

Mandatory reporting of child abuse requirements for medical imaging professionals throughout Australia

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Abstract Laws exist in most states of Australia regarding mandatory reporting of suspected child abuse. In all Australian jurisdictions, the legislation stipulates various people or professions are mandated to report suspected cases of child abuse. In some states, medical imaging professionals are included in the groups of prescribed people mandated to report their suspicions of child abuse, but these laws vary greatly in each state.

Medical imaging professionals must be familiar with their legal obligations and the protection to the reporter provided by those Acts. Even if not legally obligated to report, medical imaging professions can fulfil their moral obligations with protection provided for voluntary reporting by the various Acts throughout Australia.

Keywords: child abuse, legal, legislation, mandatory reporting

Introduction

Child abuse can be defined as “an act by parents, caregivers, other adults or older adolescents that endangers a child or young person’s physical or emotional health or development”.¹ Child abuse is commonly classified according to four main types: physical abuse, sexual abuse, emotional abuse and neglect. Abuse can be a single incident, but more often occurs over time. The severity of maltreatment and being subjected to multiple forms of abuse will greatly influence a child’s subsequent mental health.¹

Child abuse persists as a major problem throughout Australia. The number of child protection notifications has almost doubled from 137,938 in 2001–2002 to 266,745 in 2005–2006 with the number of substantiated reports also increasing for most states of Australia. Some of the increases in notifications can be contributed to changes in child protection policies.²

Every state of Australia except Western Australia has laws in place for the mandatory reporting of actual or suspected child abuse by certain health professionals. Mandatory reporting of child abuse applies to medical imaging professionals in some states of Australia. All health professionals must be aware of their legal obligations regarding mandatory reporting to avoid prosecution and to contribute to the protection of children throughout Australia.

Medical imaging professionals include radiographers, radiation therapists, nuclear medicine technologists, and sonographers.

Due to below average unemployment and good job prospects,³ medical imaging professionals can often be a mobile workforce, that allows many in this field the opportunity to travel throughout Australia pursuing employment. Individuals who travel interstate must be aware of their legal obligations because they differ in each state of Australia.

Reporting child abuse

Children are unable to protect themselves; therefore it is the responsibility of the adults in our society to protect them from abuse. It is important to note that in all states of Australia, citizens

are able to voluntarily report their suspicions of child abuse, even if not required by law.

All state government departments responsible for child protection have procedures in place for reporting child abuse. All state governments of Australia have information available on their websites, explaining the procedures to follow when reporting child abuse. Table 1 shows the departments responsible for child protection in the various states of Australia and their websites for further information.

The legislation is clear. In all states of Australia, anyone reporting child abuse is not required to prove that the abuse has occurred, or will occur; they may, or if mandated, must report their suspicions of abuse. A report to the relevant department is all that is required to comply with the law; investigation and follow up is the responsibility of the department.

Protection for reporters

In all states of Australia, the relevant legislation provides protection for people who make mandated or voluntary reports of suspected child abuse. As long as a person makes a report in good faith, the reporter is protected by law.^{4,5,6,8,9,10,12,13}

In all jurisdictions, the legislation stipulates that it is not a breach of any privacy laws or professional etiquette, ethics, or standards of professional conduct to report suspected child abuse. The reporter can not be liable to civil proceedings or criminal prosecution for making a report.^{4,5,6,8,9,10,12,13} The identity of the person making the report is confidential, and the contents of the report can only be disclosed in certain circumstances that vary with each state, although this is always in exceptional circumstances. All medical imaging professionals should be familiar with the legislation applicable to the state in which they are working. The protection column of Table 2 lists the section in the relevant legislation that details protection for people reporting child abuse.

Australian Capital Territory

The requirement for a medical imaging professionals to report child abuse in the Australian Capital Territory depends upon

Table 1: State Department websites.

