



Sara Bird

# Child abuse

## Mandatory reporting requirements

All Australian states and territories have legislation that requires medical practitioners to report cases of child abuse to the appropriate child protection service. This article outlines the obligations of medical practitioners to report child abuse and highlights the differences that exist in the legislative requirements in each state and territory.

**Keywords:** child abuse; medicolegal, jurisprudence

### Case study

On 1 August 2007, a 17 month old child was seen by a paediatrician at St Ann's Hospital, London. The presenting problems were listed as aggressive behaviour, including biting and hitting other people, easy bruising and a fungal scalp infection. The paediatrician noted three bruises on the left side of the child's face and 10–15 bruises on his back. The paediatrician provided a referral for investigation of possible metabolic disease and discharged the patient home with his mother.

Two days later the patient was dead. A postmortem examination revealed multiple injuries, including eight fractured ribs, an area of bleeding around the spine at the cervical level and numerous bruises, cuts and abrasions.

In November 2008, the child's mother, her boyfriend, and his brother were convicted of causing or allowing the child's death.

An expert review of the case concluded that the bruising the patient presented with on 1 August 2007 was typical of child abuse, and should have been recognised as such by the paediatrician.<sup>1</sup>

### Discussion

Approximately 4% of notifications of child abuse to child protection services in Australia are made by medical practitioners.<sup>2</sup> A study which examined the medical records of children up to 3 years of age

who presented with a fracture to an emergency department revealed that many cases of child abuse were being missed by hospital staff.<sup>3</sup> The study highlighted the need for more training in this area of clinical practice.

General practitioners sometimes report concerns about making a notification of child abuse including:

- breaching doctor/patient confidentiality
- a breakdown of the doctor/patient relationship
- the patient and the family will know the GP has provided the report
- the implications for the GP, especially if they 'get it wrong'
- notification may only worsen the situation for the patient and their family.

The aim of mandatory reporting legislation is to enable medical practitioners and other professionals to report cases of child abuse without fear of criticism or reprisal. There is legislative protection for the reporter, including in most states and territories protection of the identity of the person making the notification. Although there are penalties for not complying with mandatory reporting, the main focus of the legislation is to enable medical practitioners to report suspected cases of child abuse to ensure the safety and wellbeing of children.

### Risk management strategies

The mandatory reporting legislation in each state and territory is summarised in *Table 1*. In Western Australia there is mandatory reporting of child sexual abuse only; however, nonmandatory reporting of other forms of child abuse can be made.

If a GP is uncertain from a clinical point of view about whether or not to report, they should contact their local child protection unit, or a paediatrician for additional advice. Specific advice about the legislative requirements for reporting child abuse in each state and territory can be obtained from medical defence organisations.

**Table 1. Child abuse legislation**

<b>Australian Capital Territory</b>	
Legislation	<i>Children and Young People Act 2008</i>
Mandatory reporting	A report must be made if a person believes on reasonable grounds that a child or young person has experienced or is experiencing sexual abuse or nonaccidental physical injury
Definition of abuse	<p>Abuse means:</p> <ul style="list-style-type: none"> <li>• physical abuse</li> <li>• sexual abuse</li> <li>• emotional (including psychological) abuse if the child or young person has or is experiencing abuse in a way that has caused/is causing significant harm to his/her wellbeing or development</li> <li>• emotional (including psychological) abuse if the child or young person has seen or heard the physical, sexual or psychological abuse of a person that the child has a domestic relationship with, and the child's exposure to this has caused/is causing significant harm to his/her wellbeing or development; or</li> <li>• if the child or young person is at risk of seeing or hearing abuse, and this will cause significant harm to the child's wellbeing or development</li> </ul> <p>Neglect means that a child or young person is not being provided the necessities of life (including medical care) and is experiencing significant harm to his/her wellbeing or development</p>
Timing of mandatory report	As soon as practicable
Ages to be notified	Less than 18 years
Body to report to	Office for Children, Youth and Family Support
Contact details	1300 556 729 www.dhcs.act.gov.au/ocyfs
Protection from liability	Yes

<b>New South Wales</b>	
Legislation	<i>Children and Young Persons (Care and Protection) Act 1998</i>
Mandatory reporting	A report must be made if a person has reasonable grounds to suspect that a child is at risk of significant harm, and those grounds arise during the course of or from the person's work
Definition of abuse	<p>At risk of significant harm means the presence of any one or more of the following to a significant extent:</p> <ul style="list-style-type: none"> <li>• when basic physical and psychological needs are not being met, or are at risk of not being met</li> <li>• when necessary medical care is not being arranged</li> <li>• the child has been or is at risk of physical or sexual abuse, or ill treatment</li> <li>• when physical or psychological harm may occur due to domestic violence</li> <li>• parental or caregiver behaviour has caused or is at risk of causing serious psychological harm</li> <li>• the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act</li> </ul> <p>Any such circumstances may relate to a single act or omission or to a series of acts or omissions</p>
Timing of mandatory report	As soon as practicable
Ages to be notified	Less than 16 years
Body to report to	Department of Community Services
Contact details	13 36 27 www.community.nsw.gov.au
Protection from liability	Yes

