're reporting to Child Safety … So, you're giving them that invitation to take you kids while you're trying to escape violence.

[16] We conducted interviews with lawyers instead of focus groups for practical reasons. Most of the lawyers we interviewed work alone as individuals and their demanding schedules made conducting group interviews extremely difficult. The interviews with two participants were conducted with the lawyers who worked together in the same organisation.

> And they don't want to tell anyone cause if they tell anyone then their children will be taken away and then they can't get their kids back. Cause even if they are homeless and they do get shelter, where do you get a place where you can have your kids for 3 nights a week, because with homelessness at the moment, even in a boarding house it's full of really intense issues and it's not a safe place and there's usually not any other immediate housing other than a boarding house or a refuge, where they take the kids off you anyway. And it's meant to provide safety for you and your children, but if you take them there you'll end up losing them.

In another focus group, participants said that some women avoid accessing health services because they fear being reported to Child Safety. The following exchange occurred:

Worker: I.'ve found that. It is often that the children get taken to visit a GP and it is on that occasion that a notification results from that.
Facilitator: What kinds of things are alerting the doctor?
Worker: I don't know. Maybe they go in for a cold or something and then next thing they know there is a notification made against them.

This worker is not suggesting that child protection authorities have become involved simply because the child has a cold; rather the worker is emphasising the point that it is an attendance at a doctor's appointment which has triggered involvement of child protection services.

The lawyers in one of our interviews claimed that some young women even try to avoid giving birth in the hospital because of the fear that they will be reported to Child Safety and have their child removed:

Lawyer 1: So really, in some ways, it's putting child safety – in that way putting the child's life and the mother's life at risk if they then decide to, okay, I can't go to hospital because I know they're going to take my baby so I'll have it at home …
Lawyer 2: Oh, yeah, women do do that. You know, they will try and run away to have the baby and …
Lawyer 1: Self-preservation sort of thing.

The two lawyers here are reporting on their clients' behaviours. Their point is that young women may avoid contact with health professionals because they believe there is a risk that they may be reported to child protection authorities.

In the context of domestic violence, some participants suggested that women may decide not to report abuse to police because they fear the removal of their children. In one focus group, the following exchange occurred:

Facilitator: Do you think that the fear of their kids being taken away stops them calling the police about violence?
Speaker: Yeah, because as soon as you call the police, there'll often be a juvenile aid [worker] that comes out with them

In a separate group, a similar comment was made:

Facilitator: So do you think that women are less likely to seek help from the police [who have mandatory reporting requirements] than ringing [a crisis counsellor who does not have a mandatory reporting requirement]?

Worker: Yeah,because the police stuff, particularly. But also I think generally, because they're scared because, even with a shift in the culture people are going to be scared about what to say, and whether to give their name. Is it confidential and what does confidential really mean? A lot of the clients, even without reporting issues, they are very sceptical about whether or not to trust us. And that issue of reporting, I mean, it's something that has come up for us a number of times.

The fear of intervention may seem unreasonable, but often it arises because of some prior experience with child protection authorities, for example, where the mother was subject to a child protection order as a child or where the mother is otherwise 'known' to child protection authorities. One of the lawyers we interviewed said:

> The police have an obligation to report child abuse or domestic violence of course.[17] Clearly this information is exchanged between the various child protection units in the core service delivery areas. That needs to happen. But, sometimes, yes I have seen that because certain families do come to the attention of a particular service delivery agency they may have a perception that they are being targeted. Although I've not seen that to be vexatious or scurrilous. They are people that, unfortunately, are known because there is a particular history there.

Another lawyer stated:

> No one is going to go, after having their child in protection for a short period of time or a long period of time, are going to go to the Child Safety and say, listen, John's beating me or Sue's beating me, or whatever, for the pure fear factor that they're going to lose their kids again.

Another concern identified by our participants was that professionals might not report instances of child maltreatment, despite their mandatory reporting obligations, because they lack confidence in the child protection system. Some of the community service providers who participated in our research said they were reluctant to report instances of potential harm to children because they were not confident that the system would respond appropriately. The following exchange occurred in one of our focus groups:

Worker 1: Yeah, and we don't generally report. Our bottom line is that we wouldn't report unless we absolutely had to. But there have been these three cases where we've had to almost have a mini case to really talk about those issues.

