

**For discussion on
13 September 2021**

Legislative Council Panel on Welfare Services

**Proposed Mandatory Reporting Requirement
for Suspected Child Abuse Cases**

INTRODUCTION

The Government attaches great importance to the well-being of children. The healthy growth and development of children requires the joint efforts of both the Government and the community. It is our duty to protect children from abuses and neglect. In addition to existing legislation such as the Offences against the Person Ordinance (OAPO) (Cap. 212), the Crimes Ordinance (Cap. 200), the Prevention of Child Pornography Ordinance (Cap. 579) and the Protection of Children and Juveniles Ordinance (Cap. 213), the Government has also implemented a wide range of administrative measures in recent years for the prevention, early identification and appropriate intervention of suspected child abuse cases. These include strengthening social work services at different levels of schools, issuing guidelines to schools to implement a reporting mechanism for non-attendance cases, and providing guidelines for the relevant professionals to enhance inter-disciplinary co-operation. The Government will continue to explore additional administrative measures to enhance the protection of children, and at the same time would like to explore the possibilities of establishing a mandatory reporting requirement for suspected child abuse and neglect cases in Hong Kong through legislation. As non-compliance with a statutory requirement of mandatory reporting would come with a criminal liability, the Government would like to seek stakeholders' views on the proposal.

BACKGROUND

2. There have been calls from some sectors of the community for

mandatory reporting for the purpose of early and effective detection of suspected child abuse and neglect cases. The court case in April 2021 on the death of a five-year-old girl in 2018 due to abuse by her parents has revived the concern about under-reporting of such cases in Hong Kong. The Government has set up a cross-bureaux working group, comprising the Labour and Welfare Bureau, the Education Bureau, the Food and Health Bureau and the Security Bureau, to explore the possibility of introducing a mandatory reporting mechanism in Hong Kong and consider at the same time if there are effective alternative administrative measures to achieve the above-mentioned purpose, taking into account both overseas experience and local situation.

3. The working group notes that the Subcommittee on Causing or Allowing the Death of a Child or Vulnerable Adult under the Law Reform Commission (LRC) issued a consultation document in 2019. While it has stated that obligations on the reporting of abuse is not within the Subcommittee's terms of reference, it sets out a detailed account of the Subcommittee's research information on ongoing reporting obligations in a number of overseas jurisdictions, as well as some general analysis on relevant issues, including the key features of mandatory reporting mechanisms (extracts at [Annex A](#)) and the pros and cons of such mechanisms (extracts at [Annex B](#)).

THE MANDATORY REPORTING PROPOSAL

4. With reference to the LRC Subcommittee's research information on mandatory reporting systems, the working group considers it necessary to consult relevant stakeholders on the key issues essential for considering a mandatory reporting system through legislation, as follows –

- (a) Whom to protect?
- (b) Who are required to make reports?
- (c) What types of suspected cases to be reported?
- (d) What should be the appropriate level of penalty for failure to report?
- (e) How to safeguard reporters' interest?

Whom to protect?

5. The vulnerability of children who are unable to provide accounts of what happened in abuse cases has been the primary concern of the community for establishing a mandatory reporting system in Hong Kong. The working group proposes to apply the mandatory reporting duty to children protection as a matter of priority, so as to avoid diffusing the Government's efforts and prolonging the consultation and legislative programme.

6. The working group notes that the age of children protected by the proposed mandatory duty to report in overseas jurisdictions varies among countries or even among states within some countries, but generally ranges from persons aged under 16 years to under 18 years. In Hong Kong, the definition of "child" varies from below 14 to below 18 years old under different legislation because of different focuses of the Ordinances. As the mandatory reporting requirement aims at increasing public awareness of the importance of reporting child abuse case, the working group considers it appropriate to make reference to the age threshold of "child" in the offence of ill-treatment or neglect by those in charge of child or young person under section 27 of OAPO, which imposes a criminal liability on any person who wilfully assaults, ill-treats, neglects, abandons a child or young person under the age of 16 in a manner likely to cause unnecessary suffering or injury to the latter's health.

