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## **STEERING COMMITTEE FOR THE RIGHTS OF THE CHILD (CDENF)**

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### **WORKING GROUP ON RESPONSES TO VIOLENCE AGAINST CHILDREN (CDENF-GT-VAE)**

#### **Strengthening Mandatory Reporting of Child Sexual Abuse in Europe: A Study Setting the Scene for Further Action Responding to Violence against Children**

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Australia

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# **Strengthening Mandatory Reporting of Child Sexual Abuse in Europe:**

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Professor Mathews' research has generated a reliable body of evidence about the nature and effects of legal obligations to report child sexual abuse. Informed by evidence, he has advised multiple governments on law reform regarding mandatory reporting law and practice, especially for child sexual abuse, and on civil statutes of limitation for child abuse claims.

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# **PART 1**

## **EXECUTIVE SUMMARY**

### **AND**

## **MAIN RECOMMENDATIONS**

This Executive Summary contains a condensed list of main findings from the analysis detailed in this study. Part 6 contains detailed recommendations on optimal design of mandatory reporting legislation, policy, education, resources, system design, and monitoring.

“Mandatory reporting legislation” refers to laws that require designated persons – typically members of occupational groups dealing with children in their work, such as teachers, doctors, nurses and police – to report known and suspected cases of child sexual abuse to child welfare authorities.

Empirical research has shown that a jurisdiction with mandatory reporting legislation:

- Identifies more cases of child sexual abuse compared to the era when the law did not exist
- Experiences sustained positive outcomes over decades in identifying more cases of sexual abuse, and service provision to children
- Identifies more cases of sexual abuse compared to a similar jurisdiction that does not have a mandatory reporting law
- Experiences manageable numbers of reports of child sexual abuse

A key conclusion from the body of published research is that duties to report child sexual abuse that are based only in occupational policy documents do not work to identify cases of child sexual abuse. Compared to the outcomes of legislative mandatory reporting duties, policy-based duties are inferior in sexual abuse case identification, workforce professionalisation, and individual reporter protection. These policy-based duties should not be conceived as “mandatory reporting” duties.

## **1.1 Main findings**

### **1.1.1 International and Council of Europe legal instruments and documents**

Multiple international and European legal instruments contain policy imperatives and specific provisions that are consistent and compatible with the enactment of a legislative mandatory reporting duty for child sexual abuse (as shown in Part 3). In Europe, a direct encouragement to enact a legislative obligation for mandatory reporting is present in Article 12(2) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual

Abuse (Lanzarote Convention), although it arguably falls short of a direct imperative. Similarly, the Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence (CM/Rec(2009)10), 6.4 strongly support the creation of the most robust measures to require reporting of child sexual abuse, implicitly denoting a legislative duty, while not explicitly recommending the creation of a legislative reporting duty. Other instruments are also consistent with the recommendation to create a legislative reporting duty, by urging member states to take all measures to best identify cases of child sexual abuse.

Given the compelling evidence of the positive effects of legislative mandatory reporting laws for sexual abuse on sexually abused children, this international and European policy environment and its focus on protecting children from sexual violence indicates that:

- member states of the Council of Europe which have not yet enacted legislative mandatory reporting obligations for child sexual abuse should do so;
  - acknowledging that where exceptional circumstances exist – such as extreme socio-economic deprivation or the absence of a functional child protection system – the scope of the duty as initially developed may be relatively narrowly drawn, with capacity for enlargement after evaluation of the effect of its introduction;
- member states of the Council of Europe which have enacted a legislative mandatory reporting duty for child sexual abuse should:
  - assess its content to ensure it is of sufficient robustness and breadth of application;
  - assess the education of mandated reporters to ensure they are equipped to discharge their role; and
  - assess implementation in practice to ensure reporting practice is congruent with the intent of the legislation and ensure child protection systems are adequately responding to reports.

### **1.1.2 Mandatory reporting mechanisms: Comparative analysis**

As shown in Part 4, a legislative mandatory reporting duty for child sexual abuse has been enacted in scores of nations within and beyond Europe. They continue to be enacted, with Ireland's law, which came into force in 2017, being a recent example. The laws typically require designated professionals (including the four core groups of police, teachers, doctors, nurses) who deal with children in the course of their work to report known and suspected cases of child sexual abuse to child protection authorities. However, while following a similar schematic approach, a legislative analysis reveals that the laws contain substantial differences, including in:

- The list of designated mandated reporters;
- Definitions of "child" and approaches to what is "sexual abuse";
- The state of mind activating the duty;
- Whether the duty applies only to past and currently occurring cases, or also to cases of suspected risk of future abuse that has not occurred yet;
- Legal measures for non-compliance.

From a children's rights perspective and informed by scientific knowledge of the nature of child sexual abuse, some approaches are more robust than others.

### **1.1.3 Mandatory reporting mechanisms: Advantages, best practices, and obstacles**

**Advantages.** As shown in Part 5.1, a legislative mandatory reporting duty for child sexual abuse has significant advantages in theory and law, and most importantly, has demonstrably superior effects in identifying more sexually abused children, thus contributing to the prevention of further abuse. These advantages include:

1. **Increased identification of sexually abused children.** When a jurisdiction introduces a mandatory reporting duty, there will be a substantial and sustained increase in identification of children who have been sexually abused. These laws are a major success of public health policy.<sup>1</sup>
2. **Sustained positive outcomes.** A mandatory reporting duty produces sustained positive long-term outcomes over 20 years in identification of cases of child sexual abuse and provision of services.<sup>2</sup>
3. **Clearly superior child protection outcomes.** A jurisdiction having a mandatory reporting law achieves far superior child protection outcomes compared with a similar jurisdiction without such a law and will find up to five times as many proven cases per annum.<sup>3</sup>
4. **Greater protection for reporters** A legislative mandatory reporting duty is more effective in every way than a policy-based duty, and confers greater protections on reporters than a policy-based duty, through statutory protections regarding confidentiality, immunity from all lawsuits and other proceedings related to reports that are made in good faith.<sup>4</sup>
5. **Manageable for child protection systems.** Reports of child sexual abuse by mandated reporters account for only 5-6% of all reports of child maltreatment, and do not produce an intolerable burden on the child protection system.<sup>5</sup> In addition, reports of sexual abuse are very low compared with other types of maltreatment; even reports of physical abuse are more than double those of sexual abuse.<sup>6</sup>
6. **Compliant with the rights of the child.** A legislative mandatory reporting duty for designated professionals who attain knowledge or suspicion of child sexual abuse promotes children's rights to freedom from sexual violence, and is entirely consistent with scientific evidence about the nature and non-disclosure of child sexual abuse, ethics, and Article 19 of the UNCRC (protection from abuse and neglect).<sup>7</sup>
7. **A new social norm.** A legislative mandatory reporting duty creates a new social norm and appropriately requires a professional who works with children to report knowledge or reasonable suspicion of child sexual abuse.<sup>8</sup>
8. **Mandatory reporting laws are superior to non-legislative reporting obligations.** Studies have consistently shown that non-legislative or occupational policy-based duties to report are unsuccessful. A key conclusion from the body of published research is that duties based only in occupational policy documents do not work to identify cases of child sexual abuse. Compared to the outcomes of legislative models, policy-based duties are inferior in sexual abuse case identification, workforce professionalisation, and individual reporter protection.

**Good practices.** As shown in Part 5.2, identified good and promising practices for the design and effective implementation of a legislative mandatory reporting duty for child sexual abuse include:

- Optimal drafting of all features of the legislative reporting duty;
- Optimal mandated reporter education and training to equip them to discharge their role, which focuses on the development of: a multidisciplinary understanding of child sexual abuse; accurate knowledge of the reporting duty; and positive affective dispositions towards the reporting duty;
- Optimal user-friendly and child-friendly resources for mandated reporters (e.g., manuals, fact sheets, and quick reference guides);
- An integrated system that designs and employs the legislation, education and resources in a coherent and effective way;
- A commitment to ongoing improvement, through research, monitoring and review.

**Obstacles in existing systems.** As shown in Parts 5.3 and 5.4, obstacles to effective reporting include:

- Poor legislative drafting, exemplified by vague language, lack of clear definitions, lack of protections, and lack of exceptions;
- Absence of references to obligations in contracts and professional frameworks (like codes of conduct, ethical rules, profession-specific regulations, etc)
- Poor education and training of mandated reporters, exemplified by:
  - inadequate content (e.g., insufficient precision and clarity regarding the nature of the legal duty, the operationalisation of the legal duty, the nature and consequences of child sexual abuse, the indicators of child sexual abuse);
  - sub-optimal delivery (e.g., delivery by non-experts; delivery on a one-off basis instead of repeated at pre-service and in-service levels);
  - decentralised delivery (e.g., fragmented delivery of different programmes);
- Inadequate resources to assist reporters (e.g., manuals, fact sheets, and quick reference guides that are not sufficiently clear, nor user-friendly regarding length and accessibility);
- Poorly drafted policy directives that are not congruent with the legislative duty;
- Unintegrated systemic responses and lack of coordination between law, policy, reporter education, supportive resources, and practice.

## 1.2 Main recommendations on optimal design

Part 6 contains detailed lists of recommendations on the optimal design of: the legislative duty (6.1); accompanying policy (6.2); reporter education and training (6.3); reporter support and resources (6.4); system design (6.5); and research and monitoring (6.6).

Overall recommendations for member states are that:

1. In general, to promote its commitment to protecting children from sexual violence, states are invited to enact a strong legislative mandatory reporting duty for child sexual abuse.
2. Even where exceptional social or economic circumstances make the enactment of a strong duty impossible, states may still make substantial gains in identifying cases of sexual abuse by enacting a narrow duty. and should do so, for example by extending the duty to a smaller number of core occupational groups.
3. The legislative mandatory reporting duty should be supported by high quality education and training for mandated reporters to equip them to discharge their role.
4. The legislative mandatory reporting duty should be supported by high quality, user-friendly resources for reporters to optimise effective reporting practice.
5. The child protection intake, referral and response system should be supported with resources to enable it to respond to reports made by mandated reporters (and other reporters).
6. Occupations should enact a policy that is compatible with and supports a rigorous legislative mandatory reporting duty, and should support and require their members to complete education and training about the duty.

## PART 2

### BACKGROUND

#### 2.1 Terms of reference

The Council of Europe is implementing its Strategy for the Rights of the Child (2016-2021). The Strategy has as one of its five priority areas a life free from violence for all children. Implementation of the Strategy is overseen by the Steering Committee for the Rights of the Child (CDENF; as of 2020), previously the Ad Hoc Committee for the Rights of the Child (CAHENF), which identified mandatory reporting obligations and mechanisms as a theme requiring further priority action by the Council of Europe and its member states.

In its forthcoming inter-governmental work on the rights of the child, the Council of Europe will continue work to enhance implementation of international and Council standards on the protection of children from violence in member states, including through the development of non-binding instruments (e.g., guidelines, good practice guides) on systems for professionals to report violence against children. In this context, the Council is seeking to develop policy guidance on this topic for legislatures, policy-makers, and professionals.

As detailed below, this study focuses on child sexual abuse as a key dimension of violence against children warranting its own detailed treatment.

#### Study

To propose the grounds for this activity, this study:

1. Identifies relevant provisions of international and European legal instruments requiring reporting of child sexual abuse;
2. Defines and explores mandatory reporting and the types of mechanisms which exist;
3. Identifies the main advantages and good practices of such systems, as well as key obstacles in existing systems;
4. Identifies potential concerns and issues in implementation, considering different national contexts and frameworks across member states of the Council of Europe;
5. Identifies which instruments or tools would be most helpful for the Council of Europe in order to support member states to develop mandatory reporting frameworks and implementation methods; and
6. Prepares an easy-to-use questionnaire for dissemination in Council of Europe member states for the purpose of mapping current frameworks and practices.

**Children's human rights.** In completing these tasks, the promotion and protection of children's human rights is the paramount consideration. This involves consideration of potential tensions for children's rights in mandatory reporting, both in relation to children as victims of sexual violence, as well as being persons who may inflict sexual violence upon their peers.

**Note:** The author proceeded on the basis, and with approval by the Council of Europe Secretariat, that the primary concern and context of this paper was child sexual abuse; in appropriate places, notes are made regarding other forms of child abuse and neglect.

## 2.2 Glossary and notes on terminology

The study is based on the following approaches to key terms.

**The core concept of child sexual abuse.** This study adopts the definition of “child sexual abuse” as stipulated in the Council of Europe Convention on the Protection of Children against Child Sexual Exploitation and Sexual Abuse (the Lanzarote Convention):

Article 18 – Sexual abuse

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
  - a. engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
  - b. engaging in sexual activities with a child where:
    - use is made of coercion, force or threats; or
    - abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
    - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.
2. For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.
3. The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

The study’s analysis and recommendations are equally applicable to circumstances of “child sexual exploitation”, namely those involving an element of exchange or transaction.<sup>9</sup> The study’s approach to the concept of “child sexual abuse” is also consistent with the approach in the Luxembourg guidelines.<sup>10</sup>

**A conceptual model of “child sexual abuse”.** The approaches in the Lanzarote Convention and the Luxembourg Guidelines are broadly consistent with a detailed conceptual analysis of child sexual abuse by Mathews and Collin-Vézina (2019). This conceptual analysis concluded that “child sexual abuse” involves contact and non-contact acts, committed by an adult or another child, where the child cannot or does not give true consent, where the act is done for the purpose of seeking or obtaining physical or mental sexual gratification, whether immediate or deferred in time or space, or where, even if no such gratification exists, the child legitimately experiences the act as sexual.

**Genuinely consensual interactions between adolescent peers.** Most children cannot give consent to any sexual acts, and so any sexual act inflicted upon them will be classed as sexual abuse. However, as recognised by the Lanzarote Convention (art 18(3)), some minors may be technically under the legal age of consent, but may engage with each other in developmentally normative sexual behaviour. Older adolescents may have cognitive and psychosocial capacity sufficient to provide consent to genuinely consensual sexual interactions with their peers. For example, within a romantic relationship, whether between same-sex or opposite-sex attracted partners, both parties may be able to and may in fact provide consent to a sexual interaction, under circumstances in which there is no physical, psychological or other coercion. These circumstances do not fall within the concept of “child sexual abuse”.

## **Other concepts**

<b>Age of consent</b>	The chronological age specified by a nation's domestic law at which an individual is lawfully able to consent to sexual activity. This is often stated as 16. It is important to note that children aged under the legal age of consent often engage in genuinely consensual sexual activity with similarly-aged romantic partners, which is developmentally normative. Police and prosecutorial guidelines typically, and appropriately, recommend no law enforcement response in such cases.
<b>Child</b>	A person under the age of 18. <sup>11</sup>
<b>Consent</b>	The condition required to legitimise any sexual interaction. To be valid, consent is generally understood as only valid if it is informed, and is freely and fully given to the specific act at the specific time, by an individual who is cognitively able to understand the nature of the acts, and where the consent is not otherwise vitiated. It is important to understand that abuse happens when there is an abuse of power, authority, etc, even when the child is above the age of consent.
<b>Disclosure</b>	The term generally used in the literature for how children tell others about their experience of child sexual abuse. Non-disclosure and delayed disclosure refer to these connected phenomena.
<b>Mandatory reporting laws</b>	Laws imposing on designated persons an obligation to report known or suspected cases of child sexual abuse. Not to be confused with other kinds of legally-based or policy-based reporting duties.
<b>Substantiated reports</b>	Reports that, after investigation by child welfare agencies, are found to involve sexual abuse and or harm thought to be connected with sexual abuse. It is now widely accepted that the number and rate of substantiated reports alone should not be considered as the only measure of reporting efficacy. There are many reasons why a report about a child's situation cannot be technically substantiated, and children in unsubstantiated reports generally do not differ markedly from those in substantiated reports, and often receive protective and rehabilitative services.
<b>Unnecessary reports</b>	Reports made in circumstances lacking any sound basis. These are reports that clearly should not be made in any jurisdiction, including one having a mandatory reporting law. These are the appropriate measure of "overreporting", rather than reports that are not substantiated, or that are screened out (e.g., multiple reports about the same circumstance).