Worker 2: And the difference I suppose it that – as opposed to [a referral agency] … I will have a bit of a luxury in that you know you're going to have continued contact, so you give the woman the opportunity to explain the situation more fully.

One community service provider said:

> This mandatory reporting thing is very… can often just lead to being that kind of quick-to-judge-and-remove before even talking to anyone, before finding out the situation or the dynamic.

[17] While current legislation in Queensland does not mandate police reporting of children living with domestic violence, Queensland Police have a blanket policy of reporting children living with domestic violence. A recent inquiry has recommended that this policy be repealed; see Carmody Inquiry (2013) at vviii.

In a separate focus group, a community service provider said that child protection workers are 'too young and inexperienced' to effectively deal with situations where children are at risk. She said they 'may be putting their organisations at risk' because 'they know they can do a better job than handing them over [to child protection services]'. The following exchange occurred in another focus group:

Speaker: We have also made notifications with the support of women.
Facilitator: What about where women don't want to notify but you perceive an issue. How do you deal with that?
Speaker: We don't readily notify, we don't take it lightly and we have significant discussion with the people we work with. Most of the time if we are concerned with child safety, where there are high levels of DV, there is often a lot of information sharing in relation to the impact on children and issues in relation to safety and protection, particularly recognising the capacity for women to protect their children from violence where she is exposed to violence. So we look at providing support to women and recognising the challenges of living in a violent or abusive situation and the effect on children.

In one of our focus groups, the community service providers discussed circumstances in which they decided to report an instance of child abuse, but the child protection department did not offer any assistance. They said:

> I remember when we picked up two little girls, who had been thrown out of the house with all their belongings, and I went and picked them up from Logan and brought them here, rang child safety and they said, well she's just a naughty girl, she could go back if she behaved. You've got to solve the matter. You've got yourself in a corner because you've picked them up – it's their responsibility. So I said, 'was I supposed to leave them on the footpath with their belongings?' And she said 'well then they would have had to do the right thing'.
>
> We had a little girl who rang in a couple of weeks ago, and said, I'm at the neighbour's house because Mum's just lost it, yelling and screaming and telling me she never wants to see me again and all the rest of it. And she was in tears, sobbing, and she had been under the care of the Department previously, but they put her back with Mum and said everything was solved. I rang up the Department said you're going to have to intervene. It was a Friday night, and they asked whether she had anywhere to go, and I said 'well that's up to you to decide'. She said to me, do you think the neighbour would be happy to keep her?

Some of the lawyers we interviewed also discussed the negative impacts on mothers of notifications as another reason not to report. One said:

> … what I found is that if case workers from the hospital or what they call their outreach workers – and this is what I've discovered going through subpoenaed documents, is they'll make a note and then they'll make a notification to Child Safety. It doesn't necessarily mean that it was a life threatening situation. It's more of a situation where a mother might yell at her child and give it a whack and that then becomes a notification, that then becomes part of the history and then that notification will either be verified or not verified, you know. I think that's a statutory requirement anyway on the hospital but again I think it's also up to the individual and how they view the situation. Remote communities and small communities are quite volatile places.

One of the lawyers we interviewed questioned the child safety department's capacity to deal appropriately with such cases. She said:

> Cause the Department isn't a therapeutic body. I feel if they're going to do any constructive work with families it really should be another family or another agency doing the work.

Discussion

Mandatory Reporting and the Risk That Mothers Will Not Seek Help

Consistent with our findings, a common claim that is made in the literature about mandatory reporting requirements around child abuse is that parents may not seek help from professionals if they fear being reported to police or child protection agencies (Alvarez et al. 2004; Smith and Parsons Winokur 2004; Gielen et al. 2000).