Who are required to make reports?

7. The working group notes from overseas experience that only certain designated professionals who need to go through substantive training and hence could be equipped with the necessary expertise to make quality reports, are mandated to report cases of suspected child abuse and neglect to the authorities, so as to increase the chance of identifying substantiated abuse cases for reporting and hence bringing these cases to the attention of relevant agencies as soon as possible. In light of the above, the working group considers that the reporting obligations should cover only those professionals who have frequent contacts with children **and** whose professions are currently subject to self-regulation or regulation by the Government, so that their professional training programmes can be

enhanced if necessary to equip them with the necessary expertise to make quality reports on child abuses. On the basis of this guiding principle, the working group's initial view is that the following professionals should be required to make report on suspected child abuse and neglect –

- (i) teachers (including school principals) in all kindergartens (including kindergarten-cum-child care centres), primary schools, secondary schools and special schools;
- (ii) child care workers/ supervisors in publicly funded, non-profit making and private standalone child care centres and kindergarten-cum-child care centres;
- (iii) nurses;
- (iv) doctors including private practitioners and various specialists such as psychiatrists and dentists;
- (v) chinese medicine practitioners;
- (vi) all or some of the regulated healthcare professionals¹; and
- (vii) social workers (i.e. social workers registered under the Social Workers Registration Ordinance (Cap.505)).

8. In addition, the working group is inclined to include the following categories of professions/ occupations, subject to the feasibility of incorporating the necessary modules on reporting of child abuses in their respective training programme :

- (i) psychologists (e.g. clinical psychologists and educational psychologists);
- (ii) counsellors; and
- (iii) home managers and health workers in residential care homes for persons with disabilities who are vested with the responsibility of children under their care.

¹ Currently, physiotherapists, occupational therapists, medical laboratory technologists, optometrists, radiographers, pharmacists, midwives, chiropractors, and dental hygienists are subject to statutory regulation. In addition, five healthcare professions (i.e. speech therapists, dietitians, audiologists, clinical psychologists and educational psychologists) subject to self-regulation under the Accredited Registers Scheme for Healthcare Professions implemented by the Department of Health which may also see or handle paediatric clients.

9. In addition to the guiding principle in paragraph 7, the working group considers that some of the personnel's work is of a voluntary nature while others only have limited duration of interaction with children. The working group is therefore of the initial view that the following categories of persons should NOT be subject to the proposed mandatory reporting requirement –

- (i) foster parents (i.e. volunteers under the Foster Care Service);
- (ii) non-professional care workers (e.g. personal care worker and house parents of small group homes);
- (iii) child care aide (i.e. child care assistants in child care centres);
- (iv) home-based child carers (i.e. volunteers of the Neighbourhood Support Child Care Project) and child minders;
- (v) non-professional supporting staff (e.g. programme worker, workman, watchman, artisan, motor driver, cook and janitor etc.);
- (vi) welfare workers; and
- (vii) private tutors, tutors at tutorial schools, coaches or instructors for different types of activities for children.

What types of suspected cases to be reported?

10. A usually cited downside of a mandatory reporting regime is that such a regime could result in an increase in unsubstantiated referrals and thus assessment and investigation work, leading to a diversion of public resources intended to support and handle substantiated cases of child abuse and neglect. Another cited downside is that it might focus professionals' attention on reporting rather than the quality of interventions wherever they are needed. The working group notes that some jurisdictions with established mandatory reporting regime have adopted a "differential response" approach. For example, the Australian model only requires cases of "significant harm" to the child's health or wellbeing that warrant intervention or service provision to be reported, except that all sexual abuses are required to be reported.

11. To minimise the downsides commonly associated with a mandatory reporting requirement, the working group considers that the

threshold of reporting “*imminent risk of serious harm*” should be adopted. This may also address the concern that mandatory reporting may damage the trust relationship or confidential communications between a professional and his/ her client, given that it is reasonable for the professional to report abuses which will cause imminent risk of serious harm to a child. Indeed, the Code of Practice for some professions² has already set out similar reporting threshold.