## 2.3 The context: why states have enacted mandatory reporting laws, and their nature and function

### 2.3.1 Child sexual abuse: nature, prevalence, effects and non-disclosure

**Nature.** Child sexual abuse (CSA hereafter) includes a wide spectrum of contact and non-contact acts. It includes penetrative abuse (oral, vaginal and anal), by any body part or object; acts of masturbation; oral sex; fondling; voyeurism; exposure to sexual acts; exposing the child to pornography; involving the child in pornography; and other acts done to sexually gratify the abuser or another person. Child sexual abuse can be inflicted by an adult, an older child, or a younger child. It is often inflicted in secret, and may involve clear force or coercion. It can also be inflicted where the victim is not developmentally capable of understanding the acts. and or where the child is in a position of physical, cognitive, emotional or psychological vulnerability such that consent is not and cannot be freely given.

Most child sexual abuse is inflicted by persons in their circle of trust, including family members, non-family members and adolescents, in private familial settings and general community settings,<sup>12</sup> and through recreational activities undertaken by children including sports, arts and cultural pursuits.<sup>13</sup> Much child sexual abuse also occurs in religious, school and other institutional settings.<sup>13</sup> A significant proportion of perpetrators victimise multiple children.<sup>14</sup> Often, children are abused multiple times over a substantial period of time,<sup>15</sup> even when abused by a parent.<sup>16</sup> Girls are at least twice as likely to be victimised. However, in some nations, boys are victimised as much as or more than girls; examples include European member states in the Balkans.<sup>17</sup>

**Prevalence.** Child sexual abuse is widespread in all societies. Three recent meta-analyses have shown high levels of victimisation in most nations for both girls and boys. Pereda et al. (2009) found rates of 19.2% for girls and 7.4% for boys. Stoltenborgh et al. (2011) found that one in eight children (12.7%) had suffered sexual abuse (18% of girls and 7.6% of boys). Barth et al. (2013) found prevalence in girls of 15% and boys of 8%. These three studies have arrived at similar global rates of 15–20% for girls, and 5–10% for boys.

In Europe, the rates are similarly high. In Ireland, McGee et al. (2011) found 30.4% of girls and 23.5% of boys reported experiencing CSA. Kloppen et al. (2016) conducted a meta-analysis of 26 Nordic studies from Finland, Iceland, Norway, Denmark, and Sweden, and found prevalence for girls of 11.2–35.6% (with contact CSA 5.5–29.9%), and for boys of 3.1–22.5% (with contact CSA 1.2–11.9%). The nine-country Balkan study found rates of 7.9% (Romania) to 18.6% (Bosnia), with participants being children aged 11, 13 and 16.<sup>18</sup> In Croatia, Ajduković et al. (2013) found 10.8% of all children experienced some kind of sexual abuse in their lifetime (13.0% of girls and 8.6% of boys). Of those aged 16, 16.5% reported sexual abuse (20.4% of girls and 12.5% of boys) with contact sexual abuse reported by 9.4% of girls and 7.5% of boys.

**Effects.** A vast body of research has demonstrated substantial psychological, behavioural and physical harms to victims of sexual abuse, which continue through the lifespan.<sup>19</sup> Typical effects include post-traumatic stress disorder,<sup>20</sup> depression and low self-esteem.<sup>21</sup> Effects on behaviour and social functioning are substantial: coping mechanisms include alcohol and drug abuse (Simpson et al 2002). Adolescents are susceptible to suicidal thoughts and behaviour,<sup>22</sup> alcohol abuse, substance abuse and running away from home.<sup>23</sup> All these effects also have a major adverse impact on intellectual, academic and personal achievement,<sup>24</sup> adult economic wellbeing,<sup>25</sup> and intergenerational wellbeing.<sup>26</sup> The economic cost to society is immense.<sup>27</sup> Abuse of longer duration and severity, and abuse by a family member or similarly trusted authority figure, are more likely to have significant consequences.<sup>28</sup>

**Non-disclosure.** Importantly, children frequently do not tell anyone about their abuse or only disclose after reaching adulthood, and are unable to receive protection or health rehabilitation. They are deterred from seeking help through:<sup>29</sup>

- barriers from within (those related to the individual, e.g. self-protection; internalising blame; lack of cognitive development and skills enabling disclosure);
- barriers in relation to others (relational power dynamics; fear of consequences; silence induced by threats and terror; feared impact of disclosure on others); and
- barriers in the social world (societal and cultural forces including the taboo of sexuality, stigma attaching to victims due to social ignorance, and general lack of cultural consciousness).

**In their review of studies, London et al. (2007) found that 60–70% of adult survivors of child sexual abuse said they did not disclose their abuse during childhood.** Extensive research has found nondisclosure and delayed disclosure is typical,<sup>30</sup> and most disclosures are to trusted individuals rather than social agencies. The Australian Government Royal Commission into Institutional Responses to Child Sexual Abuse (2014, p. 6) found it took an average of 22 years for those who disclosed institutional CSA to be able to do so. Easton (2013) found 487 men whose mean age of onset of child sexual abuse was 10.3 years, took an average of 21 years to tell someone. Wrongdoers hardly ever disclose their own actions to social agencies.<sup>31</sup>

The extreme vulnerability of children, combined with secrecy and non-disclosure, means that they are typically unable to access help from law enforcement or other protective agencies such as health, educational or social welfare. These children are vulnerable to abuse continuing, and frequently need health rehabilitation as well as protection. In addition, offenders often have multiple victims, meaning other children are at risk if the wrongdoer is not detected.

### **2.3.2 The policy question at the core of this study**

Child sexual abuse is widespread, harmful, occurs in secret and is surrounded by taboos. It is not disclosed by the offender, and is frequently not disclosed by the victim, because of a number of internal and external barriers. A major question is posed to society: how can these hidden cases of child sexual abuse be brought to the attention of relevant government agencies and institutions so that the abuse can be stopped, and the child assisted? It is argued that mandatory reporting laws, supported by comprehensive, supporting implementation measures, provides a compelling response.

### **2.3.3 The nature and function of mandatory reporting laws**

**Case identification of sexual abuse that would otherwise remain hidden.** The prevalence and harmfulness of child sexual abuse, together with its hidden nature, presents a challenge for all societies from the perspectives of individual child safety, public health, social justice and crime prevention. One response, adopted by many jurisdictions in an effort to identify cases that would otherwise remain hidden and liable to continue, has been to recruit adults who deal with children in their professional capacity as sentinels, who can report known and suspected cases. These professionals are particularly well-placed to detect signs of CSA, and to receive disclosures, and a duty to report cases of child sexual abuse is consistent with their professional and ethical duties.

**Mandatory reporting laws.** This strategy has been deployed most systematically through the use of mandatory reporting laws, situated within child protection legislation. This approach follows the model of the original reporting laws which were created to respond to severe physical abuse of young children, termed “the Battered-child Syndrome”, by Kempe et al (1962). Having this similar genesis, the laws are also intended to overcome the phenomenon of “gaze aversion”, where those who know of, or suspect, serious child abuse choose to avert their attention and do nothing, leaving the child exposed and at risk, instead of reporting it to police, child protective services or other social welfare agencies.

These laws have been enacted in scores of nations,<sup>32</sup> including all 72 jurisdictions in the USA, Canada and Australia.<sup>33</sup> Nations continue to enact the laws, including Ireland's recent Children First Act, effective from December 2017.

**Differences and similarities between jurisdictional mandatory reporting laws.** Typically, the laws require designated professionals who deal with children in the course of their work (e.g. teachers, police, doctors, and nurses) to report known and suspected cases of child sexual abuse to government child protection agencies. Those who make reports are given protections from liability (in civil courts, criminal courts, and in administrative proceedings), provided the report is made in good faith. Reporters' anonymity is protected from disclosure. The laws differ across jurisdictions, especially in terms of which persons are required to make reports, procedures, penalties, and other technical aspects of the law, such as the state of mind (i.e., whether it is knowledge, belief, or suspicion) that activates the duty to report.<sup>34</sup>

**Similar schematic approach.** Despite their substantive differences, the laws generally have common dimensions. The laws:

- define which persons must make reports;
- identify what state of mind a reporter must have before the reporting duty is activated;
- define the types of abuse that must be reported;
- state whether the duty applies only to past or present abuse, or also to abuse which has not occurred yet but which is thought to be likely to occur;
- state penalties or criminal sanctions for failure to report;
- provide a reporter with confidentiality regarding their identity;
- provide a reporter with immunity from liability arising from a report made in good faith;
- state when the report must be made;
- state to whom the report must be made;
- state what details a report should contain;
- enable any other person to make a report in good faith, even if not required to do so, and grant confidentiality and legal immunity to these persons.

Protocols and associated documents may provide mandated reporters with further clarification of reporting processes. Forms and procedures for reporting are typically set out on government websites. Guides to assist decisions to report may also be provided.<sup>35</sup> Regulations, subordinate legislation or guidelines may provide details about the reporting form and mechanism.<sup>36</sup>

**Service intake and response.** The department for child protection which receives the report determines if it contains sufficient information justifying an investigation, or whether it can be screened out or added to an existing file. An investigation can involve as little as telephone enquiries, or can extend to consultation with the child – ensuring all interactions with the child to explore the situation are developmentally appropriate, trauma-informed, and sensitive to the child's unique position – and interviews with the child's parents, and other professionals like the child's school teacher. The agency often has specialised multidisciplinary teams for this role. An example of such an agency are the "Barnahus" models which have been set up increasingly over the past years in Council of Europe member States. The agency will work with the police in appropriate cases to discharge their respective functions. The child protection agency's statutory role is to protect the child, especially from familial maltreatment, and to take action (coordinated with other agencies) to protect the child, provide health and rehabilitation services, and assistance to the family as needed. Law enforcement are concerned with investigation of criminal offending and enforcing the law, and do not provide health services to the child or the family. Reports of suspected child sexual abuse will sometimes involve an unknown offender, but may involve a known offender; available data suggests that, in Council of Europe countries, the majority of cases of child sexual abuse take place in the child's so-called "circle of trust" (including the wider family, friends of the family, neighbours or carers).<sup>37</sup>

**Reporting duties are part of an entire child protection system.** These legal reporting duties are intended to be only one part of a systematic approach to child protection, involving the education of

mandated reporters and the resourcing of child welfare and law enforcement agencies, including their response teams, to identify more cases of child sexual abuse which otherwise would remain hidden. The main goal is clearly not to prevent the initial abuse, as this could only be the task of systematic primary prevention. Accordingly, primary prevention and eradication of child sexual abuse are not the measure of policy success when it comes to setting up mandatory reporting systems. Rather, the goal of a mandatory reporting system is to increase identification of cases of child sexual abuse by mandated reporters, and facilitate provision of protection and assistance to children who have been abused, thereby preventing further abuse of the child and possibly of other children, and enabling health and safety responses for the child, and criminal justice responses to detect perpetrators.

**Measures of efficacy.** The creation of a legislative mandatory duty to report, together with professional education about the duty, can be expected to better enable reports of appropriate cases and overcome reluctance and lack of awareness that otherwise suppress reporting activity. However, child sexual abuse is difficult to identify, even for mandated professionals who have been educated about it. Accordingly, no jurisdiction should form unreasonably high expectations about the capacity of reporters to suspect all actual cases of child sexual abuse. Many behavioural indicators of sexual abuse are consistent with innocent explanations or other childhood adversities. Most sexual abuse leaves no physical evidence, so even doctors who can physically examine a child may not detect indicators.<sup>38</sup> Therefore, expectations must be tempered about the degree to which reports will be made, and the extent to which reports will turn out to involve sexual abuse or other significant harm. Nevertheless, evidence shows that in jurisdictions with the laws, a far greater number of cases is identified by mandated reporters.

*“Substantiated reports”, or “investigated reports”, or simply “reports”?* When considering the merits of adopting a legislative mandatory reporting duty for child sexual abuse, it is not legitimate to solely rely on numbers and rates of “substantiated reports” as a measure of valuable reporting practice and outcomes.<sup>39</sup> Often, reports are technically found not to be “substantiated” because they are not investigated for sound reasons (e.g. the child is already the subject of a systemic response), or they are investigated but do not meet requirements for substantiation through lack of evidence of abuse despite clear harm.<sup>40</sup> Research has consistently concluded that children in “unsubstantiated” reports do not differ markedly from those in “substantiated reports” in health outcomes and service need.<sup>41</sup> This research has concluded the substantiation outcome is a flawed measure of child maltreatment.<sup>42</sup>

## PART 3

### INTERNATIONAL AND EUROPEAN LEGAL INSTRUMENTS AND DOCUMENTS SUPPORTING REPORTING OF VIOLENCE

At international and European level, a number of legally binding instruments, guidance, policy and other documents either call for, recommend, or are fully compatible with the introduction of mandatory reporting duties. This report focusses on those originating from bodies of the United Nations and the Council of Europe.

As described above in Part 2.3.1, child sexual abuse is widespread, and often causes devastating physical and psychological harm to children that can endure through the lifespan. Moreover, in a large proportion of cases, the abuse is not disclosed by the child, with silence enforced through threats, and engendered by fear, shame, and guilt. Typically, the offender is known to the child, and abuses a position of trust and power. Accordingly, sexual abuse is a hidden, violent, damaging phenomenon, endemic in society, and inflicted on extremely vulnerable individuals who lack the ability to protect themselves.

Acts of sexual abuse occur across a spectrum, ranging from repeated penetrative abuse, to instances of non-contact abuse such as exposure. In some of their worst forms, child sexual abuse is inflicted by an individual who is otherwise trusted and on whom the child may be dependent, whether emotionally, physically or economically. In others, sexual abuse may occur on an organised scale, involving systematic institutional abuse, or even criminal enterprises exploiting children for personal and or commercial gain. Sexual abuse can also extend beyond immediate physical interactions, to circumstances where the child's victimisation is commercialised and exploited through online vehicles.

The egregious nature of child sexual abuse, its grave consequences, its insidious secrecy, and the powerlessness of the abused child demands that civil society take actions to protect the child's security and interests. Making acts of sexual abuse criminal is necessary but insufficient. Law, policy and practice must be designed in an integrated manner in such a way as to constitute a system that targets prevention, identification of cases, and response. Individuals, institutions and societies require powerful and effective duties to protect children from sexual violence. This is where mandatory reporting legislation has a central, decisive, and essential role to play. As acknowledged by the Lanzarote Committee, "Reporting is crucial to protect child victims. Without reporting, sexual exploitation and abuse remain uncovered and children may suffer further exploitation and abuse. Only through reporting, child protection mechanisms are set in motion and action may be taken to protect child victims."<sup>43</sup>

#### 3.1 International legal instruments and documents

International legal instruments and other documents contain provisions compatible with, and which would be promoted by, a domestic legislative mandatory reporting duty for child sexual abuse, and associated reporter education and other systemic supports discussed in this study:

### 3.1.1 United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) contains several articles relevant to child sexual abuse. Article 34 requires measures to be taken to protect the child from sexual exploitation in all circumstances. Article 19 requires states to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse while in the care of parents and caregivers. Article 19(2) requires a range of protective measures to be taken, including procedures for identification, reporting and investigation of cases.

### 3.1.2 Optional Protocol on the sale of children, child prostitution and child pornography

Article 9 requires states parties to “adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol.”

The UN Committee on the Rights of the Child Guidelines on the implementation of the Optional Protocol<sup>44</sup> contain a general provision supporting the implementation of measures to prevent and identify cases:

31. States parties to the Optional Protocol have an obligation to adopt or strengthen, implement and disseminate laws, administrative measures and social policies and programmes to prevent the offences covered by the Optional Protocol.

32. In preventing the sale and sexual exploitation of children, States parties should pay attention to the underlying causes of these problems, which may serve to foster, normalize or perpetuate them, and which require specific awareness-raising measures. ...

33. The Committee recommends States parties to take all measures necessary to identify, support and monitor children at risk of falling victim to the offences covered by the Optional Protocol, especially children in vulnerable situations, and to strengthen prevention programmes and the protection of potential victims.

These Guidelines also state:

#### G. Training

29. The provision of education and continued training to all relevant professionals, and support to families and caregivers, should be an integral part of any measure for the implementation of the Optional Protocol. States parties should:

(a) Ensure systematic and targeted multidisciplinary training on the provisions of the Optional Protocol and its implementation, including how to identify and address the offences covered and how to foster child- and gender-sensitive approaches when caring for child victims and survivors, for all relevant professionals and groups working with or for children;

(b) Encourage training on effective responses that are both victim-centred and survivor-led for child victims of offences covered by the Optional Protocol;

(d) Conduct regular assessments of training activities to ensure that the knowledge and skills acquired are translated into practice in order to effectively identify victims and protect children from the offences covered by the Optional Protocol.