For example, it has been suggested that mothers may avoid services that offer home visits because they fear child protection intervention. Davidov and colleagues (2012) interviewed workers and their clients involved in a home visitation programme in Virginia which involved nurses and social workers visiting disadvantaged first-time mothers. The workers were mandated to report child abuse. Some women reported to the researchers that they would limit their disclosures of abuse to visiting nurses because of the risk of being mandatorily reported for child abuse (by virtue of their children observing domestic violence). Drawing on the perspectives of both the home visitors and the mothers, the study also found that some clients cancelled visits or dropped out of the programme because of a fear of being reported (Davidov et al. 2012, pp. 600–601). The study concluded that mandated reporting issues 'transcend clinical care' and have significant consequences for women in other contexts (Davidov et al. 2012, p. 604). The study found that 'clients' fears of mandated reporting and losing their children seem to act as barriers within the home visitation program, especially with regard to establishing trust… and disclosure' (Davidov et al. 2012, p. 602).

Unfortunately there are few studies that have considered parents' views of mandatory reporting or the views of those who support them. However some studies have been undertaken in places where there are mandatory reporting requirements relating to domestic violence. These studies may give some indication of how mothers might engage with services in an environment of mandatory child abuse reporting. It is relevant to note, for example, that some studies have demonstrated that abused women may be less likely to seek medical attention in the context of mandatory reporting laws around domestic violence (Smith and Parsons Winokur 2004, p. 208). For example, a study by Smith and Winokur (2004) examined battered women's views of doctors' mandatory reporting requirements. This study related to the mandatory reporting requirements surrounding the doctors' duty to report injuries suspected to be associated with domestic violence. What is particularly interesting about this study, and important in considering the mandatory reporting of child abuse where there is also domestic violence, is that battered women who did not want police involvement in their circumstances stated they were less likely to seek medical attention as a result of the requirement of mandatory reporting (Smith and Parsons Winokur 2004, p. 219). In a study conducted by Gielen and colleagues (2000), the researchers interviewed 442 women (202 of these women were abused women) about their policy preferences concerning domestic violence screening and

mandatory reporting. In the study, abused women were more likely than non-abused women to support routine screening for domestic violence, and the majority of women in both groups believed that routine screening would make it easier to get help (Gielen et al. 2000, p. 284). However, two thirds of the women interviewed thought that women would be less likely to tell their health-care provider about the abuse under a mandatory reporting policy, and many of the women expressed fear and concern about negative consequences resulting from mandatory reporting (Gielen et al. 2000, p. 282).

The problem, of course, is not mandatory reporting per se but rather the ineffectiveness of the child protection system as a whole. If the system does not support families to bring about protective outcomes for their children, and if child protection interventions are punitive in nature, then mandatory reporting and the response to it simply casts the net of affected families wider. Where child protection systems focus on working with mothers to support them to retain care of their children, the experience of mandatory reporting may be more positive. For example, one mandatory reporting programme for domestic violence, in the US state of Kentucky, has had some success, most likely because it was strongly connected to the provision of services to families (Bledsoe et al. 2004). In Kentucky reporting domestic violence is mandatory and anyone who suspects domestic violence must report it, not just professionals working with families. Notably, reports are made to a social service agency rather than a law enforcement agency. In a review of 631 adult protective service cases resulting from reports of domestic violence, Bledsoe et al. (2004) found that just under half of the referrals came from law enforcement, around 16 % came from women's shelters and some came from women experiencing violence themselves. Although this study did not ask whether women were less inclined to report violence to police or child protection agencies in the context of mandatory reporting, it was undertaken in light of concerns that had been expressed about possible unintended consequences of mandatory reporting law to victims (Bledsoe et al. 2004, p. 535). The researchers found that over half of those reported cases received social services, including safety plans and shelter (Bledsoe et al. 2004, p. 553). Arguably the Kentucky model is a more positive one as the focus is on family support rather than child removal or criminalisation.

While there is no specific requirement for mandatory reporting of domestic violence in Queensland, the emotional effects of domestic violence on the child may well result in reportable harm or in reporters making reports on this basis even where there is no harm to the child.[18] The study conducted in Kentucky suggests that systems focussed on family support may be more likely to be supported by mothers and those organisations that support them.

A recent inquiry into child protection in Queensland has recommended a 'dual reporting pathway' which would allow some concerns about child protection to be referred to a nongovernment broker, and ideally, under this model, many families would be referred quickly to the services they need (Carmody Inquiry 2013, pp.