12. To assist the relevant professionals to identify the targeted cases of abuse and neglect in order to comply with the mandatory duty to report such severe cases, the current code of practice/ guidelines of relevant professional sectors, such as “Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020)”³, can be beefed up to provide more specific indicators for relevant professional practitioners and to set out the limits of confidentiality to underpin the relevant legislation in future.

Level of Penalty for Non-Compliance Cases

13. The working group notes that the maximum penalty for non-compliance with the statutory requirement of reporting of child abuse cases adopted by overseas jurisdictions with mandatory reporting laws varies. Take Australia as an example, the maximum penalty differs from state to state, ranging from *a fine of AUD\$10,000* (e.g. South Australia⁴) *to imprisonment of two years* (e.g. New South Wales⁵) *to three years* (e.g. Victoria⁶ and Queensland⁷). As for the United States (US), around 20 States specify in the reporting laws the penalties for non-compliance cases

² For example, the Guidelines on Code of Practice for Registered Social Workers provides that “in circumstances where there is sufficient ground that there is a real, imminent, and serious threat to the safety or interests of clients social workers should take necessary steps to inform appropriate third parties even without the prior consent of clients”

³ SWD, *Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020)*, available at:

[https://www.swd.gov.hk/storage/asset/section/1447/en/Procedural_Guide_Core_Procedures_\(Revised_2020\)_Eng_12May2020.pdf](https://www.swd.gov.hk/storage/asset/section/1447/en/Procedural_Guide_Core_Procedures_(Revised_2020)_Eng_12May2020.pdf) ;

⁴ [https://www.legislation.sa.gov.au/LZ/C/A/CHILDREN%20AND%20YOUNG%20PEOPLE%20\(SAFETY\)%20ACT%202017/CURRENT/2017.25.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/CHILDREN%20AND%20YOUNG%20PEOPLE%20(SAFETY)%20ACT%202017/CURRENT/2017.25.AUTH.PDF)

⁵ <https://www.health.nsw.gov.au/parvan/childprotect/Pages/criminal-justice-changes.aspx>

⁶ <https://www.justice.vic.gov.au/safer-communities/protecting-children-and-families/failure-to-disclose-offence>

⁷ <https://www.qld.gov.au/law/crime-and-police/types-of-crime/sexual-offences-against-children/failure-to-report>

and the maximum penalty varies *from a fine of USD\$300 to imprisonment of 5 years*⁸ or a combination of both (e.g. California⁹ where the maximum penalty can be six months' imprisonment and/or a fine of USD\$1,000). As for the LRC Subcommittee's proposed new offence of "failure to protect"¹⁰ set out in its 2019 consultation document, it comes with a penalty of 20 years' imprisonment if the victim dies or 15 years' imprisonment if the victim suffers serious harm.

14. The working group considers that the level of penalty for non-compliance with the statutory reporting requirement should be proportionate to both the seriousness of the offence committed and the degree of participation of the person convicted. It should also strike an appropriate balance between giving a clear signal that the community will not tolerate non-reporting of serious abuse and neglect of vulnerable children on the one hand, and giving the assurance that the penalty level would be commensurate with the different nature/ seriousness of offences committed by non-reporters and perpetrators of child abuse. The working group's initial view is that a fine would not serve as a useful deterrent, while the penalty would unlikely be regarded as proportionate if a non-reporter with no direct involvement in the serious harm or death of the victim were subject to a penalty of 15 or 20 years of imprisonment. In this connection, the working group notes that the penalty of 3 years' imprisonment for summary conviction of the offence of ill-treatment or neglect of a child under section 27 of OAPO¹¹ may serve as a more appropriate basis for non-compliance of the reporting requirements for deliberation in the community.