30. With regard to specific groups who require specialized training, states parties should: ...

(b) Train health-care professionals, social workers and child welfare and child protection professionals to detect signs and to report them, and to address children who may be victims of sexual exploitation or sexual abuse in a child- and gender-sensitive manner.

Finally, they encourage the promotion of reporting mechanisms and their use:

28. To enhance the understanding of the purpose and provisions of the Optional Protocol, States parties should...

(c) Promote adequate knowledge among all persons, especially those caring for children, of different forms of sale, sexual exploitation and sexual abuse of children, and of the means to detect them and identify victims, as well as of existing reporting mechanisms and how to use them whenever there are reasonable grounds to believe that a child is a victim;

### 3.1.3 UN Sustainable Development Goals

The United Nations' Sustainable Development Goals has set an agenda for global human development efforts to 2030 (United Nations General Assembly 2015). Significantly, these Goals have added two new targets acknowledging child abuse as a fundamental obstacle to health, demanding concerted action. Target 16.2 aims to end abuse and exploitation of children, and Target 5.2 aims to eliminate all forms of violence against women and girls, including sexual exploitation. Governments are required to report on progress against these targets.

In her 2019 report *Keeping the Promise: Ending Violence against Children by 2030*, the UN Special Representative of the Secretary-General on Violence against Children (SRSG) outlined measures to be taken in order to help states reach target 16.2 of the UN SDGs. Among other things, the SRSG recommends that legislative frameworks tackling violence against children should establish mandatory reporting for institutions and professionals working regularly with and for children (p. 30).

### 3.1.4 The Office of the Special Representative of the Secretary-General on Violence against Children

The Office of the Special Representative of the Secretary-General on Violence against Children has published a number of further documents which advocate for and outline the requirements of mandatory reporting mechanisms. In *Toward a world free violence: Global survey on violence against children* (2015, p.77), the SRSG concluded that "Mandatory reporting by professionals who work with child victims of sexual abuse and other acts of violence causing physical injury and psychological violence should be given due consideration by all countries."

In 2016, in *Safe and child-sensitive counselling, complaint and reporting mechanisms to address violence against children*, a joint report with the UN Human Rights Office of the High Commissioner, it was concluded that:

The authors of the present report consider that some form of mandatory reporting, including the reporting by professionals who work with children, of sexual abuse and acts of violence causing physical injury and psychological violence is appropriate for all societies (p.11);

Those working with children should have clear guidance on reporting requirements and consequences. Mandatory reporting responsibilities should be defined with respect for children's rights, including to confidentiality and privacy; standards establishing an obligation to report violence should be incorporated into regulations or rules of conduct of all institutions and agencies that deal with children at risk of violence. Mandatory reporting by professionals who work with children of sexual abuse and other acts of violence causing physical injury and psychological violence should be given due consideration by all countries. Rules that protect the identity of professionals and private individuals who bring cases of violence against children to the attention of the competent authorities should also be enacted into law (p.20).

## 3.2 European legal instruments and documents

Several European legal instruments and other documents contain provisions compatible with, and which would be supported by, a domestic legislative mandatory reporting duty for child sexual abuse, and associated reporter education and other systemic supports discussed in this Background study.

### 3.2.1 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)

The most significant of these legal instruments is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention). This Convention has been signed by all 47 Council of Europe member states and ratified by 45 states.

The Lanzarote Committee has been established to monitor implementation of the Convention, and to facilitate the collection, analysis and exchange of information and good practices among States to enhance their capacity to prevent and respond to child sexual abuse (art 41). The Committee has determined that the optimal method of monitoring is to monitor implementation on a thematic basis.<sup>45</sup>

**Convention articles.** Across the European context, the Lanzarote Convention can be understood as framing a systematic multilateral approach to protecting children from sexual abuse in multiple forms. It was created to contribute to “the common goal of protecting children against sexual exploitation and sexual abuse, whoever the perpetrator may be, and of providing assistance to victims”. The Convention responds to **fundamental principles**, including by requiring the criminalisation of all types of sexual offences against children (Chapter VI, arts 18-29). The Convention adopts a comprehensive approach to the conceptualisation of criminal sexual offences against children, including offences related to child sexual abuse generally (art 18); child prostitution (art 19); offences related to pornography (art 20); offences related to children’s participation in pornography (art 21), the corruption of children (art 22); and solicitation (art 23). As indicated by extrinsic materials, such as Lanzarote Committee opinions and other interpretative opinions, these criminal offences are intended to extend to particular situations, such as online grooming.<sup>46</sup> However, they are not intended to apply to other situations, such as sexting.<sup>47</sup>

The Convention also incorporates **responsive principles**, including preventive and protective mechanisms. In these domains of prevention and protection, the Lanzarote Convention contains articles that are particularly salient to mandatory reporting legislation and connected mechanisms. Most significantly, these relate to: Protective measures and assistance to victims (Chapter IV, articles 11-14); and Preventive measures generally (Chapter II, articles 4-9).

**Article 12.** The key provision in the Lanzarote Convention regarding mandatory reporting is Article 12. On its face, article 12(2) obliges states to put in place mandatory reporting. It states:

Each Party shall take the necessary legislative or other measures to encourage any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services.

The use of peremptory language, namely the words “shall take”, together with the phrase “legislative or other measures” appears to denote a requirement to enact a legislative mandatory reporting duty. However, the article is equivocal. The use of the phrase “or other measures” rather than “and other measures”, and the use of the operative word “encourage” rather than “require”, suggests the article does not impose a hard obligation to enact a legislative reporting duty. In addition, the **Explanatory Report** of the Lanzarote Convention states that (paragraph 89): “Although in many member States systems of mandatory reporting are already in place and are considered to be crucial in detecting abuse and preventing further harm to children, the Convention does not impose an obligation for such professionals to report sexual exploitation or abuse of a child.”

The **Lanzarote Committee** has made recommendations regarding mandatory reporting and education of reporters. In its second implementation report, the Committee recognised that “Reporting is crucial to protect child victims. Without reporting, sexual exploitation and abuse remain uncovered and children may suffer further exploitation and abuse. Only through reporting, child protection mechanisms are set in motion and action may be taken to protect child victims”.<sup>48</sup> The Committee recommended that “All persons working in regular contact with children should be trained to recognise the signs of child sexual abuse and should be informed about reporting mechanisms and how to help the child to disclose and seek assistance. Any person who knows or suspects in good faith that a child is a victim of sexual abuse or exploitation should be encouraged to report to the competent services”.<sup>49</sup>

Regarding article 12, the Committee concluded that (p.42-43):

Parties that have not yet done so should introduce the necessary legislative or other measures, such as awareness raising campaigns, to encourage any person who knows about or suspects in good faith that a child is a victim of sexual exploitation or sexual abuse to report to the competent services.

Overall, this appears to leave the position under the Lanzarote Convention somewhat short of a firm and unequivocal recommendation to introduce a legislative mandatory reporting duty. Instead, there is a commitment to introduce “the necessary legislative or other measures... to encourage any person who knows about or suspects” child sexual abuse to report it. However, as the research evidence demonstrates, for professionals who deal with children, a reporting duty that is not based in and supported by legislation is ineffective.

#### **Chapter IV - Protective measures and assistance to victims**

##### **Article 12 – Reporting suspicion of sexual exploitation or sexual abuse**

1. Each Party shall take the necessary legislative or other measures to ensure that the confidentiality rules imposed by internal law on certain professionals called upon to work in contact with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse.
2. Each Party shall take the necessary legislative or other measures to encourage any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services.

#### **Chapter II – Preventive measures**

##### **Article 4 – Principles**

Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.

##### **Article 5 – Recruitment, training and awareness raising of persons working in contact with children**

1. Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.
2. Each Party shall take the necessary legislative or other measures to ensure that the persons referred to in paragraph 1 have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility mentioned in Article 12, paragraph 1.

### **3.2.2 Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence (CM/Rec(2009)10)**

Other European guidelines provide an unequivocal recommendation for mandatory reporting legislation. The Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence were adopted by the Committee of Ministers in 2009. The guidelines recommend that member states “a. integrate, as appropriate, in their legislation, policy and practice the principles, and implement, as appropriate, the actions set out in the Council of Europe Policy guidelines on integrated national strategies for the protection of children from violence, as they appear in the Appendix”.

Most relevantly, the Appendix has provisions on reporting of violence (6.4), and professional training (4.2):

#### **6.4. Reporting of violence**

1. Education on the rights of the child and the knowledge and understanding of authorities to whom violence can be reported are two essential conditions enabling wider reporting of violence by both children and adults. To be truly effective, the reporting mechanism should be child-friendly and part of a broader system comprising reporting, referral and support services. Such a system should respect the rights of

the child and offer children (and, where appropriate, their families) the necessary protection, including the protection of their privacy, without undue delay.

**2. Reporting of violence should be mandatory for all professionals working for and with children, including those in organisations and private entities performing tasks on behalf of the state. Where mandatory reporting already exists, the extent to which various agencies fulfil their reporting obligations should be examined and kept under regular review.**

3. To encourage wider reporting by professionals, legislative changes can be introduced in order to:

- protect those who report or initiate complaints from liability in cases of reasonable mistakes in the assessment of the risk of violence;
- remove a requirement to obtain parents' or carers' permission to file a complaint;
- ensure that confidentiality norms do not hamper the reporting where the child consents, or is judged not to have the capacity to understand, and where professionals believe reporting or referring is in the child's best interests.

#### **4.2. Professional training**

1. The training of professionals working for and with children represents an important long-term investment in children's development and well-being. Therefore, the state and society should value these professions by attributing to them the requisite moral, financial and other forms of public and private support.

2. It is the state's obligation to instil the culture of the rights of the child and responsibility for children into all professionals who come into contact with children through their work (for example, social workers, foster carers, police officers, judges, teachers, school principals, youth workers, people employed by detention facilities and child-care institutions, immigration and humanitarian workers, sports coaches, etc.). To promote knowledge of the rights of the child, relevant courses should be integrated into university and other training curricula.

...

4. All relevant professionals should have skills to prevent, detect and respond effectively to violence against children. To this end, national curriculum regulations should include compulsory, ongoing training on the prevention, identification, assessment and reporting of violence against children, and the protection and continuity of care of children. The training should pursue a comprehensive approach and prioritise early identification of potential risks to a child's well-being.

### **3.2.3 Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment (CM/Rec(2018)7)**

Other guidelines are consistent and compatible with a legislative reporting duty. The Committee of Ministers Guidelines recommend that the governments of the member states:

- review their legislation, policies and practice to ensure that they are in line with the recommendations, principles and further guidance set out in the appendix of this recommendation, promote their implementation in all relevant areas and evaluate the effectiveness of the measures taken at regular intervals, with the participation of relevant stakeholders ...

The Appendix to Recommendation CM/Rec(2018)7: Guidelines to respect, protect and fulfil the rights of the child in the digital environment then state:

#### **3.6. The right to protection and safety**

50. Taking into account the development of new technologies, children have the right to be protected from all forms of violence, exploitation and abuse in the digital environment...

#### **4.1 Legal framework**

73. A comprehensive legal framework should provide for preventive and protective measures in relation to the digital environment...establish child and gender-sensitive counselling, reporting and complaint mechanisms

#### **4.2 Policy and institutional frameworks**

102. States should ensure there is an effective mechanism to allow any person to report anonymously the existence of suspected illegal material online, in particular child sexual abuse material

### **3.2.4 Council of Europe Strategy for the Rights of the Child (2016-2021)**

Similarly compatible are the Council of Europe Programme for Building a Europe for and With Children is implemented in policy cycles. The current cycle, driven by the Strategy for the Rights of the Child (2016-2021), has as one of its five main priority areas a life free from violence for all children. It identified as a major challenge the “insufficient attention to child-sensitive mechanisms for counselling, reporting, recovery and reintegration” (para 15).

#### **Part 3 A Life Free From Violence For All Children:**

41. The UNCRC requires states to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. The European Convention on Human Rights, the European Social Charter and other Council of Europe treaties guarantee children's right to protection from harm and violence.

42. In its efforts to address violence against children, the Council of Europe will continue to act as a regional driver of initiatives to promote the implementation of the recommendations of the UN Secretary General's Study on Violence against Children and to support the mandate of the Special Representative of the UN Secretary-General on Violence against Children.

#### **3.2. Combating sexual exploitation and sexual abuse**

44. The Council of Europe will promote, monitor and support the implementation of the Council of Europe treaties aiming at preventing and addressing the various forms of sexual violence against children. Effort will in particular aim at achieving ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) by all member states, ensuring its effective implementation through the monitoring work of the Committee of the Parties to the Lanzarote Convention, as well as its role as a platform for capacity building and collection of good practices.

## PART 4

### MANDATORY REPORTING MECHANISMS: COMPARISON OF LEGISLATIVE DESIGNS

Although a significant number of member states appear to have mandatory reporting laws in place, it is an area that has not, to date, been comprehensively mapped and analysed. Drawing on comparative jurisdictions, and particularly the advanced and long-established systems in Australia, it is clear that there is global variation on:

- Who is a mandated reporter, which ranges from a general duty applicable to all members of the public, to only those in designated professions which have regular contact with children;
- The states of mind which activate a duty to report, which range from knowledge to reasonable suspicion;
- The temporal situations of abuse which must be reported (whether the duty applies only to past or current abuse, or also extends to report suspected abuse that is thought likely to occur in the future).
- The nature of the duty and the penalties for failure to comply.

A key function of this study is to identify and compare the various approaches to legislative mandatory reporting duties for child sexual abuse in different state jurisdictions. Within and beyond Europe, the laws have similar general approaches, but differ in significant respects, including the list of designated mandated reporters, the state of mind activating the duty, and whether the duty applies to past cases only or also to cases of suspected risk of future abuse. Part 4 presents the approaches taken by different legislative frameworks in Europe (Part 4.1), eight States and Territories in Australia (Part 4.2), selected jurisdictions in the USA and Canada (Part 4.3) and other nations (Part 4.4). Among other things, this exercise aids the identification of promising practices and recommendations for legislative design and implementation.

#### 4.1 Europe: Legislative reporting duties in selected states

To the author's knowledge, no primary research has analysed legislative mandatory reporting duties in European nations. It is possible to summarise findings of proxy surveys, which ask individuals from member states to provide information about the law operating in their country, although these lack detail and cannot be certain to be reliable. This study did conduct a legislative scoping of selected jurisdictions, and the results are presented below. A comprehensive study of the primary sources – i.e., the legislation - is essential to inform further recommendations.

**Proxy surveys.** Several surveys have been conducted in which representatives of EU states or member states of the Council of Europe were asked whether their jurisdiction has a legislative mandatory reporting duty. These results cannot be said to be reliable, and do not provide nuanced details about the nature of the legislation. Nevertheless, these studies indicate discrepancies across European nations, and gaps in the legislative designs.

The WHO 2013 European Report on Preventing Child Maltreatment surveyed European nations, with 79% of 41 nations indicating the presence of mandatory reporting laws.<sup>50</sup> The European Child Safety Alliance reported the results of a survey of proxy respondents about national responses to violence against children, including whether the nation had mandatory reporting duties.<sup>51</sup> Of the invited EU member states, 23 responded via people working in non-governmental organisations (NGOs) (40%), government (35%) and academics and practice experts. This survey was notable for demonstrating the low level of knowledge about whether there were any mandatory reporting duties for professionals, and in at least one instance the response was incorrect (England incorrectly stated there is mandatory reporting, when there is not, p. 10), suggesting a potential general lack of awareness of this context. Of the 23 respondents:

- 14 said there were (Austria, Bulgaria, Croatia, Denmark, France, Germany, Greece, Hungary, Lithuania, Norway, Poland, Romania, Slovakia, Spain)
- 2 said there were not (Belgium and Luxembourg)
- 15 did not respond (Cyprus, Czech Republic, Estonia, Finland, Ireland, Italy, Latvia, Malta, Netherlands, Northern Ireland, Portugal, Scotland, Slovenia, Sweden, Wales).

Another report by proxies indicated that (Fundamental Rights Agency, 2015):

- 15 EU member states indicated they had reporting duties for all professionals (Bulgaria, Croatia, Denmark, Estonia, France, Hungary, Ireland, Lithuania, Luxembourg, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom).
- 10 member states indicated they had reporting duties for a smaller list of reporter groups (Austria, Belgium, Cyprus, Czech Republic, Greece, Finland, Italy, Latvia, Portugal, Slovakia).
- several member states stated the legislation did not protect the anonymity of the individual reporter, compromising compliance with the duty.