[18] For example, under Queensland legislation, harm includes emotional and psychological harm (see *Child Protection Act 1999* (Qld) ss 9, 148).

xviii–xix). The Carmody Inquiry emphasised that child protection interventions need to be child *and* parent sensitive to ensure that services address the risk factors that give rise to child protection concerns in the first place, for example, drug addiction, domestic violence, mental illness and social exclusion (Carmody Inquiry 2013, p. 134 (emphasis added)).

Mandatory Reporting and Lack of Confidence in the Child Protection System

Many studies have found that mandatory reporting creates moral, ethical and practical dilemmas for professionals and that professionals often decide not to report suspected child abuse despite their legal obligations (Bunting et al. 2010, pp. 191, 198). For example, in their 2004 study, Alvarez and colleagues (2004) found that mandatory reporters often choose not report child abuse for various reasons including the negative impact on the therapeutic relationship, negative intrusion into the family's life and the risk of mislabelling and stigmatising families, particularly since many reports are unsubstantiated (Alvarez et al. 2004, pp. 326–327; Vulliamy and Sullivan 2000, pp. 1467–1468; Feng et al. 2012, p. 278; Wiseman 2008; cf Sege et al. 2011, p. 465).

In their survey of 26 paediatricians, Vulliamy and Sullivan (2000) found that the respondents were sometimes non-compliant with the duty to report, and many of those that did report were undecided as to whether this had resulted in a positive outcome. One of three main reasons why paediatricians in the Vulliamy and Sullivan (2000, p. 1467) study did not report was that they believed that there were problems with the child protection system.[19] Another study involving interviews with 110 primary health-care providers noted that these professionals were unlikely to report suspected child abuse, even in a mandatory reporting environment, unless they believed child protection intervention would benefit the child (Sege et al. 2011, p. 465; see also Feng et al. 2012, p. 278). Other studies have also pointed to the decision not to report being linked to perceptions that reporting would make the situation worse or to uncertainty about the child protection system's ability or willingness to deal with the case (Bunting et al. 2010, pp. 198–199; Gunn, et al. 2005, p. 99). In a qualitative study involving interviews with nurses, many of the respondents, despite mandatory reporting requirements, had delayed reporting suspected child abuse on the basis that they would be able to provide better support and intervention for the child and family given the 'overwhelmed' child protection system (Eisbach and Driessnack 2010, pp. 321–322).[20] Delaronde and colleagues (2000, p. 908)

[19] See also Jacob and Fanning (2006), where it was suggested that a number of professionals had begun to see reporting as pointless due to lack of services and follow-up from child protection authorities.

[20] Similarly in a study of doctors and nurses in Israel, nurses were more likely to consider the outcomes of reporting (as compared to doctors) before reporting; see Ben Natan et al. (2012) at 336.

emphasise that even where reporters do report suspected abuse, 'there is no evidence to suggest that these children would receive appropriate attention' from the child protection system.

Some studies suggest that the experience of women who engage with the child protection system can actually be harmful. In a Canadian study undertaken by Hughes and colleagues (2011), the researchers spoke to 64 women who had experienced domestic violence and had become involved in the child protection system. The authors found that some women had contacted child protection services seeking assistance, yet they found they were the investigated and told to leave abusive partners without being provided with appropriate support or concrete assistance (Hughes et al. 2011, p. 1088; see also Douglas and Walsh 2010). The researchers concluded that the child protection system was not an effective system for supporting women who have experienced domestic violence. In their study referred to above, Davidov and colleagues (2012, pp. 601–602) found that both mothers and the home visitors identified that mothers held strong fears of child removal if domestic violence was reported. Some of the home visitors interviewed in Davidov et al.'s (2012, pp. 601–602) study agreed this fear was legitimate. Indeed, one unintended consequence of mandatory reporting may actually be the revictimisation of abused women (Jaffe et al. 2003). Unsubstantiated reports may be held on file for many years and it can be difficult to have them removed. As one writer from the United States observes, even baseless reports can have implications for employment (Owhe 2013, p. 317).