**Table 1. Child abuse legislation (continued)**

<b>Northern Territory</b>	
Legislation	<i>Care and Protection of Children Act 2007</i>
Mandatory reporting	<p>A report must be made if a person believes on reasonable grounds that:</p> <ul style="list-style-type: none"> <li>• a child (under 18 years) has suffered or is suffering harm or exploitation; or</li> <li>• a child less than 14 years has been or is likely to be the victim of a sexual offence</li> </ul> <p>A report must be made by a health practitioner if they believe on reasonable grounds that a child aged 14 or 15 years has been or is likely to be the victim of a sexual offence and the difference in age between the child and the alleged sexual offender is more than 2 years</p>
Definition of abuse	<p>The terms 'harm' or 'exploitation' includes:</p> <ul style="list-style-type: none"> <li>• physical</li> <li>• sexual</li> <li>• emotional/psychological</li> <li>• neglect</li> <li>• exposure to physical violence (eg. violence between parents at home)</li> </ul>
Timing of mandatory report	As soon as practicable
Ages to be notified	Less than 18 years
Body to report to	Department of Children and Families
Contact details	1800 700 250 <a href="http://www.childrenandfamilies.nt.gov.au/Child_Protection/index.aspx">www.childrenandfamilies.nt.gov.au/Child_Protection/index.aspx</a>
Protection from liability	Yes
<b>Queensland</b>	
Legislation	<i>Child Protection Act 1999</i> <i>Public Health Act 2005</i>
Mandatory reporting	A report must be made if a professional becomes aware or reasonably suspects that a child has suffered, or is likely to suffer, harm
Definition of child abuse	<p>Harm means:</p> <ul style="list-style-type: none"> <li>• any detrimental effect of a significant nature on the child's physical, psychological and emotional wellbeing</li> <li>• it is immaterial how the harm is caused</li> <li>• harm may be caused by: <ul style="list-style-type: none"> <li>– physical, psychological or emotional abuse or neglect; or</li> <li>– sexual abuse or exploitation</li> </ul> </li> </ul> <p>A child is in need of protection if he/she has suffered, or is suffering harm, or is at an unacceptable risk of suffering harm, and the child does not have a parent that is willing and able to protect him/her from the harm</p>
Timing of mandatory report	Immediately Within 7 days of the initial report (if it was made orally) the professional must provide a notice about the harm or likely harm, even if they no longer believe or suspect the child is at risk
Ages to be notified	Less than 18 years
Body to report to	Department of Communities (Child Safety Services)
Contact details	1800 811 810 (BH) 1800 177 135 (AH) <a href="http://www.communities.qld.gov.au/childsafety">www.communities.qld.gov.au/childsafety</a>
Protection from liability	Yes

**Table 1. Child abuse legislation (continued)**

<b>South Australia</b>	
Legislation	<i>Children's Protection Act 1993</i>
Mandatory reporting	A report must be made if a person suspects on reasonable grounds that a child has been or is being abused or neglected or that there is a reasonable likelihood of the child being killed, injured, abused or neglected by a person with whom the child resides
Definition of abuse	Abuse or neglect includes: <ul style="list-style-type: none"> <li>• sexual abuse</li> <li>• physical or emotional abuse or neglect, to the extent that the child has or is likely to suffer:                             <ul style="list-style-type: none"> <li>– physical or psychological injury; or</li> <li>– the child's physical or psychological development is in jeopardy</li> </ul> </li> </ul>
Timing of mandatory report	As soon as practicable
Ages to be notified	Less than 18 years
Body to report to	Department for Families and Communities
Contact details	131 478 www.dfc.sa.gov.au/pub/default.aspx?tabid=485
Protection from liability	Yes