### Legislative scoping

The author of this Report consulted the primary legislation in selected jurisdictions. The provisions differ in several respects, but have a similar structure. The full table of the provisions is set out in the **Appendix**. Here, **Table 1** summarises selected national laws regarding:

- Who is a mandated reporter
- What state of mind activates the reporting duty
- What cases of abuse must be reported

**Table 1**      **Summary of legislative mandatory reporting duties: selected European jurisdictions**

Country	Mandated reporters of child sexual abuse	State of mind	Types of case of abuse
Denmark	General duty applies to everyone; an increased duty for professionals	Knowledge	Child is being abused by parents or other persons involved in his/her upbringing
France	Any person	Knowledge	Maltreatment, deprivations, or sexual assaults inflicted upon a minor under 15 years
Finland	Includes persons employed by or in positions of trust for: social and health-care services and child day care; education services; youth services; the police service; social welfare and health care service providers; education or training providers; parishes and religious communities	Knowledge	Welfare concerns about the child's need for care, circumstances endangering the child's development, or the child's behaviour
Ireland	Includes medical practitioners; nurses; midwives; dentists; psychologists; speech and occupational therapists; social workers; paramedics; teachers; pre-school managers; child-care staff; police; counsellors; clergy; child protection officers; foster carers	Knows, believes or has reasonable grounds to suspect	Has been, is being, or is at risk of being, sexually abused

Norway	Medical practitioners; dentists, psychologists, midwives, physiotherapists	Reason to believe	Child is being mistreated at home
Sweden	Includes any person; also those who conduct services in health and medical care or social services	Possession of information	Any person receiving information of a matter, which can imply a need for the social welfare committee to intervene for the protection of a child

## 4.2 Australia: a taxonomy of reporting mechanisms

**Mandatory reporting duties in child protection legislation.** In Australia, legislative mandatory reporting duties in child protection statutes have been enacted from 1969 to 2009 in each of the eight States and Territories.<sup>52</sup> These duties have been enacted for child sexual abuse at different times over this 40-year period, and have taken slightly different forms, especially in which groups are designated as mandated reporters. This has created an environment in which the nature and effects of different approaches have been able to be considered. Given this legislative tradition and variety, these different State and Territory legislative models form a useful set of frameworks for other nations to consider.

**Legislative reporting duties in other legislation.** Importantly, in addition to these reporting duties in child protection law, Australia has become arguably the most innovative legal environment for adopting other forms of legislative reporting duty to respond to child sexual abuse.<sup>53</sup> This makes Australia a particularly significant jurisdiction in this context, with its legislative developments and practical experiences able to provide particularly useful information for other jurisdictions. These developments have been strongly influenced by major revelations of endemic institutional child sexual abuse, individual failures to report known cases, and institutional cover-ups.<sup>54</sup>

Accordingly, to supplement the legislative mandatory reporting duties in Australian State and Territory child protection laws, many of these governments have enacted different reporting duties in criminal law, and in other legislation.<sup>55</sup> These duties require individuals to report known and suspected cases of child sexual abuse. Some of these are directed towards every citizen. Others are directed towards managers of child and youth-serving organisations. Jurisdictions with a strong duty in child protection law, and a general criminal law duty, as well as a reportable conduct scheme, offer the strongest model. Jurisdictions with a narrower duty in child protection law, no general criminal duty, no reportable conduct scheme, and reliance on voluntary or policy-based reporting, embody a weaker model.

**Rationales common to different duties.** While the duties take different forms and have slightly different functions, they have several common rationales. They recognise that citizens have a duty to assist police and the state in the detection of serious crimes including child sexual offences, and a similar duty not to impede detection of those who commit sexual offences against children. As well, they overcome the human tendency towards official corruption, especially in instances of child sexual abuse within organisations. Especially when imposed in mandatory reporting legislation, and reportable conduct schemes, they are imposed to avoid the phenomenon of gaze aversion: the tendency for people to avoid acting even when confronted with clear evidence of serious wrongdoing. In all cases, these duties to report also recognise that child sexual abuse occurs in secret, is likely to remain hidden, and the child is unable or unlikely to seek assistance. The common essence of the duty to report is based on ethical principles requiring the taking of action to prevent harm to a vulnerable child who cannot protect herself or himself.

#### 4.2.1 Legislative reporting duties in child protection law: Australian States and Territories

Australia's eight States and Territories each have legislative responsibility for matters to do with child protection. This has enabled each State and Territory to enact their own legislation, at different times, and with different characteristics). The duties are broadly similar, although there are some differences in substance. This variance between the eight Australian State and Territory laws prompted Australia's Royal Commission (2017) to recommend the harmonisation of all Australian State and Territory mandatory reporting laws so that a common minimum range of professional groups are designated as mandated reporters across the country (Rec. 7.3).

The provisions differ in several respects, but have a similar structure. The full table of the provisions is set out in the **Appendix**. Here, **Table 2** summarises each of the eight States and Territories' provisions regarding:

- Who is a mandated reporter
- What state of mind activates the reporting duty
- What cases of sexual abuse must be reported

**Table 2 Summary of legislative mandatory reporting duties: Australian States and Territories**

State/Territory	Mandated reporters of child sexual abuse	State of mind	Types of case of sexual abuse
Australian Capital Territory	Include: doctors; dentists; nurses; midwives; psychologists; teachers; home school inspectors; school counsellors; child care centre workers; public servants working with children	Believes on reasonable grounds	Past or current
New South Wales	Any 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	Reasonable grounds to suspect	Past or present, and future
Northern Territory	All persons, including members of the public	Belief on reasonable grounds	Past or present, and future
Queensland	Doctors; registered nurses; teachers; police; child advocates; early childhood education and care professionals	Reasonable suspicion	Past or present, and future
South Australia	Medical practitioners; pharmacists; nurses; dentists; psychologists; police officers; community corrections officers; social workers; ministers of religion; employees and volunteers in religious organisations; teachers; employees and volunteers in organisations providing health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children	Reasonable grounds to suspect	Past or present, and future
Tasmania	Medical practitioners; nurses; midwives, dentists; psychologists; police officers; probation officers; principals and teachers in any educational institution; persons who provide child care or a child care service for fee or reward; managers of education and care services; any other person employed or who is a volunteer in, a government agency that provides health, welfare, education, child care or residential services	Knowledge, or a belief or suspicion on reasonable grounds	Past or present, and future
Victoria	Medical practitioners, nurses, midwives, teachers, early childhood teachers; school principals; police officers (and clergy, after passage of the Children Legislation Amendment Bill 2019	Belief on reasonable grounds	Past or present, and future
Western Australia	Doctors; nurses and midwives; teachers and boarding supervisors; police officers	Belief on reasonable grounds	Past or current

**A note on clergy and mandatory reporting provisions.** A significant number of jurisdictions in Australia and other nations extend the legislative mandatory reporting duty to clergy. Some US jurisdictions apply the general duty to clergy, but retain an exemption for belief or suspicion gained through confession. Examples include North Carolina, Oklahoma, Rhode Island, and Texas.

However, many jurisdictions expressly state that the duty applies even to situations where the clergy member's belief or suspicion is developed through disclosures during confession. In these locations, ministers of religion are therefore required to report a belief or suspicion on reasonable grounds that a child has been or is at risk of being sexually abused, even if that belief or suspicion is formed as a result of information revealed by a person during confession. This person could be the offender, the child, or another person. Examples include South Australia,<sup>56</sup> Ontario,<sup>57</sup> New Hampshire, West Virginia, and Guam. In Ireland, the Children First Act 2015 Sched 2 expressly includes clergy as mandated reporters, but does not contain express provisions regarding exclusion of privilege.

#### **4.2.2 Legislative reporting duties in criminal law: Australian States and Territories**

##### **A general duty to report child sexual abuse offences**

Reporting duties in criminal law can have a unique impact due to their special character and consequences (Mathews 2019). In several Australian States, criminal legislation imposes a special duty requiring all adults who have knowledge or belief that child sexual abuse has been committed to report this to the police. In Australia, these duties exist in Victoria and New South Wales.

**Victoria.** The Crimes Act 1958 s 327 makes it an offence to fail to disclose a sexual offence committed against a child under age 16. Section 327(2) requires an adult "who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years" to disclose the information to a police officer as soon as it is practicable to do so, unless they have a reasonable excuse. The provision contains several exceptions, and provides protections from liability for those who make disclosures. The maximum penalty is three years imprisonment. This provision was inserted in 2014, in response to the Betrayal of Trust Inquiry's recommendation.<sup>58</sup>

**New South Wales.** A similar duty is imposed by the Crimes Act 1900 ss 316A(1) and 316(9)(b), which has a maximum penalty of two years imprisonment. This duty is even wider than Victoria's, as the mental state activating the duty includes not only knowledge or belief, but extends to situations where a person "reasonably ought to know" a child abuse offence has been committed.

##### **Failure by a person in authority to protect a child from a sexual offence in an organisation**

**Victoria.** Victoria has enacted a new additional reporting duty requiring those in management roles in organisations to report to police a known risk to a child of sexual abuse by someone in the organisation (Crimes Act 1958 (Vic) s 49O).<sup>59</sup> The duty requires a person in a position of authority in an organisation, who knows there is a substantial risk that a child in the organisation's care will be sexually abused by an adult in the organisation, to take action to protect the child by removing or reducing that risk. The duty aims to encourage appropriate action, and to prevent and punish gross malfeasance in failing to respond appropriately to protect a child in cases of known risk (Mathews 2019). Circumstances of known "substantial" risk include those, for example, where a person knows another adult in the organisation has a record of abusing children and has access to children, and where a known offender is transferred within the organisation to a new department or a new geographical area. Liability does not require sexual abuse to occur. Breach of the duty is punishable by a maximum prison term of five years.

**New South Wales.** New South Wales enacted a similar duty in 2018. The Crimes Act 1900 s 43B (NSW) is similar to Victoria's provision, and breach is punishable by imprisonment for two years.

### 4.2.3 Non-legislative policy-based reporting duties

#### Duties based in occupational policy

In many jurisdictions, including those that have mandatory reporting, an occupational group will have a policy-based (rather than legislatively-based) reporting duty that applies to individuals practising that occupation. Teachers, doctors, nurses and police, for example, commonly have occupational policies which include duties to report suspected cases of child sexual abuse they encounter in the course of their work. A failure to comply with these occupational policy duties may create liability under industrial policy, such as professional disciplinary measures (Mathews et al. 2006).

These policy-based duties may also exist in jurisdictions that do not have a legislative reporting duty. That is, some jurisdictions do not have laws containing mandatory reporting duties, and instead only have occupational policies containing an obligation to report.

These policies face a number of shortcomings in comparison to legislative mandatory reporting duties.<sup>60</sup> Policies cannot provide legislative protections to confidentiality and immunity. They do not form a coherent part of a child protection system and are not able to be supported by systematic financial appropriations. They are also vulnerable to poor quality design and implementation, and fragmentation within and across occupations.

Even more significantly, empirical studies have shown that in jurisdictions which only have a policy-based reporting duty, professionals:<sup>61</sup>

- Report far fewer cases than those with a legislative duty;
- Have lower levels of knowledge of the duty to report;
- Have less positive attitudes towards the duty to report;
- Are not protected by formal legislative protections, including confidentiality.

In sum: non-legislative duties to report that are placed in occupational policies have been shown to be unsuccessful in theory, in law, and in practice. A key conclusion from the body of published research is that duties based only in occupational policy – as opposed to those in legislation - do not work.

## 4.3 North America: Legislative reporting duties in selected jurisdictions from Canada and the USA

The general approach in Canada and the USA is similar to that of Australia (Mathews & Kenny 2008). Each state, territory and province has power to legislate for child protection, and enacts its own law. This means the laws can differ in key dimensions, while having similar schematic approaches. The provisions differ in several respects. The full table of the provisions is set out in the **Appendix**. Here, **Table 3** summarises selected national laws regarding:

- Who is a mandated reporter
- What state of mind activates the reporting duty
- What cases of sexual abuse must be reported

**Table 3 Summary of mandatory reporting duties: selected Canadian and US jurisdictions**

Jurisdiction	Mandated reporters of child sexual abuse	State of mind	Types of case of sexual abuse
Ontario	Any person, including a person who performs professional or official duties with respect to children	Reasonable grounds to suspect	Past or present, and future

Alberta	Any person	Reasonable and probable grounds to believe	Past or present, and future
Texas	Any person	Cause to believe	Past
West Virginia	Includes medical, dental, or mental health professionals, teachers, school personnel, social service workers, child care or foster care workers, law-enforcement officials, member of clergy, employee or volunteer of an entity providing activities for children	Reasonable cause to suspect	Past or present, and future
North Carolina	Any person or institution	Cause to suspect	Past or present
Oklahoma	Any person	Reason to believe	Past or present

## 4.4 Other nations: Legislative reporting duties in selected jurisdictions

Details on a number of other jurisdictions' legislative reporting duties are provided below. The provisions differ in several respects, but have a similar structure. The full table of provisions is set out in the **Appendix**. Here, **Table 4** summarises selected national laws regarding:

- Who is a mandated reporter
- What state of mind activates the reporting duty
- What cases of sexual abuse must be reported

**Table 4 Summary of mandatory reporting duties: selected non-European jurisdictions**

Country	Mandated reporters of child sexual abuse	State of mind	Types of case of sexual abuse
Brazil	Doctor, professor or person responsible for an institution of health assistance and basic education, preschool or day-care centre	Knowledge or suspicion	Past or present
Israel	Physician, nurse, educator, social worker, social welfare employee, policeman, psychologist, criminologist, paramedic, staff member of a home or institution in which minors live under care	Belief on reasonable grounds	Past
Malaysia	Any medical officer or practitioner; family member; child care provider	Belief on reasonable grounds	Past or present
Mexico	Relatives; social neighbours; doctors; teachers; workers; public servants; and all who suspect violation of the child's rights	Knowledge	Past or present
South Africa	Dentist, medical practitioner, nurse, social worker or teacher, any person employed by a children's home, place of care or shelter	Suspicion	Past

## PART 5

### MANDATORY REPORTING MECHANISMS: ADVANTAGES, BEST PRACTICES, AND OBSTACLES

#### 5.1 Advantages of mandatory reporting systems

Legislative mandatory reporting duties for child sexual abuse have multiple advantages. They are:

- **theoretically sound**, by promoting essential liberal democratic values of liberty and children's rights to freedom from violence and abuse, and by promoting core values of public health as social justice;
- **ethically sound**, in promoting the dignity of the individual, justice, beneficence and non-maleficence;
- **legally sound**, in being consistent and compatible with other legal principles;
- **practically warranted**, by virtue of assisting and protecting practitioners who work with children and who have professional and ethical duties to protect them from abuse, and who deserve to be educated about how best they may discharge these duties and act as protective agents for children; and
- **empirically proven and justified**, as shown by the findings of multiple studies about their success in identifying substantially more children who have been sexually abused than would otherwise occur.

Research suggests that concerns about such systems (including the risk of overburdening agencies, or of exposing reporters to retaliation) are either unfounded or not applicable to duties to report sexual abuse.