Improving Current Approaches

It seems that mandatory reporting can have the effect of casting the net of child protection system wider for some kinds of abuse, not necessarily to the benefit of children and families. In 2002 research, Ainsworth (2002, p. 8) observed that considerably more resources were applied to unsubstantiated cases in a mandatory reporting environment (NSW) compared to a non-mandatory reporting environment (WA). The diversion of much needed resources to situations that can be dealt with more effectively outside the child protection system is undesirable, and service providers who work closely with children and their families believe that they are often in the best position to judge what kind of intervention will be appropriate in the circumstances.

In most circumstances, it will be appropriate that consultation with the mother occurs before a report is made to child protection services. In the context of reporting domestic violence, some have suggested that victims of violence should be consulted and consent to the reporting. This might encourage attendance at doctors and other service providers (Smith and Parsons Winokur 2004, p. 219).

In their research, Delaronde and colleagues (2000 p. 903) suggested that only a narrow group of matters – sexual abuse, serious physical abuse or maltreatment which places the child in imminent danger – be immediately reported by mandated

reporters by telephone with a written report to follow to child protection services within 72 h.[21] In Delaronde and colleagues' (2000) study, the researchers found that for a significant number of mandated reporters, this option was preferred to traditional mandatory reporting obligations.

Some have suggested that professionals who have mandatory reporting duties should at least advise their clients of this before consulting with them. Adler (1995, p. 193), a psychiatrist, accepts that the number of fatalities stemming from child abuse has reduced since the introduction of mandatory reporting. He says there have been discussions in his field of expertise about developing a consent form for patients to sign which makes it clear that they allow doctors to disclose information that reveals the patient may be a danger to others, for example, to children (Adler 1995, p. 197).

It is also important that professionals who work with children and families have confidence in the child protection system. This will encourage reporting and ensure compliance with any mandatory reporting requirements that do exist. For participants in our research, it was important that the removal of a child only occurs as a last resort and that every effort be made to support a family to bring about protective outcomes for their child. Our participants felt that often this did not occur, and this is a common complaint by professionals about child protection systems in Australia and elsewhere (Penn and Gough 2002; McConnell and Llewellyn 2005; Tomison 2002b; Masson 2008). This is ameliorated to some extent in New South Wales and Victoria by the legislative requirement that every effort be made to assist the family to maintain care of the child before placing a child in alternative care.[22] In Queensland, no such provision exists; rather the test applied is a broad 'best interests' of the child test.[23] This means that workers can feel alienated from the system rather than working in partnership and collaborating on the kind of intervention that is best for the child and the family. In recognition of these concerns, the recent Carmody Inquiry into child protection in Queensland recommended a new statutory practice framework, 'Signs of Safety', should be introduced (2013, p. xx). Such an approach would allow child protection workers to use their casework skills and focus more on what works for the individual family. This strength-based approach would allow child protection workers to 'rebalance case-work and decision-making back in favour of professional judgment' (Carmody Inquiry 2013, p. 204). The Carmody Inquiry also recommended legislative reform to the definition of 'child in need of protection' to emphasise that a child must be 'at risk of significant harm to meet the legislative threshold' (2013, p. 504).

[21] Another aspect to this alternative strategy was that in less severe cases the mandated reporter may report to the child protection service or discuss with an independent reviewer.

[22] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 63; *Children, Youth and Families Act 2005* (Vic) s 276(2)(b).

[23] *Child Protection Act 1999* (Qld) s 5A.

Conclusion

Our research has suggested that mandatory reporting is problematic if the child protection system cannot be relied upon by professionals to adequately and effectively support children and families. In cases of serious abuse, particularly sexual abuse, mandatory reporting serves a useful function and is important to protect children. However in a punitive child protection environment, mandatory reporting may discourage vulnerable mothers from seeking assistance from social services. Where child protection services are unable to offer substantive assistance to families, their capacity to respond appropriately to the reports they receive may be limited, and mandatory reporters may actually choose not to comply with their reporting obligations.

References

Adler, R. (1995). To tell or not to tell: The psychiatrist and child abuse. *Australian and New Zealand Journal of Psychiatry, 29*, 190–198.

Ainsworth, F. (2002). Mandatory reporting of child abuse and neglect: Why would you want it? *Developing Practice: The Child, Youth and Family Work Journal, 4*, 5–8.

