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# Child Abuse: Mandatory Reporting Bound to Fail

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*Moira Rayner*

Until this year, Western Australia was the only Australian State not to mandate reporting of suspected child abuse. On 7 March, 2007, Premier Alan Carpenter announced that WA would require doctors, nurses, teachers and police to report evidence of child sexual abuse as part of the Government's response to the Ford Review of its child protection system— despite the Review strongly recommending that it should not.

There will now be eight different child-abuse mandatory reporting regimes across Australia.

Ford made 70 recommendations based on a whole-of-government responsibility for child protection. The recommendations included direct responsibility in government agencies such as Health and Education — along with a proposed new Department of Child Safety and Well-Being — through formal central and district structures.

Ford left the most powerful recommendation until last — don't introduce a mandatory reporting system because it does nothing to improve children's lives. Mandatory reporting has fallen into chaos worldwide.

Last year, Ford had found WA's child protection system close to collapse. The old Department had a reactive and crisis-driven culture, had no overall planning framework, was defensive and over-reacted to criticism, and lacked performance evaluation and quality assurance processes.

Ford found a culture of blame affecting individual caseworkers, many on short-term contracts and some with no professional qualifications at all.

Voluntary notifications were tipped to soar by 22 per cent, while the WA Industrial Relations Commission ruling — which limited child protection workers' loads to 15 active case files — had left an increasing number of notifications awaiting investigation for up to 12 months. The rate of children being taken into care had gone up by 75 per cent yet, a year later some of these had no allocated caseworker, care plan or services. Nearly 36 per cent of all children in care had had at least two foster care placements over three years, and 84 had more than seven — a major indicator of further risk down the track.

Children were not getting therapeutic services because of poor co-ordination or no acceptance of shared responsibility between different Departments.

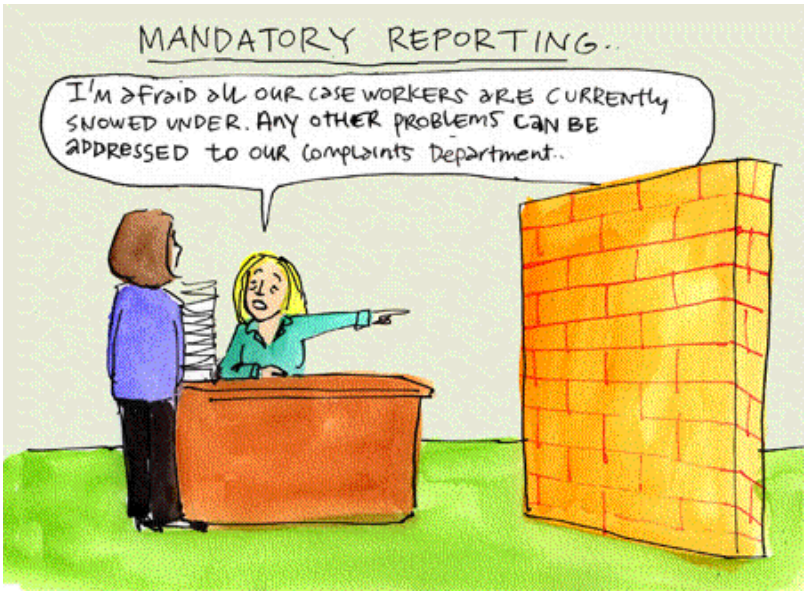
For example, the State Housing Commission's eviction of tenant families — most of them Aboriginal — handed responsibility over to a Department with no accommodation resources at all.

As Ford commented, homelessness isolates children and increases their vulnerability. It disrupts school, social and support networks and leaves their carers unsupervised.

Evicting problematic tenants and moving responsibility for homeless children to a Department that can't house them was 'simply ludicrous.'

WA has recently published several independent reports about avoidable deaths of 'at risk' children, children abused in 'care,' adequacy of foster care placement, and the 2002 Gordon report on Aboriginal abuse and neglect. Thirty-eight per cent of Aboriginal children are in care but they make up less than 3 per cent of WA's population.

Something must be done.




What happens next is important. That is why, having spent most of my life as an advocate for the human rights of children, I believe that the implementation process should be publicly overseen, and I do not support mandatory reporting, because:

- It doesn't reduce child abuse;
- It doesn't help the families of abused children;
- It doesn't prevent recidivism, or protect other children from harm from the same offender;
- It discriminates against some groups;
- It doesn't lead to timely, appropriate or welcome assistance to the children and families; because

- There is no link between a mandated report and the mandatory delivery of an appropriate service for that child and family.