There is wide support for a legislative mandatory reporting duty from the academic community, the general community, and from government inquiries. This support is informed both on normative grounds, and on empirical evidence of the positive effect of mandatory reporting on identifying cases of child sexual abuse. Scholarly support for mandatory reporting has been strong and consistent, and particularly for serious forms of child abuse including child sexual abuse.<sup>62</sup> Quantitative studies have shown that a mandatory reporting duty has been supported in diverse nations and professions, including by physicians in countries ranging from New Zealand, Singapore, Taiwan; nurses in Australia and Taiwan, and psychologists in Canada.<sup>63</sup>

A large qualitative study in Nepal also found strong support by health practitioners for a mandatory reporting duty.<sup>64</sup>

In addition, professionals and academics alike support the laws for child sexual abuse for many reasons, including that they are consistent with ethical professional duties.<sup>65</sup> Community support and government departmental support for mandatory reporting laws for child sexual abuse has been noted by major government inquiries.<sup>66</sup>

**Government Inquiry support is consistent and strong.** Numerous public inquiries have repeatedly endorsed the use of mandatory reporting laws for child sexual abuse.<sup>67</sup> These Inquiries often consider whether reporting laws should be abolished to reduce state expenditure, but have consistently recommended their retention and indeed their expansion.<sup>68</sup> As an obligation of the liberal democratic state, government inquiries have consistently supported mandatory reporting laws as a necessary component of social policy to identify and respond to child abuse and neglect. In 2012, the Victorian Inquiry recommended extending the mandated reporter groups (Cummins, Scott & Scales 2012, p. 349 Recommendation 44). In 2013, the Queensland Inquiry recommended harmonisation and refinement of fragmented and inconsistent mandatory reporting laws, and improving reporter education (Carmody, 2013).<sup>69</sup> In Australia, six major examples include:

- the Wood Royal Commission in New South Wales (Wood, 1997);
- the Layton Review in South Australia (Layton, 2003);
- the Wood Inquiry in New South Wales (Wood, 2008);
- the Cummins Inquiry in Victoria (Cummins et al., 2012);
- the Carmody Inquiry in Queensland (Carmody, 2013); and
- the Australian Government Royal Commission (Australian Government, 2017).

In Europe, the most recent example of sustained government deliberation has occurred in Ireland, which enacted mandatory reporting duties in 2015 in the Children First Act. In addition, England and Wales are currently considering the introduction of mandatory reporting, including in hearings conducted by the Independent Inquiry Into Child Sexual Abuse.<sup>70</sup>

### **5.1.1 Theoretical legitimacy: children's rights, and public health**

**Children's rights to bodily inviolability (or bodily integrity) and freedom from harm.** The fundamental normative argument underpinning mandatory reporting laws for child sexual abuse is grounded in the child's right to bodily integrity and therefore to be protected from sexual abuse and the serious harms it causes.<sup>71</sup> Moreover, in the context of sexual abuse, children are particularly vulnerable; they have little if any capacity to protect themselves and often cannot bring their experience to the attention of adults in a position of helping them, including law enforcement or health agencies. This is particularly profound in cases of abuse by parents, caregivers, and authority figures, and in other cases where the child may disclose to a parent but not be believed or protected. The right to bodily integrity, and freedom from harm, are bedrock principles in rule of law societies governed by the rule of law. Moreover, liberal democracies require the state to provide protection to vulnerable citizens. The state in a liberal democracy has a justified interest and a necessary role in protecting these vulnerable children from this type of severe harm, whether inflicted by parents and caregivers, or other parties. These principles are consistent with those identified in international and European legal instruments in Part 3.

**Public health as social justice.** This duty of the state to protect the child is consistent with the idea of public health as social justice.<sup>72</sup> The central mission of public health is to promote social justice,<sup>73</sup> and this justifies and demands action by the state and private and public institutions to protect the human rights of those in vulnerable groups.

**Pragmatic protective action.** Child sexual abuse by its nature possesses certain qualitative and contextual characteristics justifying the recruitment of persons outside the child's family to report known and suspected cases. The laws aim to give sexually victimised children the possibility of social support and assistance in circumstances where access to society's supportive and protective mechanisms is severely compromised. The acts occur in private, hidden situations beyond the scrutiny of others. Members of some professions who ordinarily deal with children in the course of their work have an opportunity and the means to detect this kind of harm and bring it to the attention of law enforcement and health agencies, and indeed may be the only adult the child encounters who is capable of helping them.

**Formal analysis based on an established theoretical framework.** The systematic review by Mathews et al (2015) of theoretical analyses of legislative mandatory reporting laws identified extremely strong theoretical support for reporting duties for sexual abuse, based on approaches using rights theories, bioethics, and moral philosophy (deontological ethics, consequentialism and pragmatism). Summary arguments from perspectives combining bioethics, consequentialism, and children's rights include:<sup>74</sup>

- mandatory reporting enables protection to be provided to children in situations of serious harm, and a system of non-mandatory reporting does not produce appropriate compliance;
- mandatory reporting increases awareness of child maltreatment and increases reports and case identification;
- the most serious abuse affects children who cannot protect themselves; reporting enables intervention to protect the child; without these reports, the cases will not come to the attention of welfare/protective agencies;
- reporting enables health rehabilitation to be provided to the child, and can prevent the escalation of abuse and subsequent additional cost, as well as victimisation of other children.

### **5.1.2 Legal legitimacy: consistency with general legal principles**

These rights and interests are consistent with other legal rights held by children and adults in domestic laws, and rights promoted for children by international instruments such as the United Nations Convention on the Rights of the Child as well as instruments such as the Council of Europe Policy Guidelines on integrated national strategies for the protection of children from violence (CM/Rec(2009)10).

### **5.1.3 Empirical legitimacy: evidence of improved case identification**

**Major findings of an extensive programme of research.** An extensive programme of research on the empirical effects of legislative mandatory reporting laws for child sexual abuse has been undertaken in Australia since 2005. Researchers have examined:

- trends in numbers and outcomes of reports of child sexual abuse over time, stratified by different mandated and non-mandated reporter groups;
- effects of introducing a mandatory reporting duty for the first time;
- comparative differences between jurisdictions with and without a mandatory reporting duty.

**Summary of key findings.** These studies, both individually and taken as a whole, have shown the positive effects of these legislative mandatory reporting duties for child sexual abuse. The studies have found that a legislative mandatory reporting duty for child sexual abuse is a remarkably successful public policy strategy, producing:

1. A higher number of effective reports of known and suspected child sexual abuse
2. A higher number of detected cases of child sexual abuse
3. A higher number of reports of child sexual abuse where the child receives other support or assistance
4. Broader sensitisation to child sexual abuse of both girls and boys
5. Better outcomes compared with a jurisdiction without a legislative mandatory reporting duty
6. Manageable reporting rates and sustainable costs for child protection agencies

**Specific major findings** include:

1. A 10-year national study of trends in reports of child sexual abuse, comparing different states, and reporter groups, showed that legislatively mandated reports accounted for **>50% of substantiated reports of CSA**.<sup>75</sup>
2. A 7 year study in the state of Western Australia comparing trends in numbers and outcomes of reports of child sexual abuse before and after the introduction of a mandatory reporting law, showed that **twice the number of children** were identified in officially substantiated cases per annum.<sup>76</sup>
3. A 20 year study of reports of child sexual abuse in the state of Victoria, comparing trends in numbers and outcomes of reports for girls and boys, showed that positive report outcomes (i.e. substantiations, findings of harm, and referral to services) **increased twelve-fold for boys, and nearly five-fold for girls**.<sup>77</sup>
4. Comparison of similar jurisdictions, where only one had a mandatory reporting law, showed the jurisdiction with mandatory reporting identified **4.73 times the number of sexually abused children** in one year.<sup>78</sup>

Further detail of some of these studies is provided below.

#### **5.1.4 Addressing concerns: no robust theoretical or practical opposition to reporting laws for sexual abuse.**

The review by Mathews et al (2015) found that where opposition to legislative mandatory reporting duties existed,<sup>79</sup> it was directed towards other kinds of child maltreatment, especially in relation to neglect, emotional abuse, and exposure to domestic violence, and did not consider sexual abuse. Notably, even these more limited claims have been challenged.<sup>80</sup> Additionally, insofar as the arguments do not address sexual abuse, there are many explanations for this:

- **Concerns of overburdening systems and agencies:** reports of child sexual abuse to government agencies under legislative reporting schemes account for such a small proportion of all maltreatment reports that arguments about systemic strain do not apply;<sup>81</sup>
- **Concerns that mandatory reporting will lead to “overreporting”, including for trivial matters:** child sexual abuse is qualitatively so different from other instances of other types of maltreatment – e.g., always constituting criminal activity, and typically involving significant harm to the child – that different social policy responses are required,<sup>82</sup> including reporting of known and suspected cases;<sup>83</sup>

- **Claims that underreporting is not sufficiently prevalent to warrant such a duty:** there is a massive gap between the real prevalence of child sexual abuse and cases coming to official attention, nullifying any claim that case identification is not a challenge;
- **Concerns that the duty will place an undue burden on professionals:** the reporting duty does not place a burden on professionals, given the relative infrequency with which they will encounter known and suspected cases;<sup>84</sup>
- **Concerns that reporters will face retaliation:** the legislative duty actually protects professional reporters far more effectively than a voluntary or policy-based duty, including protections from legal liability and strict confidentiality.<sup>85</sup>

## 5.2 Good practices in mandatory reporting systems

Legislative mandatory reporting duties should, among other things, be:

- clearly defined and comprehensive;
- include as reporters all who work in positions which put them in regular contact with children;
- be activated by reasonable suspicion;
- provide concrete information on the contents of a report; and
- contain provisions protecting the reporter's identity and conferring immunity from liability.

Importantly, these duties should be accompanied by continuous, high-quality and multidisciplinary education programmes, as well as clear, user-friendly information.

### 5.2.1 Optimal legislative drafting features

Analyses of different legislative designs in Australia and elsewhere around the world have been conducted to identify strengths and weaknesses from legal perspectives, theoretical perspectives, and empirical perspectives.<sup>86</sup> These analyses inform the following conclusions about optimal legislative drafting features for a mandatory reporting duty for child sexual abuse.

A legislative mandatory reporting duty for child sexual abuse should:

1. Clearly define the concept of "child sexual abuse", including through the use of concrete operational definitions. In Council of Europe member States, the Lanzarote Convention is the legal instrument which provides the most comprehensive definitions on child sexual abuse. The Convention can be complemented by the guidance provided in the Luxembourg Guidelines.
2. Define who is a "child". This should be all individuals aged under 18, in line with the UN Convention on the Rights of the Child.
3. Clearly list the designated groups of reporters. These should include, at a minimum, teachers, early childhood education and care practitioners (e.g., childcare centre practitioners), police, doctors, and nurses. It is strongly recommended that staff in child and youth-serving organisations delivering sports, recreational and religious activities should also be mandated.
4. Apply the duty to cases of past or presently-occurring abuse, and to cases where the reporter suspects the abuse is likely to happen (for example, where the reporter witnesses a child being groomed for sexual abuse).

5. Specify the state of mind activating the duty. This should not be limited to knowledge and should include “knowledge” and “suspicion on reasonable grounds”.

Section 14 of Ireland’s Children First Act 2015 states:

(1) Subject to subsections (3), (4), (5), (6) and (7), where a mandated person knows, believes or has reasonable grounds to suspect, on the basis of information that he or she has received, acquired or becomes aware of in the course of his or her employment or profession as such a mandated person, that a child— (a) has been harmed, (b) is being harmed, or (c) is at risk of being harmed, he or she shall, as soon as practicable, report that knowledge, belief or suspicion, as the case may be, to the Agency.

(2) Where a child believes that he or she— (a) has been harmed, (b) is being harmed, or (c) is at risk of being harmed, and discloses that belief to a mandated person in the course of the mandated person’s employment or profession as such a person, the mandated person shall, subject to subsections (5), (6) and (7), as soon as practicable, report that disclosure to the Agency.

6. Clearly set out what details the report must include. To assist in improving the quality and detail of information provided in reports, a provision should contain the specific components that must be included in a report. This should include: details relating to the child (including: name; age; date of birth; sex; location; matters on which the knowledge or suspicion is based (physical indicators, behavioural indicators, acts observed, acts suspected, other details e.g., statements from the child or another child or person, drawings; observable injuries and behaviours, disclosures; relevant dates and times; prior injuries and disclosures; details relating to the suspected offender/s (if any knowledge exists); details relating to the child’s parents and other family information (e.g., siblings); details relating to the reporter (capacity of the reporter in relation to the child; contact details).
7. Clearly set out to whom the report must be made. This should generally be to the child protection department or equivalent.
8. Clearly set out that where an expert liaison officer exists (either in the reporter’s institution or the child protection department), the reporter may discuss their suspicion with that person to inform their decision about whether or not to report.
9. Clearly set out when the report must be made. This should be immediate.
10. Contain protections of the reporter’s identity. This is essential to reassure reporters that their identity will not be revealed. Fear of reprisals from potential offenders are known to be a deterrent to reporting. Importantly, in this respect, a legislative mandatory reporting confers greater protection to reporters than a policy-based duty.
11. Confer on mandated reporters an immunity from liability for making a report in good faith, in any civil, criminal or administrative proceedings in relation to the report. Again, importantly, in this respect also, a legislative mandatory reporting confers greater protection to reporters than a policy-based duty.

Section 166 of the South Australian Children and Young People (Safety) Act 2017 states that:

(4) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

12. Contain a statutory penalty for non-compliance. There are different approaches to this, ranging from a high monetary penalty, to a lower monetary penalty, to a monetary penalty as well as the possibility of imprisonment. However, some jurisdictions (e.g., New South Wales) do not have a penalty. On balance, the author's recommendation would be to retain some kind of financial penalty (although not necessarily the possibility of imprisonment) as a proportionate way to encourage reporting.
13. Include a provision that prohibits reprisals against reporters. This is desirable because fear of reprisals is known to be a factor deterring reports, leading to failure to report known and suspected cases. It should add further confidence and support to those who make reports, and should deter those who may threaten people who intend to report, or who actually make a report.

Section 165 of the South Australian Children and Young People (Safety) Act 2017 states that:

(1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.

(3) An act of victimisation under this Act may be dealt with—

(a) as a tort; or

(b) as if it were an act of victimisation under the Equal Opportunity Act 1984,

(6) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: \$10 000.

(8) In this section- *detriment* includes - ... (d) threats of reprisal

14. Include a provision that clearly states a report is not required where the reporter knows a report about the same incident/circumstance has already been made.

Section 357 of the Australian Capital Territory's Children and Young People Act 2008 states:

(1) Section 356 does not apply to a person if the person believes on reasonable grounds that—

(a) someone else has made a report to the director-general about the same child or young person in relation to the same abuse or non-accidental physical injury; and (b) the other person has reported the same reasons for their belief as the person has for their belief.

15. Require the delivery of educational programmes for reporters, which focus on the domains specified in 5.2.2. This can be included as a specific legislative provision.
16. Be accompanied by a duty for reporters to attend educational programmes. This can be a component of the legislative provision requiring delivery of educational programmes.
17. Be accompanied by user-friendly guidance and tools for mandated reporters. These should include the types of resources detailed in 5.2.3.

## 5.2.2 Optimal reporter education: evidence on cognitive and affective elements

Education of mandated reporters is essential to ensure the system functions effectively. Instrumentally, this education is aimed at creating the optimal conditions for mandated reporters to achieve two public policy objectives:

- (1) increase the likelihood of reporting known or suspected circumstances of sexual abuse (avoiding "failure to report"); and
- (2) decrease the likelihood of reporting situations that should not be reported (avoiding "clearly unnecessary reporting").

**Factors facilitating effective reporting.** Studies of professions including teachers, nurses, doctors and counsellors, have found that more effective reporting is associated with:<sup>87</sup>

- Accurate knowledge of the reporting duty
- Accurate knowledge of the indicators of child abuse and neglect
- Positive attitudes towards the reporting duty
- Experiencing specific child protection training

**Educational needs for reporters.** Mandated reporters require effective education about their duties. This education should be multi-dimensional and focused on:<sup>88</sup>

1. **Multidisciplinary understanding** of the context of child sexual abuse. This should include coverage of the indicators of sexual abuse, its prevalence, the settings in which it occurs, and risk and protective factors. It should include coverage of the health, behavioural and social consequences of child sexual abuse, and the role of the police and the child protection system in responding to maltreatment.
2. **Development of knowledge**, including accurate and in-depth coverage of the exact nature of the legislative duty to report, how to make an effective report, to whom to report, what to expect after making a report, how to deal with the child and the child's family, and how to deal with colleagues and the organisation.
3. **Development of affective dispositions**, to inculcate positive attitudes towards the reporting duty, and towards the professional's role in the child's life.
4. **Useful resources.** This education should be supported by user-friendly resources that are accessible, understandable, and easy to use.

**Implementation of education.** There are known effective methods of designing and delivering education via centralised platforms, which are also cost-effective (including through use of online platforms). This is essential for professionalisation of the workforce, enhancement of effective reporting, and enhanced child protection. Education and training should be supported by any new formulation of supporting documentation and the legislative framework so that all components of law and practice are congruent.