Alvarez, K., Donohue, B., Kenny, M., et al. (2004). The process and consequences of reporting child maltreatment: A brief overview for professionals in the mental health field. *Aggression and Violent Behaviour, 10*, 311–331.

Australian Institute of Health and Welfare. (2013). *Child protection in Australia 2011–2012* (Child welfare series No. 55). Canberra: Australian Institute of Health and Welfare.

Australian Law Reform Commission. (1997). *Seen and heard: Priority for children in the legal system* (Report No 84). Canberra: Australian Law Reform Commission.

Bamblett, M., Bath, H., & Roseby, R. (2010). *Growing them strong, together: Promoting the safety and well-being of the Northern Territory's Children.* Report of the Board of Inquiry into the Child Protection System in the Northern Territory, Northern Territory Government, Darwin.

Ben Natan, C., Faour, S., Naamhah, K., et al. (2012). Factors affecting medical and nursing staff reporting of child abuse. *International Nursing Review, 59*(3), 331–337.

Bessarab, D., & Crawford, F. (2010). Aboriginal practitioners speak out: Contextualising child protection interventions. *Australian Social Work, 63*(2), 179–193.

Betts, A. (2013, May 14). Indigenous adoption push prompts stolen generation fears. *ABC News*. Available from http://www.abc.net.au/news/2013-05-14/indigenous-child-adoption-proporal-and-reaction/4688232

Bledsoe, L. K., Yankeelov, P., Barbee, A., et al. (2004). Understanding the impact of intimate partner violence mandatory reporting law. *Violence Against Women, 10*, 534–560.

Brophy, J. (2008). Child maltreatment in diverse households: Challenges to law, theory and practice. *Journal of Law and Society, 35*, 75–94.

Bunting, L., Lazenbatt, A., & Wallace, I. (2010). Information sharing and reporting systems in the UK and Ireland: Professional barriers to child maltreatment concerns. *Child Abuse Review, 19*, 187–202.

Busch, M., Wall, J. R., Koch, S., et al. (2008). Addressing the disproportionate representation of children of color: A collaborative community approach. *Child Welfare, 87*, 255–278.

Cancian, M., Slack, K., & Yang, M. (2009). *The effect of poverty on risk of child maltreatment* (Discussion Paper 1385–10). Institute for Research on Poverty. Available from http://www.irp.wisc.edu/publications/dps/pdfs/dp138510.pdf

Carmody Inquiry: Queensland Child Protection Commission of Inquiry. (2013). *Taking responsibility: A roadmap for Queensland child protection*. Brisbane: Queensland Child Protection Inquiry.

Cashmore, J. (2002). Mandatory reporting: Is it the culprit? Where is the evidence? *Developing Practice: The Child, Youth and Family Work Journal, 4*, 9–12.

Church, W. T. (2006). From start to finish: The duration of Hispanic children in out of home placements. *Children and Youth Services Review, 28*, 1007–1023.

CT v Commissioner for Children and Young People and Child Guardian [2012] QCAT 354.

Davidov, D., Jack, S., Frost, S., et al. (2012). Mandatory reporting in the context of home visitation programs: Intimate partner violence and children's exposure to intimate partner violence. *Violence Against Women, 18*, 595–610.

Delaronde, S., King, G., Bendel, R., et al. (2000). Opinions among mandated reporters toward child maltreatment reporting policies. *Child Abuse and Neglect, 24*(7), 901–910.

Department of Communities, Child Safety and Disability Services. (2013). *What is child abuse?* Queensland Government. Available from http://www.communities.qld.gov.au/childsafety/protecting-children/what-is-child-abuse

Derezotes, D. (2009). *Child welfare commentary, racial and ethnic disparity and disproportionality in child welfare and juvenile justice: A compendium* (pp. 41–46). Chicago: Centre for Juvenile Justice Reform, University of Chicago.

Dettlaff, A. J., Rivaux, S. L., Baumann, D. J., et al. (2009). Disentangling substantiation: The influence of race, income, and risk on the substantiation decision in child welfare. *Children and Youth Services Review, 33*(9), 1630–1637.

Dingwall, R. (1997). Accounts, interviews and observations. In G. Miller & R. Dingwall (Eds.), *Context and method in qualitative research* (pp. 52–66). London: Sage.