Mandatory reporting was initially introduced in the United States in 1963 to deal with the 'battered child' syndrome. The aim was to encourage doctors to report suspected cases of child abuse in good faith, with protection from consequences. The laws became more complex (covering neglect, emotional and sexual abuse and 'risk') because of a misplaced belief that if such reports were publicised, resources to address the issues would be found.

They haven't been. So why has WA adopted mandatory reporting now?

It's a law that makes the community feel better about these horrible problems, without having to take individual responsibility for the cause.

Mandatory reporting systems operate on the assumption that bureaucratic procedures and on-paper accountability mechanisms mean that standard quality decisions will be made. In my experience, it doesn't work — not child protection registers, nor monitoring released convicted sexual offenders against children. And it is inconceivable that Australia would adopt mandatory life sentences for offenders, popular in some US States, which could result in an increased the murder rate.

Mandatory reporting laws in Australia all prescribe differently what must be reported and to whom. But some highly developed, child-sensitive jurisdictions overseas don't mandate reporting at all. In the UK, for example, they use moral and professional sanctions to get professionals to notify. That has been the theory in WA where there is a very significant degree of protection against legal liability — so long as they adhere to professional standards. Child protection workers need professional qualifications and standards too.

The greatest predictor of harm or death of children known to be at risk is overwhelmed, under-trained, under-resourced child protection workers, who are unable or unwilling to hear what children say or pay attention to telltale behaviours they exhibit.

Mandatory reporting can actually make the problem worse in a number of ways:

1. It makes the public feel better when they shouldn't. The problem remains. Mandatory reporting offers a simple solution to a complex problem and laws never solve these problems. The reports may not be responded to and services may never come.
2. It takes away power from the child. Already voiceless and damaged, they can't influence what happens next. The consequences may be worse than the abuse.
3. It does not guarantee a report. The NSW Child Protection Council found in 2002 that doctors

were more likely to report when they were sure (i) it was abuse, (ii) their peers would support them, and (iii) something good would happen for the child. Address these first.

4. It does not guarantee a better outcome. A report might be uselessly vague. A flood of unsubstantiated reports may desensitise child protection workers to the 'big one.'
5. It does not ensure sufficient resources for a child protection system. Money gets siphoned from services which support children to reports about children. Mandatory reporting is expensive. No government maintains these systems well, anywhere.
6. The law is unenforceable without the 'social glue' that makes people want to comply with it — which means accepting children are people too.
7. It may discourage older, articulate children from reporting abuse at all, fearing the consequences.

Children who feel they can influence decisions that affect them, who can make sense of the values and structures of the adult world and who feel valued, can survive a hard, degrading or chaotic early life. The best way to promote this, and to protect children, is to provide these experiences and ensure that any child can step out of an abusive situation and confide in a trusted adult, knowing it won't make things worse.

There should be an independent overview of the Department's implementation plans — because they appear, from the outside, to be of the 'steady as she goes' variety. In dividing one dysfunctional Department into two, its senior managers seem likely to shuffle the chairs.

One might wonder, if they didn't get it right the first time, how they can be expected to now.

There is no plan to mandate service-provision by other government Departments once the Child Protection Department takes a child into care. It's former 'other half,' the Department for Communities, will now include women's, multicultural and seniors' affairs, and — quite unexpectedly — the State's Constitutional Centre.

One can only marvel at how the spirit of a recommendation could be so interpreted.

The hope may lie in professionalising field staff. Ford recommends they have 'tertiary qualifications.' I would have hoped that all child protection field officers should be required to hold a social work qualification — including specialised training and a year's supervised field experience. But that is not to be.

Premier Carpenter's introduction of mandatory reporting of sexual abuse, claiming WA can just 'learn from the mistakes' of others' failure, is against the spirit of the Ford Report, and a disappointing political response. The Department's response seems to be more of the same.

Will the cycle never end?

## About the author

**Moira Rayner** is a lawyer and a writer who was Director of the Office of the Children's Rights Commissioner for London and is currently Vice President of Defence for Children International (Australian Section). Her personal views are not necessarily those of DCI.