### 5.2.3 Optimal reporter support: systems and user-friendly resources

**Systems.** Research has demonstrated that optimal reporting of child sexual abuse is facilitated by support by the child protection agency and connected departments (e.g., police, health, education authorities). This systemic support takes various forms, and includes the legislation, policy, reporter education and intake systems being designed to form a coherent integrated approach. Cross-agency communication and collaboration in the design of these components is beneficial. The involvement of key personnel from participating agencies is also useful to ensure coordinated approaches and agile responses to identified problems.

**User-friendly resources.** An extensive recent study identified key approaches to better support mandated reporters across a range of health, educational, law enforcement and other professions.<sup>89</sup> Education and training should be supplemented by a suite of user-friendly resources or products. For example, there should be a **Mandated reporter manual** that contains more detailed information about child sexual abuse (including its definition, nature, prevalence, indicators, and health outcomes); the nature of the legislative duty; and how the reporting duty is intended to work as part of the child protection system. There should also be **Fact sheets** can give clear, focused, easily digestible information on key topics. **Quick reference guides** can give clear and accurate advice on key information (e.g., information on contact numbers and reporting forms); specific "What to do" information for common circumstances of sexual abuse; and advice on any circumstances in the local context identified as being "hotspots of concern" (e.g., organised criminal networks, sex trafficking).

These user-friendly products should employ concrete terms and give clear directions about what to do in different sets of circumstances. They should include documents that simply and clearly detail recommended actions for discrete categories of cases, with clear examples. For example, guidance can be clearly given about:

1. the types of situation that must always, immediately, be reported (for example, a direct disclosure by a child that they are being sexually abused);
2. the types of situation that may justify consultation with an experienced colleague or an initial conversation with the child welfare agency (for example, a difficult case where the indicators are unclear);
3. the types of situation that should never be reported (for example, developmentally normal self-touch by a 3-year-old; clearly consensual peer sexual activity between 15-year-olds).

### 5.3 Obstacles in existing systems

Systems with a mandatory reporting duty have been shown to be superior to those without it. However, even where the mandatory reporting duty exists, there are well-known obstacles in existing systems. In addition, an overarching challenge is the imperative to integrate the components of this system – legislation, policy, education, resources for reporters, and intake system – so that the system functions as a coherent whole. This requires a level of coordination and efficiency in public administration.

**Individual obstacles.** A range of obstacles to effective reporting include:

1. Poor legislative drafting, exemplified by vague or ambiguous language, and lack of clear definitions, lack of protections;<sup>90</sup>
2. Poor education and training of mandated reporters, exemplified by:
  - inadequate content (e.g., insufficient precision and clarity regarding the nature of the legal duty, the operationalisation of the legal duty, the nature and consequences of child sexual abuse, the indicators of child sexual abuse)
  - sub-optimal delivery (e.g., delivery by non-experts; delivery on a one-off basis instead of repeated at pre-service and in-service levels)
  - decentralised delivery (e.g., fragmented delivery of different programmes)
3. Reporter-related factors contributing to failure to report, including:<sup>91</sup>
  - Lack of knowledge about the reporting duty, how to identify abuse, and how to report<sup>92</sup>
  - Lack of certainty of whether abuse has happened, is now happening, or is at risk of happening (concern about being wrong)<sup>93</sup>
  - Lack of confidence in the authority to respond effectively (e.g., no feedback, nothing happened that the reporter could detect; no services known to be provided)
  - Belief that child maltreatment is a one-off event unlikely to be repeated
  - Concern about preserving the therapeutic relationship with the child/family
  - Fear of reprisals
  - Fear of being sued
  - Concern about involvement with legal proceedings
4. Inadequate resources to assist reporters (e.g., a mandated reporter manual, fact sheets and quick reference guides are not sufficiently clear and simple; do not contain concrete examples; are not user-friendly regarding length, digestibility, and accessibility);
5. Poorly drafted policy directives that are not congruent with the legislative duty;
6. Unintegrated systemic responses and lack of coordination between law and practice.

### **Overarching challenge: the need for integration, clarity and simplicity**

To overcome the challenge of sub-optimal systemic functioning, five aims should be achieved:

1. The legislative framework, reporter education, accompanying policy guidance, and child protection departmental response priorities, should be designed to work together as an integrated, coherent system. They should use a common language (e.g., similar use of terminology) and give consistent and accurate directions to reporters.
2. The cornerstone of the system is the design of a rigorous legislative mandatory reporting duty.
3. The active ingredient in the implementation of the duty is high-quality education and training for mandated reporters.
4. The supporting policy guidance, and resources and tools for mandated reporters, then support the legislation and education package.
5. The intake and response system should also liaise and work with the education designers and providers, and major professional service providers, to ensure the system functions as intended, and that continuous improvements can be made.

## **5.4 Implementation issues**

For successful implementation of a mandatory reporting duty, states will need to ensure:

- that reporting systems/agencies have adequate financing and resources to cope with increased reporting levels;
- cross-agency collaboration such as Barnahus models, and strong support for potential child victims;
- adequate training programmes and systems for feedback on reports made;
- broader support networks for children, even where a report is not substantiated;
- encouragement of a constructive media environment which raises public awareness.
- comprehensive communication for the general public, including awareness raising campaigns on child sexual abuse.

### **5.4.1 Implementation challenges generally**

When a jurisdiction introduces a new legislative mandatory reporting duty for child sexual abuse, either generally, or for a new occupational reporter group, it will need to confront several implementation challenges. As stated, an overarching challenge, also mentioned above, is the imperative to integrate the components of this system – legislation, policy, education, resources for reporters, and intake system – so that the system functions as a coherent whole. Several other main challenges of implementation arise for the child protection system. These are mentioned briefly, as follows.

**Systemic capacity.** The introduction of mandatory reporting is intended to increase in the designated professional groups an awareness of child sexual abuse, and knowledge about its indicators, and both knowledge of and commitment to the duty to report known and suspected cases. It can therefore be expected that, especially in the short-term – approximately the first one to three years – there will be an increase in the number of reports made by these reporters.<sup>94</sup> The increase in report numbers will require sufficient resourcing to be able to receive and process these reports, investigate those that warrant investigation, and implement appropriate child protection service responses to children requiring it. In addition, connected service agencies will need to be supported so that they can provide the child with required health services and support.

In short, there will need to be adequate resources available to respond to any increased demand for staffing and services. Reporting trends for child sexual abuse generally stabilise several years after introduction of a mandatory reporting duty and remain at this same level.<sup>95</sup>

**Cross-agency collaboration and data systems.** The child protection agency will need to ensure it coordinates and cooperates appropriately with other agencies, including law enforcement, health, and education, and with agencies providing multiple interdisciplinary responses and services such as Barnahus centres. This may involve multi-agency agreements, efforts to harmonise policies and practices, and other cooperative work. Intake agency data systems will need to be established to ensure all relevant information is able to be recorded, shared, monitored and analysed.

**Reporter education and feedback on reports.** As repeatedly emphasised, it is essential that mandated reporters receive multidisciplinary training and accurate information to ensure they know what cases they have to report, how to make a report containing the details needed by the child welfare agency intake team, and what cases they should not report. However, they should also receive feedback from the intake agency about reports that are made. A frequent complaint from reporters is that they do not receive information about the outcome of a report they have made, and they do not know if it helped the child or not. It is important to provide feedback on reports, to give reporters information about how they may improve the quality of their reports, but also to inform them of the general outcome for the child. Especially when the outcome resulted in protection or assistance to the child (whether for sexual abuse or another form of maltreatment), receiving information about the child can be a powerful way of affirming a commitment to the duty. Even when the outcome did not have this effect, supportive feedback can help to support the reporter in continuing their commitment to child protection.

**Other support for the child.** There will be a general need to establish and support the implementation by mandated reporters and their employers of systems of support for the child. This will apply where the report is investigated and substantiated, but it may also apply to many cases that while not officially substantiated, clearly involve a degree of abuse, harm, or other clinical need. It is important that the role of the mandated reporter and the institution in supporting the child does not end once the report has been made. A trauma-informed approach must be adopted in all interactions with the child, and measures must be taken to ensure harm minimisation and avoidance in these interactions. In addition, it is important to ensure the child is able to participate in all decisions involving the him or her.

**Media and awareness raising campaigns.** A supportive media environment can be helpful in implementing a sound child protection system. In this regard, two points can be made. First, it can be helpful for the child protection agency to engage with media outlets to support coverage that accurately explains the general context, the nature of the duty, its importance, its purposes, and its limitations. This can help to create a professional commitment to the duty, and a public understanding of the general context and particular issues, as well as a realistic understanding of what a legislative reporting duty can and cannot achieve. This kind of coverage could be general, as well as in relation to specific stories of success. Second, it can be useful to generate an understanding through responsible coverage of cases of child sexual abuse that, while some cases cannot be reasonably expected to be identified by any mandated reporter, responsibility for failure to report clearly known cases and broader institutional coverups can rightly be ascribed to the parties concerned.

#### **5.4.2 Implementation challenges considering different national contexts and frameworks across member states of the Council of Europe**

Some member states may face specific challenges in implementing a legislative mandatory reporting duty, given their local conditions. These could include: different levels of systemic preparedness; different levels of familiarity with the general phenomenon of child sexual abuse; cultural norms and attitudes towards family privacy, reporting on others more generally (concerns about “defamation”); religious influence; and competing economic imperatives. However, research suggests that it is possible for the duty to be implemented, and for tailored systemic responses to be designed to suit local conditions.<sup>96</sup>

## **PART 6**

# **RECOMMENDATIONS ON OPTIMAL DESIGN FOR THE COUNCIL OF EUROPE TO SUPPORT MEMBER STATES TO DEVELOP MANDATORY REPORTING FRAMEWORKS**

Part 6 sets out recommendations for the Council of Europe to support member states in the following areas: optimal legislative design (6.1); optimal policy design (6.2); optimal reporter education and training (6.3); optimal reporter support and resources (6.4); system design (6.5); and research and monitoring (6.6). These recommendations are informed by the research and analyses by the author and others.

### **6.1 Recommendations for optimal legislative design**

A legislative mandatory reporting duty for child sexual abuse should:

1. Clearly define the concept of “child sexual abuse”.
2. Define a “child” as individuals under the age of 18;
3. Clearly list the designated occupational groups of reporters.
4. Specify the state of mind activating the duty. This should include “knowledge” and “suspicion on reasonable grounds”.
5. Clearly set out what details the report must include.<sup>97</sup>
6. Clearly set out to whom the report must be made.
7. Clearly set out that where an expert liaison officer exists, the reporter may discuss their suspicion with that person to inform their decision about whether or not to report.
8. Clearly set out that a report should be made immediately.
9. Contain protections of the reporter’s identity.
10. Confer on mandated reporters an immunity from liability for making a report in good faith, in any civil, criminal or administrative proceedings in relation to the report.
11. Contain a statutory penalty for non-compliance.
12. Include a provision that prohibits reprisals against reporters.
13. Include a provision that clearly states that a report is not required where the reporter knows a report about the same incident/circumstance has already been made.
14. Contain a requirement for the delivery of educational programmes for reporters.
15. Be accompanied by a duty for reporters to attend educational programmes.
16. Be accompanied by user-friendly guidance and tools for reporters (see below, Part 6.4).

## 6.2 Recommendations for optimal policy design

In a jurisdiction where a legislative mandatory reporting duty **exists**, a policy-based reporting duty for child sexual abuse should:

1. Be promulgated by central administrative bodies in the major reporting professions (police, doctors, nurses, teachers, early childhood education and care), and desirably also in major sporting, recreational and religious organisations serving children
2. Be consistent with the legislative reporting duty
3. Complement the legislative duty by adding additional contextual information, e.g.:
  - State how practitioners should engage with their supervisors when making a report
  - Specify the required reporting forms and processes
  - Specifying which training is essential for licensure or registration

For individual practitioners:

- **Education and training** is essential for professionals who work with children, and at a minimum, for police, teachers, early childhood care and education practitioners, doctors and nurses (see below, Part 6.3).
- **User-friendly products.** Education and training should be supplemented by a suite of user-friendly products, which should also be used in reporter education (see above Part 5.2.3, and below Part 6.4).

## 6.3 Recommendations for optimal reporter education and training

1. **Education must be a top priority.** All mandated reporters need to receive education and training about the content and implementation of their legislative reporting duty.
2. **Regulatory mode of education, and implementation.** Ideally, this education and training should be legislatively mandated and supported by suitable budgetary appropriation.
3. Education could be made a **requirement for professional licensing or registration.**
4. **Form of education.** Education and training should have similar components for all professions, and tailored modules to suit specific professions to accommodate local contexts. This education should be three-dimensional and focused on:<sup>98</sup>
  - Multidisciplinary understanding of the context of child sexual abuse.
  - Development of knowledge,
  - Development of affective dispositions.
5. **Delivery mode.** Consider optimal design and delivery via centralised online platforms.

## 6.4 Recommendations for optimal reporter support and resources

### User-friendly products

In addition to the education and training provided to reporters, accompanying user-friendly products are an essential component of the system. They should include a small but effective package of documents – such as a mandated reporter manual, fact sheets and quick reference guides – that detail recommended actions for discrete categories of cases, with clear examples. Each document should use specific examples using concrete terms.

These documents should be:

- Designed for universal application to all different mandated reporter groups;
- Able to be supplemented by specialist products for specific occupations (e.g., an additional fact sheet for medical practitioners conducting physical examinations);
- Used in reporter education and training;
- Available in print and online forms (and where online, accessible via smartphone);
- Carefully designed and tested with practitioners for validity and useability; and
- Subject to regular but practicable review and updates.

## **6.5 Recommendations for system design**

### **Integration, clarity and simplicity**

1. The legislation, reporter education, accompanying policy guidance, and child protection agency response priorities, should work together as an integrated, coherent system.
2. The cornerstone of the system is a rigorous legislative mandatory reporting duty.
3. The active ingredient in the implementation of the duty is high-quality education and training for mandated reporters.
4. The supporting policy guidance, and resources and tools for mandated reporters, then support the legislation and education package.
5. The intake and response system should also liaise and work with the education designers and providers, and major professional service providers, to ensure the system functions as intended, and that continuous improvements can be made.

## **6.6 Recommendations for research and monitoring**

### **A commitment to evaluation and continuous improvement**

A legislative mandatory reporting duty for child sexual abuse is a complex public health intervention. It should be the subject of ongoing evaluation and monitoring to identify its outcomes, and areas where improvements can be made. This monitoring should include:

- Quantitative analysis to identify numbers and outcomes of reports;
- Qualitative interviews with reporters from different professions to identify needs;
- Mixed-methods research with reporters to explore their knowledge about child sexual abuse and the reporting duty, their attitudes towards the reporting duty, and difficulties in implementing the duty;
- Mixed-methods research with intake system workers to explore the nature of reports and identify ways to improve the quality of reports.

This research and monitoring should also include comparative analysis across member states to evaluate trends and outcomes, identify areas that may be improved, and test and implement new approaches to optimal design and delivery.