Doreian, P., & Woodard, K. L. (1992). Fixed list versus snowball selection of social networks. *Social Science Research, 21*, 216–233.

Douglas, H., & Walsh, T. (2009). Mothers and the child protection system. *International Journal of Law, Policy and the Family, 23*(2), 211–229.

Douglas, H., & Walsh, T. (2010). Mothers, domestic violence and child protection (symposium centrepiece). *Violence Against Women, 16*(5), 489–508.

Douglas, H., & Walsh, T. (2013). Continuing the stolen generations: Child protection interventions and indigenous people. *The International Journal of Children's Rights, 21*(1), 59–87.

Douglas, H., Walsh, T., & Blore, K. (2009). Mothers and the child protection system (Research Report). Brisbane: The University of Queensland.

Drake, B., Moo, S., & Jonson-Reid, M. (2009). Race and child maltreatment reporting: Are blacks overrepresented? *Children and Youth Services Review, 31*, 309–316.

Drake, B., Jolley, J., Lanier, P., et al. (2011). Racial bias in child protection? A comparison of competing explanations using national data. *Pediatrics, 127*(3), 471–478.

Eisbach, S., & Driessnack, M. (2010). Am I sure I want to go down this road? Hesitations in the reporting of child maltreatment by nurses. *Journal for Specialists in Pediatric Nursing, 15*(4), 317–323.

Feng, J., Chen, Y., Fettzer, S., et al. (2012). Ethical and legal challenges of mandated child abuse reports. *Children and Youth Services Review, 34*, 276–280.

Gielen, A. C., Schollenberger, J., & Dienman, J. (2000). Women's opinions about domestic violence screening and mandatory reporting. *American Journal of Preventive Medicine, 19*(4), 279–285.

Gunn, V., Hickson, G., & Cooper, W. (2005). Factors effecting paediatricians' reporting of suspected child maltreatment. *Ambulatory Pediatrics, 5*, 96–101.

Hughes, J., Chau, S., & Poff, D. (2011). "They're not my favourite people": What mothers who have experienced intimate partner violence say about involvement in the child protection system. *Children and Youth Services Review, 33*, 1084–1089.

Jacob, A., & Fanning, D. (2006). *Report on child protection services in Tasmania*. Hobart: Department of Health and Human Services.

Jaffe, P., Crooks, C., & Wolfe, D. (2003). Legal and policy responses to children exposed to domestic violence: The need to evaluate intended and unintended consequences. *Clinical Child and Family Psychological Review, 6*(3), 205–213.

Kaur, J. (2012). *Cultural diversity and child protection: Australian research review on the needs of culturally and linguistically diverse (CALD) and refugee children and families*. Cleveland: JK Diversity Consultants.

Keegan Eamon, M., & Kopels, S. (2004). 'For reasons of poverty': Court challenges to child welfare practices and mandated programs. *Children and Youth Services Review, 26*, 821–836.

Kidd, P. S., & Parshall, M. B. (2000). Getting the focus and the group: Enhancing analytical rigor in focus group research. *Qualitative Health Research, 10*, 293–308.

Kitzinger, J. (1994). The methodology of focus groups: The importance of interaction between research participants. *Sociology of Health and Illness, 16*, 103–121.

Lewis, J., & Welsh, E. (2005). Fathering practices in twenty-six intact families and the implications for child contact. *International Journal of Law in Context, 1*, 81–99.

Marts, E., Eun-Kyoung, O. L., McRoy, R., et al. (2008). Point of engagement: Reducing disproportionality and improving child and family arguments. *Child Welfare, 87*(2), 335–358.

Masson, J. (2008). The state as parent: The reluctant parent? The problems of parents of last resort. *Journal of Law and Society, 35*(1), 52–74.

Mathews, B. (2012). Exploring the contested role of mandatory reporting laws in the identification of severe child abuse and neglect. In M. Freeman (Ed.), *Current legal issues: Vol. 14. Law and childhood studies* (pp. 302–338). Oxford: Oxford University Press.

Mathews, B., & Bross, D. C. (2008). Mandated reporting is still a policy with reason: Empirical evidence and philosophical grounds. *Child Abuse and Neglect, 32*, 511–516.