⁸ <https://www.childwelfare.gov/pubpdfs/report.pdf>

⁹ https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=1.&part=4.&chapter=2.&article=2.5

¹⁰ LRC Subcommittee proposed in the consultation paper in 2019 a new criminal offence of "failure to protect a child or vulnerable person where the child's or the vulnerable person's death or serious harm results from an unlawful act or neglect" by a person "who had a duty of care to the victim" or "was a member of the same household as the victim" but "failed to take steps that the defendant could reasonably be expected to have taken in the circumstances to protect the victim from such harm..."

¹¹ Section 27 of OAPO provides that any person guilty of an offence of ill-treatment or neglect of child is liable on conviction on indictment to imprisonment for 10 years; or on summary conviction to imprisonment for 3 years.

Safeguard Reporters' Interest

15. The statutory provisions of the mandatory reporting systems in the US, Canada and Australia contain safeguards to provide a guarantee of protection of the reporter's identity and confer the reporter with immunity from any civil, criminal or administrative liability arising from a report made in good faith with an aim to encouraging reporting. The working group considers that similar provisions should be made, if a mandatory reporting system were introduced in Hong Kong, to provide legal protection to the reporters especially the professionals to be covered by the reporting requirement.

ADMINISTRATIVE MEASURES

16. The working group notes that some jurisdictions, such as the United Kingdom (UK) and New Zealand, have decided not to enact mandatory reporting laws possibly because of the perceived danger of over reporting of innocent cases, which is seen as adversely affecting the interests of children and families, and as diverting scarce resources intended to support deserving cases. The UK Government¹² published in 2018 the "Reporting and Acting on Child Abuse and Neglect: Summary of Consultation Responses and Government Action"¹³ which showed that the majority of respondents (63%) were in favour of allowing the Government's existing programme of reforms¹⁴ to be fully embedded. Only a quarter of respondents (25%) favoured introducing a duty to act, with the remaining respondents (12%) favouring the introduction of mandatory reporting. On the basis of the feedback collected during the consultation, the UK Government set out the important areas of the reform programme, including (i) stronger collaboration among different local agencies; (ii) further work to encourage new and innovative practice to better protect the children; and (iii) better training on child protection for

¹² The existing regime of the UK Government sets no legal requirement but relies on the statutory guidance to require persons working with children and families to report suspected child abuse or neglect.

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685465/Reporting_and_acting_on_child_abuse_and_neglect_response_to_consultati...pdf

¹⁴ The reform programme focuses on how local agencies effectively act on information already gathered about children at risk of harm, which is considered to be the most effective way to address the concern on children being "missed" by the system.

practitioners.

17. In Hong Kong, the Government has already implemented a number of improvement measures in recent years to enable the early detection of abuse cases that otherwise may not come to the attention of enforcement agencies. These measures include –

- (a) strengthening social work service for more than 700 aided child care centres (CCCs), kindergartens (KGs) and KG-cum-CCCs across the territory; implementing “one school social worker for each school” in public sector primary schools, and raising the number of school social workers to two for each secondary school and enhance supervisory support;
- (b) further to the prevailing requirement for primary and secondary schools to report students’ non-attendance within seven days of the student’s continuous absence regardless of the reasons, kindergartens are also required to report students’ absence for seven consecutive school days without reasons or under doubtful circumstances;
- (c) revising the “Protecting Children from Maltreatment - Procedural Guide for Multi-disciplinary Co-operation” to provide clear guidance to frontline personnel in relevant sectors for early identification of families with higher risk of child maltreatment, and issuing circular to schools to further enhance school personnel’s capability in identifying child abuse cases, raising their alertness and reporting the cases for follow-up actions; and
- (d) to enhance inter-disciplinary communication and collaboration under the Comprehensive Child Development Service ¹⁵, the Hospital Authority, the Department of Health and the Social Welfare

¹⁵ Comprehensive Child Development Service (CCDS) jointly implemented by the Education Bureau, Department of Health, the Hospital Authority and the Social Welfare Department aims to identify various health and social needs of children (aged 0 to 5) and their families at an early stage so that comprehensive and timely support and services can be provided to them. CCDS identifies at-risk pregnant women, mothers with postnatal depression, families in need of psychosocial services (including families at risk of child abuse), and pre-primary children with health, developmental and behavioural problems through various platforms, including the Maternal and Child Health Centres of DH, the hospitals of HA and other relevant service units (e.g. IFSCs, ISCs and pre-primary institutions). Children and families identified will be referred to health and social service units for follow-up.