## **APPENDIX**

### **LEGISLATIVE MANDATORY REPORTING DUTIES**

<b>Table 1</b>	<b>Legislative mandatory reporting duties: selected European jurisdictions</b>
<b>Table 2</b>	<b>Legislative mandatory reporting duties: Australian States and Territories</b>
<b>Table 3</b>	<b>Legislative mandatory reporting duties: selected North American jurisdictions</b>
<b>Table 4</b>	<b>Legislative mandatory reporting duties: selected non-European jurisdictions</b>

**Table 1**      **Legislative mandatory reporting duties: selected European jurisdictions**

Jurisdiction	Essence of Duty
France  French Penal Code Article 434-3	<p>[Article 434-3]. Any person who, having knowledge of maltreatment, deprivations, or sexual assaults inflicted upon a minor under fifteen years of age or upon a person incapable of self-protection by reason of age, sickness, infirmity, psychical or psychological disability or pregnancy, omits to report this to the administrative or judicial authorities is punished by three years' imprisonment and a fine of €45,000. Except where the law otherwise provides, persons bound by an obligation of secrecy pursuant to the conditions set out under article 226-13 are exempted from the above provisions.</p> <p>[Article 226-13] The disclosure of secret information by a person entrusted with such a secret, either because of his position or profession, or because of a temporary function or mission, is punished by one year's imprisonment and a fine of €15,000.</p> <p>Article 226-13 is not applicable to the cases where the law imposes or authorises the disclosure of the secret. In addition, it is not applicable:</p> <p>1° to a person who informs a judicial, medical or administrative authority of cruelty or deprivation, including sexual abuse, of which he has knowledge and which has been inflicted on a minor or a person unable to protect himself because of his age, or physical or psychological state;</p> <p>2° to a doctor who, with the consent of the victim, brings to the knowledge of the public prosecutor instances of cruelty or deprivation, either physical or psychological, that he has observed in the exercise of his profession that cause him to believe that physical, sexual or psychological violence of any sort, has been committed. Where the victim is a minor, his consent is not necessary;</p>
Denmark Consolidation Act on Social Services	General duty applies to everyone. There is an increased duty of notification for professionals (This duty applies to everyone holding public office or providing public services). Any person who learns or becomes aware that a child or young person under 18 is being neglected or abused by his/her parents or other persons involved in his/her upbringing
Finland  Child Welfare Act (No 683/1983)	'Duty to notify'. S25 (1) Section 25 (88/2010) – Duty to notify (1) Persons employed by, or in positions of trust for, 1) social and health-care services and child day care, 2) education services; 3) youth services; 4) the police service; 5) the Criminal Sanctions Agency; 6) fire and rescue services; 7) social welfare and health care service providers; 8) education or training provider; 9) a parish or other religious community; 10) a reception centre and organisation centre referred to in section 3 of the Act on Reception of People Seeking International Protection (746/2011); 11) a unit engaged in emergency response centre activities; or 12) a unit engaged in morning and afternoon activities for school children as well as persons working in a principal/contractor relationship or as independent professionals, and all health care professionals have a duty to notify the municipal body responsible for social services without delay and notwithstanding confidentiality provisions if, in the course of their work, they discover that there is a child for whom it is necessary to investigate the need for child welfare on account of the child's need for care, circumstances endangering the child's development, or the child's behaviour.
Ireland  Children First Act 2015 Part 3, ss 14-19 Sched 2	<p>Definition of "harm": s 2. "harm" means, in relation to a child ... (b) sexual abuse of the child, whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise;</p> <p>Mandated persons. 14. (1) Subject to subsections (3), (4), (5), (6) and (7), where a mandated person knows, believes or has reasonable grounds to suspect, on the basis of information that he or she has received, acquired or becomes aware of in the course of his or her employment or profession as such a mandated person, that a child— (a) has been harmed, (b) is being harmed, or (c) is at risk of being harmed, he or she shall, as soon as practicable, report that knowledge, belief or suspicion, as the case may be, to the Agency.</p> <p>(2) Where a child believes that he or she—(a) has been harmed, (b) is being harmed, or (c) is at risk of being harmed, and discloses that belief to a mandated person in the course of the mandated person's employment or profession as such a person, the mandated person shall, subject to subsections (5), (6) and (7), as soon as practicable, report that disclosure to the Agency.</p> <p>(3) A mandated person shall not be required to make a report to the Agency under subsection (1) where—(a) he or she knows or believes that— (i) a child who is aged 15 years or more but less than 17 years is engaged in sexual activity, and (ii) the other party to the sexual activity concerned is not more than 2 years older than the child concerned, (b) he or she knows or believes that— (i) there is no material difference in capacity or maturity between the parties engaged in the sexual activity concerned, and (ii) the relationship between the parties engaged in the sexual activity concerned is not intimidatory or exploitative of either party, (c) he or she is satisfied that subsection (2) does not apply, and (d) the child concerned has made known to the mandated person his or her view that the activity, or information relating to it, should not be disclosed to the Agency and the mandated person relied upon that view.</p> <p>(7) Where a mandated person acting in the course of his or her employment or profession knows, believes or has reasonable grounds to suspect that a child may be at risk of immediate harm and should be removed to a place of safety, he or she may make a report to the Agency under subsection (1) or (2) other than by means of a mandated report form.</p> <p>(8) Where a mandated person makes a report under subsection (7), he or she shall in addition, complete a mandated report form as soon as may be but in any event not later than 3 days after the making of the first-mentioned report.</p> <p>Schedule 2 Mandated persons. The following classes of persons are specified as mandated persons for the purposes of this Act: 1. Registered medical practitioner ... 2. Registered nurse or registered midwife ... 3. Physiotherapist ... 4. Speech and language therapist ... 5. Occupational therapist ... 6. Registered dentist ... 7. Psychologist ... 8. Social care worker ... 9. Social worker ... 10. Emergency medical technician, paramedic and advanced paramedic ... 11. Probation officer ... 12. Teacher ... 13. Member of An Garda Síochána. 14. Guardian ad litem ... 15. Person employed in any of the following capacities: (a) manager of domestic violence shelter; (b) manager of homeless provision or emergency accommodation facility; (c) manager of asylum seeker accommodation (direct provision) centre; (d) addiction counsellor ...; (f) manager of a language school or other recreational school where children reside away from home; (g) member of the clergy (howsoever described) or pastoral care worker (howsoever described) of a church or other religious community; (h) director of any institution where a child is detained by an order of a court; (i)</p>

	safeguarding officer, child protection officer or other person (howsoever described) who is employed for the purpose of performing the child welfare and protection function of religious, sporting, recreational, cultural, educational and other bodies and organisations offering services to children; (j) child care staff member employed in a pre-school service ...; (k) person responsible for the care or management of a youth work service .... Youth worker. .... 17. Foster carer registered with the Agency. 18. A person carrying on a pre-school service ...
Norway Child Welfare Act	<u>ss 6-4</u> : Medical practitioners; dentists, psychologists, midwives, physiotherapists. Notwithstanding the duty of confidentiality, public authorities shall of their own initiative provide information to the municipal child welfare service when there is reason to believe that a child is being mistreated at home or subjected to other forms of serious neglect.
Sweden  Social Services Act 2001:453	Chapter 14. Reporting of Abuses Section 1. Any person receiving information of a matter, which can imply a need for the social welfare committee to intervene for the protection of a child should notify the committee accordingly. Authorities whose activities affect children and young persons are duty bound, as are other authorities in health care, medical care, other forensic psychiatric investigation services and social services, prison and probation services to notify the social welfare committee immediately of any matter which comes to their knowledge and may imply a need for the social welfare committee to intervene for the protection of a child. The same applies to persons employed by such authorities. The same duty of notification also applies to persons active within professionally conducted private services affecting children and young persons or any other professionally conducted private services in health and medical care or in the social services field. Where couples counselling services are concerned, the provisions of subsection three shall all apply instead. It is the duty of persons employed in the couples counselling to notify the social welfare committee immediately if in the course of their activity it comes to their knowledge that a child is being sexually abused or subjected to physical or mental abuse in the home. It is the duty of the public authorities, officials and professionally active persons as referred to in subsection two to furnish the social welfare committee with all particulars which may be material to an investigation of a child's need of protection.

**Table 2 Legislative mandatory reporting duties: Australian States and Territories**

Jurisdiction	Essence of duty
<p>Australian Capital Territory</p> <p>Children and Young People Act 2008</p>	<p><u>s356 Offence—mandatory reporting of abuse</u></p> <p>(1) A person commits an offence if— (a) the person is a mandated reporter; and (b) the person is an adult; and (c) the person believes on reasonable grounds that a child or young person has experienced, or is experiencing— (i) sexual abuse; ... and (d) the person's reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid); and (e) the person does not, as soon as practicable after forming the belief, report to the director-general— (i) the child's or young person's name or description; and (ii) the reasons for the person's belief. (2) A person who is or was a member of the clergy of a church or religious denomination is not entitled to refuse to make a mandatory report because it contains information communicated to the member during a religious confession.</p> <p><u>Mandatory reporting exceptions.</u> s357(1) Section 356 does not apply to a person if the person believes on reasonable grounds that— (a) someone else has made a report to the director-general about the same child or young person in relation to the same abuse or non-accidental physical injury; and (b) the other person has reported the same reasons for their belief as the person has for their belief.</p>
<p>New South Wales</p> <p>Children and Young Persons (Care and Protection) Act 1998</p>	<p><u>s27 Mandatory reporting</u></p> <p>(1) This section applies to: (a) 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, and (b) a person who holds a management position in an organization, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.</p> <p><u>s27(2) If:</u> (a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of significant harm, and (b) those grounds arise during the course of or from the person's work, it is the duty of the person to report, as soon as practicable, to the Secretary the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.</p>
<p>Northern Territory</p> <p>Care and Protection of Children Act 2007</p>	<p>Section 26 Reporting obligations. (1) A person is guilty of an offence if the person: (a) believes, on reasonable grounds, any of the following: (i) a child has suffered or is likely to suffer harm or exploitation; (ii) a child aged less than 14 years has been or is likely to be a victim of a sexual offence; (iii) a child has been or is likely to be a victim of an offence against section 128 of the Criminal Code; and (b) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer: (i) that belief; and (ii) any knowledge of the person forming the grounds for that belief; and (iii) any factual circumstances on which that knowledge is based</p>
<p>Queensland</p> <p>Child Protection Act 1999</p>	<p><u>s13E Mandatory reporting by persons engaged in particular work:</u></p> <p>s13E(2) For this section, a reportable suspicion about a child is a reasonable suspicion that the child— (a) has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and (b) may not have a parent able and willing to protect the child from the harm.</p> <p>(3) If a relevant person forms a reportable suspicion about a child in the course of the person's engagement as a relevant person, the person must give a written report to the chief executive under section 13G.</p> <p><u>13G Report to the chief executive</u></p> <p>(1) This section applies to a report that a relevant person is required to give under section 13E or 13F.</p> <p>(2) The report must— (a) state the basis on which the person has formed the reportable suspicion; and (b) include the information prescribed by regulation, to the extent of the person's knowledge.</p> <p>(3) The person is not required to give a report about a matter if— (a) giving the report might tend to incriminate the person; or (b) the person knows, or reasonably supposes, that the chief executive is aware of the matter.</p> <p>(4) A regulation may prescribe the way the report must be given.</p> <p>(5) To remove any doubt, it is declared that a person does not commit an offence against this or another Act only because the person omits to do an act required under section 13E(3) or 13F(3) or this section.</p>
<p>South Australia</p> <p>Children and Young People (Safety) Act 2017</p>	<p><u>s31—Reporting of suspicion that child or young person may be at risk</u></p> <p>(1) A person to whom this Part applies must, if— (a) the person suspects on reasonable grounds that a child or young person is, or may be, at risk; and (b) that suspicion was formed in the course of the person's employment, report that suspicion, in accordance with ss (4), as soon as is reasonably practicable after forming the suspicion.</p> <p>(2) However, a person need not report a suspicion under subsection (1)— (a) if the person believes on reasonable grounds that another person has reported the matter in accordance with that subsection...</p> <p>(4) A person reports a suspicion by doing 1 or more of the following: (a) making a telephone notification to a telephone number determined by the Minister for the purposes of this subsection; (b) making an electronic notification on an electronic reporting system determined by the Minister for the purposes of this subsection; (c) by reporting their suspicion to a person of a class, or occupying a position of a class, specified by the Minister; (d) reporting their suspicion in any other manner set out in the regulations ..., and, in each case, providing—(e) ... (ii) The name and address (if known) of the child or young person; and (f) information setting out the grounds for the person's suspicion; and (g) such other information as the person may wish to provide in relation to their suspicion.</p>
<p>Tasmania</p> <p>Children, Young Persons and Their Families Act 1997</p>	<p><u>s14(2)</u> If a prescribed person, in carrying out official duties or in the course of his or her work (whether paid or voluntary), believes, or suspects, on reasonable grounds, or knows – (a) that a child has been or is being abused or neglected .. or (b) that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides; .. the prescribed person must inform the Secretary or a Community-Based Intake Service of that belief, suspicion or knowledge as soon as practicable after he or she forms the belief or suspicion or gains the knowledge.</p>
<p>Victoria</p> <p>Children, Youth and Families Act 2005</p>	<p><u>s184 Mandatory reporting.</u> (1) A mandatory reporter who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as set out in section 182, forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in section 162(1)(c) or 162(1)(d) must report to the Secretary that belief and the reasonable grounds for it as soon as practicable—(a) after forming the belief; and (b) after each occasion on which he or she becomes aware of any further reasonable grounds for the belief. (2) It is a defence to a charge under subsection (1) for the person charged to prove that he or she honestly and reasonably believed that all of the reasonable grounds for his or her belief had been the subject of a report to the Secretary made by another person. ... (4) [A] belief is a belief on reasonable grounds if a reasonable person practising the profession or carrying out the duties of the office, position or employment.. would have formed the belief on those grounds.</p>

	Section 162(1) [A] child is in need of protection if... (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type
Western Australia  Children and Community Services Act 2004	s124B. Duty of certain people to report sexual abuse of children (1) A person who — (a) is a doctor, nurse, midwife, police officer, teacher or boarding supervisor; and (b) believes on reasonable grounds that a child—(i) has been the subject of sexual abuse...; or (ii) is the subject of ongoing sexual abuse; and (c) forms the belief—(i) in the course of the person's work (whether paid or unpaid) as a doctor, nurse, midwife, police officer, teacher or boarding supervisor; and (ii) on or after commencement day, must report the belief as soon as practicable after forming the belief. <u>s124C Reports under s. 124B, form and content of:</u> (1) A report may be written or oral but if oral the reporter must make a written report as soon as practicable after the oral report is made. (2) A written report may, but does not need to be, in a form approved by the CEO. (3) A report is to contain — (a) the name and contact details of the reporter; and (b) the name of the child or, if the child's name cannot be obtained after reasonable inquiries, a description of the child; and (c) if, or to the extent, known to the reporter — (i) the child's date of birth; and (ii) information about where the child lives; and (iii) the names of the child's parents or other appropriate persons as defined in section 41(1); and (d) the grounds for the reporter's belief that the child has been the subject of sexual abuse or is the subject of ongoing sexual abuse; and (ea) if, or to the extent, known to the reporter — (i) the name of any person alleged to be responsible for the sexual abuse; and (ii) the person's contact details; and (iii) the person's relationship to the child; and (e) any other information that is prescribed.

**Table 3 Legislative mandatory reporting duties: selected North American jurisdictions**

Jurisdiction	Essence of duty
<b>Alberta, Canada</b>  Child, Youth and Family Enhancement Act, R.S.A. 2000, ss 1, 4	Reporting child in need <b>4(1)</b> Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to (a) a director, or (b) a police officer. Section 4 1 (1.2) A police officer who receives a report pursuant to subsection (1)(b) shall report the matter to a director as soon as practicable. <b>Section 1(2)</b> [A] child is in need of intervention if there are reasonable and probable grounds to believe that the safety, security or development of the child is endangered because of any of the following: (d) the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child; (e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse;
<b>British Columbia, Canada</b>  Child, Family and Community Service Act [RSBC 1996]	Chapter 46 Duty to report need for protection <b>14(1)</b> A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director. (2) Subsection (1) applies even if the information on which the belief is based (a) is privileged, except as a result of a solicitor-client relationship, or (b) is confidential and its disclosure is prohibited under another Act. <b>13(1)</b> A child needs protection in the following circumstances: ... (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent; (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child; ...
<b>Ontario, Canada</b> Child, Youth and Family Services Act, 2017	Duty to report child in need of protection. 125 (1) Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following [including sexual abuse: ss (3)], the person shall immediately report the suspicion and the information on which it is based to a society: 3. The child has been sexually abused or sexually exploited by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child. 4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3. (5) A person referred to in subsection (6) is guilty of an offence if, (a) the person contravenes subsection (1) or (2) by not reporting a suspicion; and (b) the information on which it was based was obtained in the course of the person's professional or official duties. (6) Subsection (5) applies to every person who performs professional or official duties with respect to children including (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist; (b) a teacher...early childhood educator, school principal, social worker, family counsellor, youth and recreation worker, and operator or employee of a child care centre or home child care agency or provider of licensed child care ...; (c) a religious official; ... (10) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with this section unless the person acts maliciously or without reasonable grounds for the suspicion. (11) Nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.
New Hampshire Title XII: Public Safety and Welfare, Chapter 169-C Child Protection Act	Rev. Stat. §169-C Section 29: Persons Required to Report. Any physician, surgeon, county medical examiner, psychiatrist, resident, intern, dentist, osteopath, optometrist, chiropractor, psychologist, therapist, registered nurse, hospital personnel... Christian Science practitioner, teacher, school official, school nurse, school counselor, social worker, day care worker, any other child or foster care worker, law enforcement official, priest, minister, or rabbi or any other person having reason to suspect that a child has been abused or neglected shall report the same in accordance with this chapter.
<b>North Carolina</b> Chapter 7B. Juvenile Code	Gen. Stat. § 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment. (a) Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101...shall report the case of that juvenile to the director of the department of social services (b) Any person or institution who knowingly or wantonly fails to report ... as required by subsection (a) ... or who knowingly or wantonly prevents another person from making a report as required by subsection (a), is guilty of a Class 1 misdemeanor.
Oklahoma Statutes Title 10A Children and Juvenile Code	§1-2-101. Every person having reason to believe that a child under age 18 is a victim of abuse or neglect shall report the matter promptly ... No privilege or contract shall relieve any person from the requirement of reporting pursuant to this section.