<b>Victoria</b>	
Legislation	<i>Children, Youth and Families Act 2005</i>
Mandatory reporting	A report must be made if a belief is formed, on reasonable grounds, that a child is in need of protection from physical or sexual abuse
Definition of abuse	A child is in need of protection where: <ul style="list-style-type: none"> <li>• the child has been abandoned</li> <li>• the child's parents are dead or incapacitated and no other suitable person can be found who is willing and able to care for the child</li> <li>• the child has suffered, or is likely to suffer, significant harm as a result of:                             <ul style="list-style-type: none"> <li>– physical injury</li> <li>– sexual abuse</li> <li>– emotional or psychological harm that has, or is likely to, significantly damage the child's emotional or intellectual development</li> <li>– failure to provide or arrange, or permit basic or effective medical, surgical or remedial care</li> </ul> </li> </ul>
Timing of mandatory report	As soon as practicable
Ages to be notified	Less than 17 years
Body to report to	Department of Human Services – Child Protection and Family Services
Contact details	13 12 78 (AH) www.dhs.vic.gov.au/for-individuals/child,-youth-and-family-services/child-protection
Protection from liability	Yes

**Table 1. Child abuse legislation (continued)**

<b>Tasmania</b>	
Legislation	<i>Children, Young Persons and their Families Act 1997</i>
Mandatory reporting	<p>A report must be made if a person believes or suspects on reasonable grounds, or knows:</p> <ul style="list-style-type: none"> <li>(a) that a child has been or is being abused or neglected or is an affected child within the meaning of the <i>Family Violence Act 2004</i>; or</li> <li>(b) that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides; or</li> <li>(c) while a woman is pregnant, that there is a reasonable likelihood that after the birth of the child <ul style="list-style-type: none"> <li>(i) the child will suffer abuse or neglect, or may be killed by a person with whom the child is likely to reside; or</li> <li>(ii) the child will require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman resides or is likely to reside, before the birth of the child</li> </ul> </li> </ul>
Definition of abuse	<p>Abuse or neglect means:</p> <ul style="list-style-type: none"> <li>• sexual abuse; or</li> <li>• physical or emotional injury or other abuse, or neglect, if the child is likely to suffer physical or psychological harm, the child's wellbeing is likely to be (or has been) harmed, or the child's physical or psychological development is in jeopardy</li> </ul> <p>A child is at risk if:</p> <ul style="list-style-type: none"> <li>(a) the child has been, is being, or is likely to be, abused or neglected; or</li> <li>(b) any person with whom the child resides or who has frequent contact with the child (whether the person is or is not a guardian of the child) <ul style="list-style-type: none"> <li>(i) has threatened to kill or abuse or neglect the child and there is a reasonable likelihood of the threat being carried out; or</li> <li>(ii) has killed or abused or neglected some other child or an adult and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or</li> </ul> </li> <li>(ba) the child is an affected child within the meaning of the <i>Family Violence Act 2004</i>; or</li> <li>(c) the guardians of the child are: <ul style="list-style-type: none"> <li>(i) unable to maintain the child; or</li> <li>(ii) unable to exercise adequate supervision and control over the child; or</li> <li>(iii) unwilling to maintain the child; or</li> <li>(iv) unwilling to exercise adequate supervision and control over the child; or</li> <li>(v) dead, have abandoned the child or cannot be found after reasonable inquiry; or</li> <li>(vi) are unwilling or unable to prevent the child from suffering abuse or neglect; or</li> </ul> </li> <li>(d) the child is under 16 years of age and does not, without lawful excuse, attend a school, or other educational or training institution, regularly</li> </ul> <p>NB: 'affected child' means a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence</p>
Timing of mandatory report	As soon as practicable
Ages to be notified	Less than 18 years
Body to report to	Department of Health and Human Services – Child Protection
Contact details	1300 737 639 <a href="http://www.dhhs.tas.gov.au/children/child_protection_services">www.dhhs.tas.gov.au/children/child_protection_services</a>
Protection from liability	Yes

**Table 1. Child abuse legislation (continued)**

<b>Western Australia</b>	
Legislation	<i>Children and Community Services Act 2004</i>
Mandatory reporting	A report must be made if a person believes, on reasonable grounds, that a child has experienced, or is experiencing sexual abuse
Definition of abuse	Sexual abuse in relation to a child, includes sexual behaviour in circumstances where: <ul style="list-style-type: none"> <li>• the child is the subject of bribery, coercion, a threat, exploitation or violence; or</li> <li>• the child has less power than another person involved in the behaviour; or</li> <li>• there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour</li> </ul>
Timing of mandatory report	As soon as practicable, once a belief on reasonable grounds has been formed Reporting of sexual abuse is mandatory from 1 January 2009
Ages to be notified	Less than 18 years
Body to report to	Department for Child Protection
Contact details	1800 708 704 <a href="http://www.mandatoryreporting.dcp.wa.gov.au">www.mandatoryreporting.dcp.wa.gov.au</a>
Protection from liability	Yes

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