Department have jointly developed the Parenting Capacity Assessment Framework for use by professionals to assess the capacity of parents or carers in childcare and parenting.

18. With reference to the experience of overseas reform programmes (without a mandatory reporting mechanism) to enhance prevention of child abuse, the relevant Bureaux/ Departments have been exploring the possibility of the enhancing the following administrative measures –

- (a) further strengthening collaboration among relevant professionals at all levels, including district, regional and central levels, to improve case management, information sharing, communication, team work and mutual support in identifying, reporting and following up on suspected child abuse cases;
- (b) regularising the Pilot Scheme on Social Work Services for Pre-primary Institutions so as to make possible timely intervention through professional counselling of the family members concerned and appropriate referrals;
- (c) enhancing training for frontline professionals (e.g. social workers, school personnel and medical personnel) to raise their alertness of early identification of suspected child abuse cases and the procedures for handling the cases including reporting of suspected cases, risk assessment, immediate protection actions, investigation and follow-up services through multi-disciplinary collaboration, etc.
- (d) introducing mandatory modules in accreditation training to enhance further the training of frontline health care professionals (e.g. doctors, chinese medicine practitioners, nurses and allied health professionals) in identification and management of suspected child abuse;
- (e) exploring the possibility of on-site social workers in the Maternal and Child Health Centres and Student Health Service Centres to allow one-stop services to enhance the engagement and initial assessment of families who require early social support;
- (f) strengthening preventive measures for high risk families by providing more evidence-based intensive parenting support to parents/ carers, child care support (e.g. high quality educare for aged

- 0-2), more intensive follow-up on confirmed cases and additional supportive programmes to enhance the mental wellbeing of carers;
- (g) enhancing parenting support for suspected/ substantiated cases of child abuse and neglect (e.g. perpetrators to receive counselling and parenting training, and to be monitored by the case workers); and
 - (h) strengthening home-school co-operation and parent education with a view to creating a harmonious and healthy environment for the development of children under the joint efforts of parents and schools.

ADVICE SOUGHT

19. This paper sets out the working group's preliminary views on the key parameters essential for considering a mandatory reporting system for suspected child abuse and neglect cases in Hong Kong. We would like to know whether Members and other stakeholders consider that legislation is the appropriate way forward and, if so, the working group will take into account the views received from the stakeholders and proceed to work out a detailed legislative proposal for further consultation with stakeholders. We would also like to seek Members' and other stakeholders' views on whether the proposed administrative measures can achieve the same objective of early and effective detection of child abuses, while avoiding the downsides commonly associated with a mandatory reporting requirement as set out in Annex B.

**LABOUR AND WELFARE BUREAU
EDUCATION BUREAU
FOOD AND HEALTH BUREAU
SECURITY BUREAU**

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**Extracted Paragraphs from LRC's consultation paper on
Features of Mandatory Reporting Systems**

8.57 Mathews and Kenny note that the statutory provisions of the mandatory reporting systems in the US, Canada and Australia “*exhibit many common features*” but also may individually differ in significant respects. The key features of the legislation usually include:

- defining which persons are required to make reports;
- identifying what state of knowledge, belief or suspicion a reporter must have before the reporting duty is activated, ie, “*requiring a ‘reasonable’ suspicion or belief of abuse or neglect, or some synonymous variation of this, and therefore not requiring knowledge of abuse or neglect*”;
- specifying that reporters are not to conduct their own investigation but are simply required to report their suspicions according to the law;
- defining the types of abuse and neglect that attract the duty to report, or stating that a child suspected to be “*in need of protection*” must have their case reported, with key phrases then further defined;
- penalties for failure to report according to the duty will be stipulated, although these are largely intended to encourage reporting rather than police it;
- a guarantee of confidentiality is provided concerning the reporter’s identity;
- the reporter is conferred with immunity from any legal liability arising from a report made in good faith;
- practical requirements will be detailed regarding when and how the report is to be made, and to whom;
- “*a final key element of the legislation is to enable any person to make a report in good faith even if not required to do so, and to provide confidentiality and legal immunity for these persons.*”