West Virginia Annotated Code Chapter 49 Child Welfare	§49-2-803. Persons mandated to report suspected abuse and neglect; requirements. (a) Any medical, dental, or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources. ...
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**Table 4**                      **Legislative mandatory reporting duties: selected non-European jurisdictions**

Jurisdiction	List of Reporters and Essence of Duty
Brazil  Statute of the Child and Adolescent	Article. 13. Without prejudice to other legal measures, cases involving suspicion or confirmation of maltreatment of children or adolescents will obligatorily be notified to the Council of Guardianship. <u>Article. 245.</u> Should the medical doctor, professor or element responsible for an institution of health assistance and basic education, preschool or day-care center, fail to notify the proper authority of cases of which he has become knowledgeable, involving suspicion or confirmation of maltreatment against a child or adolescent
Israel  Penal Law 5737-1977	<u>Obligation to report s 368D.</u> (b) If a physician, nurse, educator, social worker, social welfare employee, policeman, psychologist, criminologist or a person engaged in a paramedical profession, as well as a director or staff member of a home or institution in which minors or persons under care live, has – in consequence of his professional activity or responsibility – reasonable grounds to believe that an offense was committed against a minor or against a helpless person by the person responsible for him, then he is under obligation to report that as soon as possible to a welfare officer or to the police; if a person violates this obligation, then he is liable to six months imprisonment. (c) If the person responsible for a minor or for a helpless person has reasonable grounds to believe that another person responsible for him committed an offense against the minor or the helpless person, he is under obligation to report that as soon as possible to a welfare officer or to the police; if a person violates this obligation, then he is liable to six months imprisonment (c1) If a person has reasonable grounds for believing that an offense under sections 345 to 347, 348 and 351 was recently committed against a minor or against a helpless person by a relative who has not yet reached age 18, then he must report that as soon as possible to a welfare officer or to the police; if a person violates this obligation, then he is liable to three months imprisonment; in this section, "relative" – within its meaning in paragraph (2) of the definition of "guardian of minor or helpless person" in section 368A.
Malaysia  Child Act 2001 (Act 611)  (As at 1 February 2018)	27. (1) If a medical officer or a registered medical practitioner believes on reasonable grounds that a child he is examining or treating is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Social Welfare Officer. 28. (1) If any member of the family of a child believes on reasonable grounds that the child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Social Welfare Officer. 29. (1) If a child care provider believes on reasonable grounds that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Social Welfare Officer.
South Africa  Child Care Act (No. 74/1983)	s42(1) Notwithstanding the provisions of any other law every dentist, medical practitioner, nurse, social worker or teacher, or any person employed by or managing a children's home, place of care or shelter, who examines, attends or deals with any child in circumstances giving rise to the suspicion that that child has been ill-treated, or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from a nutritional deficiency disease, shall immediately notify the Director-General or any officer designated by him or her for the purposes of this section, of those circumstances

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## Endnotes

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- <sup>1</sup> Mathews, Lee and Norman, 2016.
- <sup>2</sup> Mathews, Bromfield, Walsh, Cheng and Norman, 2017.
- <sup>3</sup> Mathews 2014.
- <sup>4</sup> Mathews et al 2009.
- <sup>5</sup> Mathews, Lee and Norman, 2016; Mathews Bromfield, Walsh and Vimpani 2015; Mathews 2018.
- <sup>6</sup> Mathews, Bromfield and Walsh, 2020.
- <sup>7</sup> Mathews, 2019.
- <sup>8</sup> Mathews & Bross, 2008.

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<sup>9</sup> See further Articles 19-23 of the Council of Europe Convention for the Protection of children against Sexual Exploitation and Sexual Abuse (“Lanzarote Convention”).

<sup>10</sup> ECPAT International (2016). Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Adopted by the Interagency Working Group in Luxembourg, 28 January 2016). Bangkok: ECPAT International. <http://luxembourgguidelines.org/>. The Guidelines state (pp. 19-20): The sexual abuse of children requires no element of exchange, and can occur for the mere purpose of the sexual gratification of the person committing the act. Such abuse can be committed without explicit force, with other elements, such as authority, power, or manipulation being determining factors. Moreover, it is noteworthy that, when the child has not reached the age of sexual consent, there is no legal requirement to establish any of these elements. The mere fact of the sexual activity taking place is sufficient to constitute abuse. Furthermore, child sexual abuse can take the form of both contact and non-contact abuse. Child sexual abuse is a broad category that, at its core, defines the harm caused to children by forcing or coercing them to engage in sexual activity, whether they are aware of what is happening or not. As such, it is an appropriate umbrella term for many of the other terms referred to in this document. The terms “child sexual abuse” and “sexual abuse of children” are used interchangeably in English and pose no particular problem. Linguistically speaking, “abuse” as a word in this context already implies the mistreatment of someone else, and appears sufficiently clear on its own to ensure no confusion arises. Both “child sexual abuse” and “sexual abuse of children” thus clearly refer to the fact that someone else is subjecting the child to the abuse.”

<sup>11</sup> As determined by Article 1 UN Convention on the Rights of the Child.

<sup>12</sup> Finkelhor et al. 1990, 2014; Hussey et al. 2006.

<sup>13</sup> Australian Government Royal Commission into Institutional Responses to Child Sexual Abuse 2017; Boston Report 2003; Commission to Inquire into Child Abuse 2009; Rassenhofer et al. 2015.

<sup>14</sup> Smallbone and Wortley 2001.

<sup>15</sup> Easton et al. 2014.

<sup>16</sup> Hussey et al. 2006.

<sup>17</sup> Nikolaidis et al. 2018.

<sup>18</sup> Nikolaidis et al. 2018.

<sup>19</sup> Chen et al. 2010; Cutajar et al. 2010a; Dube et al. 2005; Paolucci et al. 2001; Spataro et al. 2004; Trickett et al. 2011.

<sup>20</sup> Boney-McCoy and Finkelhor 1995; Trickett et al. 2011.

<sup>21</sup> Spataro et al. 2004.

<sup>22</sup> Cutajar et al. 2010b.

<sup>23</sup> Dube et al. 2006.

<sup>24</sup> Daignaut and Hebert 2009.

<sup>25</sup> Currie and Widom 2010.

<sup>26</sup> Trickett et al. 2011.

<sup>27</sup> Letourneau et al. 2018.

<sup>28</sup> Chen et al. 2010; Trickett et al. 2011.

<sup>29</sup> Collin-Vezina et al., 2015.

<sup>30</sup> Alaggia et al. 2017; Easton 2013; Jonzon and Lindblad 2004; Kogan 2004; McElvaney 2013.

<sup>31</sup> US DHSS 2009.

<sup>32</sup> Mathews, 2014.

<sup>33</sup> Mathews & Kenny, 2008; Mathews et al., 2009.

<sup>34</sup> Mathews & Kenny, 2008.

<sup>35</sup> For example, in New South Wales, see the website: <https://reporter.childstory.nsw.gov.au/s/topiccatalog>

<sup>36</sup> For example, in Queensland, the Child Protection Regulation 2011 r 10 sets out the particulars to be included in the report of harm to the child, as follows: (a) the child’s name and sex; (b) the child’s age; (c) details of how to contact the child (examples—the address at which the child usually lives; the name and address of the school the child attends); (d) details of the harm to which the reportable suspicion relates; (e) particulars of the identity of the person suspected of causing the child to have suffered, suffer, or be at risk of suffering, the harm to which the reportable suspicion relates; (f) particulars of the identity of any other person who may be able to give information about the harm to which the reportable suspicion relates.

<sup>37</sup> See paragraph 3 of the Explanatory Report to the Lanzarote Convention.

<sup>38</sup> Anderst et al. 2009; Heger et al. 2002.

<sup>39</sup> Mathews 2012, 2014, 2018, 2019

<sup>40</sup> Cross & Casanueva, 2009; Drake & Jonson-Reid, 2007; Kohl et al., 2009; Mathews, 2012, 2018

<sup>41</sup> Hussey et al., 2005; Kohl et al., 2009; Drake & Jonson-Reid, 2007

<sup>42</sup> Hussey et al., 2005; Cross & Casanueva, 2009.

<sup>43</sup> Second implementation report, p. 39.

<sup>44</sup> Adopted by the Committee at its eighty-first session (13-31 May 2019).

<sup>45</sup> Lanzarote Committee. 2020. 5th activity report of the Lanzarote Committee (covering the period 22 June 2018 – 18 October 2019). <https://rm.coe.int/5th-activity-report-of-the-lanzarote-committee-covering-the-period-22-/1680993c78>

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The 1st report considered criminal law frameworks concerning the sexual abuse of children in the circle of trust ("The framework"). The 2nd report covered structures, measures and processes in place to prevent and protect children from sexual abuse in the circle of trust ("The strategies").

<sup>46</sup> Lanzarote Committee. 2015. Solicitation of children for sexual purposes through information and communication technologies (Grooming): Opinion on Article 23 of the Lanzarote Convention and its explanatory note.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064de98>

<sup>47</sup> Lanzarote Committee. 2019. Opinion on child sexually suggestive or explicit images and/or videos generated, shared and received by children. <https://rm.coe.int/opinion-of-the-lanzarote-committee-on-child-sexually-suggestive-or-exp/168094e72c>

<sup>48</sup> Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse. 2018. 2<sup>nd</sup> implementation report: Protection of children against sexual abuse in the circle of trust.

[https://www.coe.int/en/web/children/lanzarote-committee#{"12441908":2}\]](https://www.coe.int/en/web/children/lanzarote-committee#{) p. 39.

<sup>49</sup> Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse. 2018. 2<sup>nd</sup> implementation report: Protection of children against sexual abuse in the circle of trust.

[https://www.coe.int/en/web/children/lanzarote-committee#{"12441908":2}\]](https://www.coe.int/en/web/children/lanzarote-committee#{) p. 4.

<sup>50</sup> Sethi et al 2013.

<sup>51</sup> Radford and MacKay, 2015.

<sup>52</sup> Mathews, 2014.

<sup>53</sup> Mathews, 2019.

<sup>54</sup> Australian Government Royal Commission 2017; Mathews 2017, 2019; Victorian Family and Community Development Committee, 2013.

<sup>55</sup> Mathews 2019.

<sup>56</sup> The provisions include clergy as mandated reporters of child sexual abuse, and apply this obligation to information without any expressed exception: Children and Young People (Safety) Act 2017 (SA) s 30(3)(e).

<sup>57</sup> Child, Youth and Family Services Act, 2017, c 14 applies the duty to "a religious official" (s 125(6)(c)), including ministers of religion. It applies the duty despite any form of privilege (s 125(10)), apart from lawyer-client privilege (s 125(11)).

<sup>58</sup> Inserted by the Crimes Amendment (Protection of Children) Act 2014.

<sup>59</sup> In s 49O(7), a *relevant organisation* means—(a) an organisation that exercises care, supervision or authority over children, whether as its primary function or otherwise, and includes but is not limited to—(i) a church; and <sup>SEP</sup>(ii) a religious body; and (iii) a school; and 11 other types of child serving organisations.

<sup>60</sup> Mathews et al 2009; Mathews, 2014; Mathews 2019.

<sup>61</sup> Mathews, Walsh et al. 2009; Mathews, Payne et al., 2009

<sup>62</sup> Besharov, 2005; Dalziel & Segal 2007; Segal, 2015; Drake and Jonson-Reid, 2007, 2015; Finkelhor, 1990, 2005; Mathews & Bross, 2008; Mathews 2014; Mathews, Lee & Norman 2016; Mathews et al., 2017.

<sup>63</sup> Rodriguez, 2002; Fung & Chow, 1998; Lee, Fraser & Chou, 2007; Mathews et al., 2008; Feng & Levine 2005; Beck & Ogloff, 1995.

<sup>64</sup> UNICEF Nepal, 2006.

<sup>65</sup> Greipp 1997; Katner et al 2012; Kim et al 2012; Mathews 2012; Walters 1995.

<sup>66</sup> Wood 2008; Layton 2003.

<sup>67</sup> Mathews, 2014, 2019.

<sup>68</sup> Carmody, 2013; Cummins, Scott, & Scales, 2012; Layton, 2003; Wood, 2008.

<sup>69</sup> The Protecting Victoria's Vulnerable Children Inquiry investigated systemic problems in Victoria's child protection and services system (Cummins, Scott, & Scales, 2012) recommended the expansion of mandatory reporting duties to further professional groups (p. 349) and amendment of the Crimes Act 1958 to require the reporting by any religious minister, office-holder, employee, member or volunteer of a religious or spiritual organisation providing services to children of a reasonable suspicion of physical or sexual abuse of a child committed by an individual in a religious or spiritual organisation (p. 355).

<sup>70</sup> See, e.g. <https://www.iicsa.org.uk/research-seminars/mandatory-reporting-child-sexual-abuse>.

<sup>71</sup> Mathews & Bross 2008; Mathews 2015, 2019

<sup>72</sup> Mathews 2019.

<sup>73</sup> Beauchamp, 1999; Gostin, 2008.

<sup>74</sup> Mathews et al 2015.

<sup>75</sup> Mathews, Bromfield, Walsh & Vimpani, 2015.

<sup>76</sup> Mathews, Lee & Norman, 2016.

<sup>77</sup> Mathews, Bromfield, Walsh, Cheng, & Norman, 2017.

<sup>78</sup> Mathews, 2014.

<sup>79</sup> Ainsworth, 2002; Melton, 2005; Wald, 2013.

<sup>80</sup> Drake & Jonson-Reid, 2007; Mathews & Bross, 2008.

<sup>81</sup> Mathews et al 2015; Mathews 2018.

<sup>82</sup> Mathews 2014.

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<sup>83</sup> Child protection investigation teams must avoid unnecessary intrusion during investigations. However, there is no compelling evidence showing investigations cause unavoidable trauma for children, parents and others, especially for sexual abuse, where fewer cases will involve suspected parental involvement (Drake and Jonson-Reid 2007; Finkelhor 1990; Fryer et al 1990). It is also arguable that the need to protect children from such fundamental violations outweighs mere distress and intrusion (Finkelhor, 1990). Some small studies with mothers have identified both positive and negative experiences with investigations and other systemic interactions, which indicate ongoing efforts are required to develop the required professional attributes and monitor investigators' practice (Plummer and Eastin, 2007; Softestad and Toverud, 2012).

<sup>84</sup> Mathews, 2014; Mathews, Lee and Norman, 2016.

<sup>85</sup> Mathews et al 2009.

<sup>86</sup> Mathews 2015, 2018, 2019.

<sup>87</sup> Fraser et al., 2010; Goebbels et al., 2008; Hawkins et al., 2001; Mathews et al., 2008.

<sup>88</sup> Mathews et al., 2017; Mathews & Collin-Vezina, 2016.

<sup>89</sup> Mathews, 2018.

<sup>90</sup> Mathews 2018.

<sup>91</sup> Mathews et al 2015.

<sup>92</sup> Kenny, 2005; Mathews et al., 2008; Mathews et al., 2009.

<sup>93</sup> Flaherty et al., 2006, Jones, et al., 2008.

<sup>94</sup> Mathews, Lee & Norman, 2016.

<sup>95</sup> Mathews, Bromfield, Walsh, & Vimpani, 2015; Mathews 2018.

<sup>96</sup> Mathews 2015a, 2015b.

<sup>97</sup> This should include: details relating to the child (including: name; age; date of birth; sex; matters on which the knowledge or suspicion is based (physical indicators, behavioural indicators, acts observed, acts suspected, other details e.g., statements from the child or another child or person, drawings); details relating to the offender (if any knowledge exists); details relating to the child's parents and other family information (e.g., siblings); details relating to the reporter (capacity of the reporter in relation to the child; contact details).

<sup>98</sup> Mathews et al., 2017.