State	Department	Website(s)
ACT	Department of Disability, Housing and Community Services	http://www.community.nsw.gov.au/DOCS/STANDARD/PC_101002.html
NSW	Department of Community Services	http://www.dhcs.act.gov.au/ocyfs/services/care_and_protection#CIS http://www.dhcs.act.gov.au/__data/assets/pdf_file/0017/5660/keeping_childweb.pdf
NT	Department of Health and Community Services	http://www.nt.gov.au/health/comm_svs/facs/child_protect/child_protect.shtml http://www.nt.gov.au/health/childabuse/
Qld	Department of Child Safety	http://www.childsafety.qld.gov.au/child-abuse/report/index.html http://www.childsafety.qld.gov.au/child-protection/mandatory-reporting.html
SA	Department for Families and Communities	http://www.familiesandcommunities.sa.gov.au/Default.aspx?tabid=381
Tas	Department of Health and Human Services	http://www.dhhs.tas.gov.au/agency/pro/FGC/documents/CP%20Info%20Sheet%20Mandatory%20Reporters.pdf http://www.dhhs.tas.gov.au/agency/pro/FGC/documents/CP%20Info%20Sheet%20Whist%20is%20Child%20Abuse.pdf
Vic	Department of Human Services	http://www.office-for-children.vic.gov.au/home_page/quick_help2/child_abuse_reporting_and_seeking_help http://www.office-for-children.vic.gov.au/__data/assets/pdf_file/0011/16220/cp_re-responding_to_child_abuse.pdf
WA	Department for Child Protection	http://www.community.wa.gov.au/DCP/Resources/Child+Protection/#neglect

Table 2: Legislation by state.

State	Act	Section	Mandated	Max. penalty	Protection
ACT	<i>Children and Young People Act 1999</i>	159	Public Servants	\$5000/6 mths gaol	s 163
NSW	<i>Children and Young Persons (Care and Protection) Act 1998</i>	27	All	\$22,000	s 29
NT	<i>Community Welfare Act 1983</i>	14	All	\$22,000	s 14
Qld	<i>Child Protection Act 1999</i>	N/A	None	N/A	s 22
SA	<i>Children's Protection Act 1993</i>	11	All	\$10,000	s 12
Tas	<i>Children, Young Persons and Their Families Act 1997</i>	14	Gov. or Crown Funded	\$2,400	s 15
Vic	<i>Children, Youth and Families Act 2005</i>	182	None	N/A	s 189
WA	<i>Children and Community Services Act 2004</i>	N/A	None	N/A	s 129

whom they are employed by. Section 159(k) of the *Children and Young People Act 1999* (ACT) states that “a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families”⁴ is a mandated reporter under *The Act*. Therefore, medical imaging professionals working in a government hospital or facility are subject to mandatory reporting. Failure to report the suspicion of child abuse can incur a penalty of \$5000, six months imprisonment, or both.⁴

Although medical imaging professionals working in private practices in the ACT are not legally bound to report their suspicions of child abuse, they can make a voluntary report under section 158 of *The Act*.⁴

New South Wales

In New South Wales, all medical imaging professionals are required to report any cases of suspected child abuse according to

the *Children and Young Persons (Care and Protection) Act 1998* (NSW). Medical imaging professionals fall under s 27 of *The Act* as a person required to report suspected cases of child abuse. Section 27(2) states that if a person “has reasonable grounds to suspect that a child is at risk of harm”⁵ and “those grounds arise during the course of or from the person’s work”,⁵ the details must be reported as soon as practicable to the NSW Department of Community Services.

Failing to report suspected cases of child abuse as a prescribed person under s 27(1) can incur penalties of up to \$22,000.⁵

Northern Territory

Of all the states and territories of Australia, the Northern Territory has the most broad and all-encompassing mandatory reporting laws. Every adult in the Northern Territory is required to report child abuse.

Section 14(1) of the *Community Welfare Act 1993* (NT) states

“A person, not being a member of the Police Force, who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment shall, as soon as practicable after obtaining the knowledge that constitutes the reasonable grounds for his or her so believing, report the fact, and all material facts on which that knowledge is based, to the Minister or a member of the police force.”⁶

Any adult that fails to report suspected child abuse in the Northern Territory can incur penalties of up to \$22,000, regardless of their occupation.⁶

Queensland

The only health professionals that are legally obligated to report suspected cases of child abuse in Queensland are doctors and nurses as required by the *Public Health Act 2005* (Qld).⁷

Although medical imaging professionals are not required by law to report suspected cases of child abuse in Queensland, they can do so with the protections afforded to them under section 22 of the *Child Protection Act 1999* (Qld).⁸

South Australia

Medical imaging professionals employed in South Australia are legally obligated to report suspected child abuse under section 11(2)(j) of the *Children's Protection Act 1993* (SA).⁹ If a medical imaging professional “suspects on reasonable grounds that a child has been or is being abused or neglected”⁹ and that suspicion is “formed in the course of the person’s work”⁹, then that person is required to report their suspicions.