**Extracted Paragraphs from LRC’s consultation paper on
Pros and Cons of Mandatory Reporting of Child Abuse**

8.34 **The issue of whether to impose a mandatory duty to report suspected abuse and neglect is a controversial one.** On the one hand, the early reporting of suspected abuse can lead to positive action to end the suffering of a child or vulnerable person at risk, and bring those responsible to account. On the other, well-meaning but mistaken reporting of abuse (for example, when genuine accidental injuries or other medical problems have occurred) can have devastating social and legal consequences for the family involved.

8.35 Some jurisdictions, such as the United Kingdom and New Zealand, have chosen *not* to enact mandatory reporting laws. Mathews and Kenny observe that this appears to be “*for reasons including the perceived danger of over reporting of innocent cases, which is seen as adversely affecting the interests of children and families, and as diverting scarce resources from already known deserving cases.*”

8.36 A more detailed discussion of mandatory reporting – its ‘pros and cons’ and implications – is set out later below, and further information on the approaches to reporting in a number of common law jurisdictions is included in Appendix VI. We first set out below a description of the voluntary reporting system which operates in Hong Kong.

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Arguments in favour of mandatory reporting

8.58 In arguing the case for mandatory reporting, Mathews and Bross highlight the vulnerability of children. They observe that in most cases, the abuse and neglect are inflicted by the child’s parents or caregivers or other adults known to the child, consequently the perpetrators rarely seek assistance and the child is rarely able to seek assistance for himself. Mathews and Bross stress that the harmful consequences of child abuse

and neglect can sometimes be fatal, and even when not, may negatively affect a child (physically, psychologically and behaviourally) for a lifetime. They argue that the law therefore needs to make special provision to protect the rights of the most vulnerable in these types of situations.

8.59 In terms of benefits, a mandatory reporting duty could:

- increase awareness of the importance of reporting child abuse and neglect, both by those under a duty to report and the general public;
- lead to more cases of child abuse and neglect being identified, and at an earlier point in a child's life than is currently the case;
- create a higher risk environment for abusers or potential abusers because the number of reports being made would be likely to increase; and
- ensure that those best placed to make judgements about whether abuse and/or neglect is happening – social workers – do so. Practitioners (ie, those who work with children in any capacity) have not always been able to confidently conclude when a child is being abused or neglected or is at risk of abuse or neglect. Requiring a wide range of practitioners to report would enable these difficult cases to be examined by social workers.

8.60 In those jurisdictions where mandatory reporting systems are in place, it appears that not only has the number of cases reported substantially increased, but the “mandated reporters” (for example, teachers, police, nurses, doctors and welfare officers) “make the majority of all substantiated reports of child abuse and neglect.” Mathews and Bross argue that: “Mandatory reporting may in fact contribute to declines in incidence of serious child abuse.” Citing a 2005 US study, they observe: “It has been estimated that due to increased reporting, investigation and treatment services, annual child deaths in the USA have fallen from 3,000-5,000 to about 1,100.”

8.61 More recently, Mathews and Bross have stated the view that mandatory reporting laws have indisputably resulted in the identification of many more cases of severe child maltreatment than would otherwise have been revealed. The overall effect on child protection and child welfare must be viewed as positive. First, they state, the laws do result in

more reports, at least initially, and a substantial proportion of these result in substantiated cases and other outcomes which assist the child. Second, the presence of a reporting law (and associated mechanisms, e.g. reporter training) influences case identification by a specified reporter group. Third, the known presence of a reporting law can influence what would otherwise be a reluctance to report.