Mathews, B., & Kenny, M. (2008). Mandatory reporting legislation in the USA, Canada and Australia: A cross-jurisdictional review of key features, differences and issues. *Child Maltreatment, 13*, 50–63.

Mathews, B., Walsh, K., & Fraser, J. A. (2006). Mandatory reporting by nurses of child abuse and neglect. *Journal of Law and Medicine, 13*, 505–517.

McConnell, D., & Llewellyn, G. (2005). Social inequality, the "deviant parent" and child protection practice. *Australian Journal of Social Issues, 40*(4), 553–566.

McGlade, H. (2012). *Our greatest challenge: Aboriginal children and human rights*. Canberra: Aboriginal Studies Press.

Melton, G. (2005). Mandated reporting: A policy without reason. *Child Abuse and Neglect, 29*, 9–18.

Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook* (2nd ed.). Thousand Oaks: Sage.

Owhe, J. (2013). Indicated reports of child abuse or maltreatment: When suspects become victims. *Family Court Review, 51*(2), 316–329.

Penn, H., & Gough, D. (2002). The price of a loaf of bread: Some conceptions of family support. *Children and Society, 16*(1), 17–32.

Pietrantonio, A. M., Wright, E., Gibson, K., et al. (2013). Mandatory reporting of child abuse and neglect: Crafting a positive process for health professionals and caregivers. *Child Abuse and Neglect, 37*, 102–109.

Rath, A. (2001) *Permanency planning and adoption* (Briefing Paper No. 2/2001). Sydney: NSW Parliamentary Library Research Service.

Roberts, D. (2007). Child welfare's paradox. *William and Mary Law Review, 49*, 881–901.

Roberts, D. (2008). The racial geography of child welfare: Toward a new research paradigm. *Child Welfare, 87*(2), 125–150.

Roberts, D. (2012). Prison, and foster care: The systemic punishment of black mothers. *UCLA Law Review, 59*, 1474–1500.

Scott, D. (2013). *Child protection statistics for aboriginal and Torres Strait Islander children.* Australian Institute of family Studies. Available from http://www.aifs.gov.au/cfca/pubs/factsheets/a142117/index.html

Sege, R., Flaherty, E., Jones, R., et al. (2011). To report or not to report: Examination of the initial primary care management of suspicious childhood injuries. *Academic Pediatrics, 11*(6), 460–466.

Smith, A., & Parsons Winokur, K. (2004). What doctors and policymakers should know: Battered women's views about mandatory reporting laws. *Journal of Criminal Justice, 32*, 207–221.

Stretch, R. (2003). The duty to report child abuse in France, lessons for England? *Child and Family Law Quarterly, 15*, 139–154.

Takis, A. (2008). The mandatory reporting debate. *Macquarie Law Journal, 8*, 125–152.

Thomson, J. (2003). This is nothing new: Child protection concerns and poverty. *Children Australia, 28*(1), 4–10.

Tomison, A. (2002a). Mandatory reporting: A question of theory versus practice. *Developing Practice, 4*, 13–17.

Tomison, A. (2002b). Preventing child abuse: Changes to family support in the 21st century. *National Child Protection Clearinghouse, 17*, 1–24.

Vulliamy, A., & Sullivan, R. (2000). Reporting child abuse: Pediatricians' experiences with child protection system reporting. *Child Abuse and Neglect, 24*(11), 1461–1470.

Walsh, T., & Douglas, H. (2008). Homelessness and legal needs: A South Australia and Western Australia case study. *Adelaide Law Review, 29*(2), 359–380.

Walsh, T., & Douglas, H. (2009). Legal responses to child protection, Poverty and Homelessness. *Journal of Social Welfare and Family Law, 31*(2), 133–146.

Walsh, T., & Douglas, H. (2012). Lawyers' views of decision-making in child protection matters: The tension between adversarialism and collaborative approaches. *Monash University Law Review, 38*(2), 181–211.

Wekerle, C. (2013). Resilience in the context of child maltreatment: Connection to the practice of child maltreatment. *Child Abuse and Neglect, 37*, 93–101.

Wiseman, H. (2008). Failed by the system. *Australian Doctor, 22*, 13–14.