Failing to report suspected cases of child abuse as a prescribed person under section 11(1) can incur penalties of up to \$10,000.⁹

Tasmania

Mandatory reporting of child abuse in Tasmania is governed by the *Children, Young Persons and Their Families Act 1997* (Tas). Most medical imaging professionals fall under the category of a prescribed person in *The Act*, requiring them to report any suspicions of child abuse.¹⁰

Medical imaging professionals working in any government hospital or facility in Tasmania are prescribed persons under section 14(1)(k)(i) of the *Children, Young Persons and Their Families Act 1997* (Tas).¹⁰

Medical imaging professionals in Tasmania that are not working in government institutions may be prescribed persons under the *Children, Young Persons and Their Families Act 1997* (Tas), depending on their employer’s funding or source of income. Section 14(1)(k) of *The Act* states,

“(k) any other person who is employed or engaged as an employee for, of or in, or who is a volunteer in –

(i) a Government Agency that provides health, welfare, education, child care or residential services wholly or partly for children

(ii) an organisation that receives any funding from the Crown for the provision of such services”.¹⁰

Under section 24 of the *Interpretation Act 1931* (Tas), the Crown is defined as the sovereign at the time and is not limited to State or Federal jurisdiction,¹¹ therefore any medical imaging professional who works for an organisation that receives any funding from Medicare or other government department is a prescribed person and is required to act upon their suspicions of child abuse. Due to the clause relating to funding from the Crown, the vast majority of medical imaging professionals are subject to mandatory reporting requirements in Tasmania.

Victoria

Mandatory reporting in Victoria is governed by the *Children, Youth and Families Act 2005* (Vic). Section 182 of *The Act* lists numerous occupations as mandatory reporters, but medical imaging professionals are not amongst this group.¹²

Although not mandated, medical imaging professional are free to report their suspicions of child abuse under section 183 of the *Children, Youth and Families Act 2005* (Vic) and are protected under section 189 of *The Act*.¹²

Western Australia

Western Australia is the only state in Australia that does not currently require any health professional to report suspected child abuse. Anyone in Western Australia is encouraged to report suspected child abuse as they have protection under section 129 of the *Children and Community Services Act 2004* (WA).¹³

The current mandatory reporting requirements in Western Australia are likely to change soon. *The Children and Community Services (Mandatory Reporting) Bill 2006* (WA) has been introduced to the parliament by Paul Omodei. The bill must pass through both houses of parliament before becoming law. The progress of this bill can be followed on the Parliament of Western Australia web site at <http://www.parliament.wa.gov.au> under bills.

The Bill states that a person “who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly, to children”¹⁴ is classed as a prescribed person. If this bill is passed as law in Western Australia, medical imaging professionals will be required to report their suspicions of neglect or physical, sexual, emotional, and psychological abuse. If a prescribed person fails to report suspected child abuse, then that person can incur a penalty of up to \$12,000.¹⁴

If this legislation is passed, Western Australia will be the last of the Australian states to introduce mandatory reporting for prescribed health professionals. This legislation would make medical imaging professionals one of the prescribed persons for mandatory reporting of child abuse.

Conclusion

All states of Australia except Western Australia have legislation in place for mandatory reporting of child abuse by health professionals, with Western Australia likely to introduce similar laws as the other states of Australia. Some medical imaging professionals are legally obligated to report their suspicions of child abuse, depending on which jurisdiction of Australia in which they work. Table 2 details which medical imaging professionals are mandated to report and the penalties for non-compliance.

Even if not obligated to report, medical imaging professionals can report their suspicions with protection afforded to them by the legislation relevant to their state. Medical imaging professionals must be familiar with the legislation in the state in which they work to contribute to the protection of children within Australia.

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 - 5 *Children and Young Persons (Care and Protection) Act 1998* (NSW).
 - 6 *Community Welfare Act 1983* (NT).
 - 7 *Public Health Act 2005* (Qld).
 - 8 *Child Protection Act 1999* (Qld).
 - 9 *Children's Protection Act 1993* (SA).
 - 10 *Children, Young Persons and Their Families Act 1997* (Tas).
 - 11 *Interpretation Act 1931* (Tas).
 - 12 *Children, Youth and Families Act 2005* (Vic).
 - 13 *Children and Community Services Act 2004* (WA).
 - 14 *Children and Community Services (Mandatory Reporting) Bill 2006* (WA).
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