8.62 The Australian Government has commented that:

- mandatory reporting is a strategy that acknowledges the prevalence, seriousness and often hidden nature of child abuse and neglect, and enables early detection of cases that otherwise may not come to the attention of agencies;
- mandatory reporting requirements reinforce the moral responsibility of community members to report suspected cases of child abuse and neglect. The laws help to create a culture that is more child-centred and that will not tolerate serious abuse and neglect of vulnerable children;
- the introduction of mandatory reporting and accompanying training efforts aim to enable professionals to develop an awareness of cases of child abuse and create conditions that require them to report those cases and protect them as reporters. Research has found that mandated reporters make a substantial contribution to child protection and family welfare.

Arguments against mandatory reporting

8.63 A mandatory reporting system could, however, also:

- result in an increase in unsubstantiated referrals. Unsubstantiated referrals may unnecessarily increase state intrusion into family life and make it harder to distinguish real cases of abuse and neglect. Appropriate action may not be taken in every case as a result;
- lead to a diversion of resources from the provision of support and services for actual cases of child abuse and neglect, into assessment and investigation;

- result in poorer quality reports as there might be a perverse incentive for all those who may be covered by the duty (from police officers to school caterers) to pass the buck. This might mean the children are less protected than in the current system;
- focus professionals' attention on reporting rather than on improving the quality of interventions wherever they are needed. This might encourage behaviour where reporting is driven by the process rather than focusing on the needs of the child;
- lead to those bound by the duty feeling less able to discuss cases openly for fear of sanctions, hinder recruitment and lead to experienced, capable staff leaving their positions;
- dissuade children from disclosing incidents for fear of being forced into hostile legal proceedings;
- undermine confidentiality for those contemplating disclosure of abuse. Victims may be more reluctant to make disclosures if they know that it will result in a record of their contact being made; and
- have limited impact on further raising awareness of child abuse and neglect given other media and Government awareness raising efforts.

8.64 Opposition to mandatory reporting laws is often based on a range of arguments, in particular that unsubstantiated reports “*invade privacy and harm those on whom suspicion wrongly falls.*” Opponents consider that mandatory reporting may lead to inflation of unwarranted reports, “*causing huge economic waste and diverting resources from known deserving cases.*” It is also argued that laws on mandatory reporting have been extended too far; that they were originally created “*only for a perceived few cases of physical abuse, not the more varied types of abuse and neglect we now know of.*”

8.65 It has also been stated that mandatory reporting is not a perfect system of case-finding. Even with mandatory reporting laws in place, cases of abuse can evade the attention of authorities for a number of reasons. Leung, Wong, Tang and Lee note that in practice, even where suspected reported abuse is a legal responsibility, as in the US and Australia, “*many medical professionals fail to do so despite potential criminal and civil*

penalties.” Mathews and Bross comment that reporters may not report due to feared misdiagnosis or low confidence in child protection services. Many ‘unsubstantiated’ cases will be abusive but lack sufficient evidence to be considered ‘substantiated’. Also, many cases will simply not be perceived by, or even made present before, a mandated reporter. Leung, Wong, Tang and Lee observe that even where mandatory reporting laws are in place, common barriers to reporting include a lack of knowledge and training on identifying child abuse, lack of knowledge on reporting laws and process, professionals’ concerns regarding maintaining anonymity and a reluctance to get involved in litigation.

8.66 The UK government, following a recent public consultation on the subject, has commented:

“It is difficult to be definitive about the effectiveness (or not) of mandatory reporting. Such a duty would likely increase the volume of reports made to children’s social care. In theory, this might help to identify abuse more quickly to enable swifter preventative and protective action. However, the increased volume of reports might overwhelm the child protection system.

This might mean that an increased number of unsubstantiated reports (ie, reports of children at risk that were later not confirmed as such) detracts from cases where children need help and protection, meaning that the system becomes slower to help these children. While mandatory reporting could encourage a stronger reporting culture, this might not necessarily be positive if that means that professionals ‘pass the buck’ and report to children’s social care rather than trying to take preventative/protective action themselves. Mandatory reporting could also dissuade children from disclosing incidents for fear of being forced into legal proceedings.”