



Government of **Western Australia**
Department for **Child Protection**

Mandatory Reporting of Child Sexual Abuse in Western Australia

A guide for mandatory reporters

Child Protection
Make the Call

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FOREWORD

The introduction of mandatory reporting of child sexual abuse on 1 January 2009, is a significant milestone in strengthening the child protection system in Western Australia.

This information has been compiled to assist doctors, police officers, teachers, nurses and midwives meet their obligations as mandatory reporters of child sexual abuse when the amendments to the *Children and Community Services Act 2004* come into effect next year.

As the lead agency, the Department for Child Protection has worked closely with the Departments of Education and Training, Education Services and Health, and the WA Police. This relationship has been critical in developing an across government framework to support the effective implementation of mandatory reporting of child sexual abuse.

The information provided in this booklet is based on that framework and supporting guidelines. It is a valuable reference for all mandatory reporters and allied professionals in understanding their legal and professional obligations under the new legislation.

We strongly recommend this booklet to all doctors, police officers, teachers, nurses and midwives throughout Western Australia, as it will assist you to make well informed reports of child sexual abuse.



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INTRODUCTION

All children have the right to be protected from sexual abuse.

The protection and care of children is a whole of community and society responsibility. The Department for Child Protection (the Department) has a major responsibility for safeguarding and promoting the wellbeing¹ of children and to provide for their protection and care in circumstances where their parents have not given, or are unlikely or unable to give, that protection and care. The *Children and Community Services Act 2004* provides a legislative base for the Department's involvement with families and children.

Child abuse, and child sexual abuse, occurs in all sectors of society regardless of social, economic and cultural factors. Early identification and reporting of child sexual abuse to authorities is critical to keeping children and young people safe.

Mandatory reporting legislation varies across Australian jurisdictions around the types of abuse that must be reported and the range of people mandated to report.

The legislation that governs the mandatory reporting of child sexual abuse in Western Australia is the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*. From 1 January 2009, these mandatory reporting provisions will become part of the *Children and Community Services Act 2004*.

In Western Australia, mandatory reporters of child sexual abuse under the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* are:

- doctors
- nurses and midwives
- teachers
- police officers.

However, any person who has a belief that a child is being subjected to any form of abuse or neglect should report these concerns to the Department.

¹ Wellbeing of a child is defined in the *Children and Community Services Act 2004* as 'includes the care, development, health and safety of the child'.

The term 'mandatory reporter' is used throughout this document to mean 'mandatory reporters of child sexual abuse', in line with the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*.

Throughout this document, the terms 'child' and 'children' are used to refer to all children and young people under the age of 18 years.

The purpose of this booklet is to support mandatory reporters fulfil their legal obligation to make a report when they form a belief, on reasonable grounds, that a child has been sexually abused, or is the subject of ongoing sexual abuse. This booklet outlines the responsibilities of mandatory reporters and the mandatory reporting process in Western Australia.

CORE PRINCIPLES

The following principles underpin the mandatory reporting of child sexual abuse in Western Australia:

- The best interests of the child or young person must be the paramount consideration.
- Every child and young person has a right to be protected from sexual abuse.
- Keeping children safe from abuse is the responsibility of individuals, families, communities and the society as a whole. This is best achieved through a collaborative approach.
- Children have the right to be heard and to be believed.
- If anyone has a concern regarding the safety of a child, it is their responsibility to make a report.
- Child sexual abuse affects everyone. Early detection is critical to reducing child sexual abuse in our community.
- Child sexual abuse is not condoned by any culture or religion. Cultural practices or traditions cannot be used as an excuse for sexual abuse or sexual exploitation.

THE LEGISLATION

In Western Australia, the legislation covering mandatory reporting of child sexual abuse is the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*. From 1 January 2009, these mandatory reporting provisions will become part of the *Children and Community Services Act 2004*.

WHO ARE MANDATORY REPORTERS? [S124B(1)(A)]

- Doctors
- Nurses and midwives
- Teachers
- Police officers.

LEGISLATIVE DEFINITION OF SEXUAL ABUSE [S124A]

'Sexual abuse', in relation to a child, includes sexual behaviour in circumstances where:

- (a) the child is the subject of bribery, coercion, a threat, exploitation or violence; or
- (b) the child has less power than another person involved in the behaviour; or
- (c) there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour.

Note that this legislation is not intended to capture all sexual activity involving children and young people. Reference should be made to age of consent laws in Western Australia.

MAKING A REPORT

WHAT MUST BE REPORTED?

[S124B(1)(B)]

Mandatory reporters must report a belief, formed on reasonable grounds in the course of their work, paid or unpaid, that a child or young person has been the subject of sexual abuse or is the subject of ongoing sexual abuse, to the Department.

When making a report, in good faith, about possible child sexual abuse, a mandatory reporter does not breach any employment related duty of confidentiality, professional ethics or standards and will not have engaged in unprofessional conduct [S129].

WHEN MUST A REPORT BE MADE? [s124B(1)]

Mandatory reporters must report the belief that a child is being sexually abused, or has been sexually abused, as soon as practicable. This is important as the earlier a report is received, the earlier steps can be taken to protect a child, where this is necessary.

IS PROOF OF ABUSE NEEDED TO MAKE A REPORT?

Reporters do not need to have proof that a child or young person is being abused in order to make a mandatory report. However, mandatory reporters must have formed a belief on reasonable grounds.

It is critical that professionals who believe a child is being sexually abused make a report so that the Department and the Western Australia Police can conduct the necessary investigation.

Mandatory reporters who fail to report a belief that a child is being sexually abused commit an offence which attracts a fine of up to \$6,000 [s124B(1)].

HOW IS A REPORT MADE?

Mandatory reporters are to report child sexual abuse to the Chief Executive Officer (CEO) of the Department for Child Protection, or to other persons approved by the CEO [s124B(2)]. Reporters should check to see if someone in their organisation is approved by the CEO to receive mandatory reports.

In practice, all reports are made to the Department for Child Protection's Mandatory Reporting Service. Organisations may also have a policy on internal reporting procedures, so reporters should check with their organisation.

Verbal reports

Due to the seriousness of child sexual abuse, a verbal report is the preferred method of reporting in the first instance. A verbal report enables the Mandatory Reporting Service to ask clarifying questions and gather as much information as possible to inform the assessment, and any future intervention and planning. However, all verbal reports must be followed by a written report [s124C(1)].

To make a verbal report, mandatory reporters can telephone the Mandatory Reporting Service on 1800 708 704.

Written reports

A written report must follow a verbal report as soon as practicable, preferably within 24 hours. It is an offence to fail to provide a written report after lodging a verbal report and such a failure carries a maximum penalty of \$3,000 [s124C(1)]. A form for mandatory reporters, **Mandatory Report - Sexual Abuse** can be completed online through the Department's mandatory reporting website at:

www.mandatoryreporting.dcp.wa.gov.au.

This form can also be downloaded from the website.

Reporters should also refer to their organisation's internal processes before making a mandatory report to the Department for Child Protection.

Written reports can be lodged with the Mandatory Reporting Service via:

- email to: mrs@dcp.wa.gov.au
- fax to: 1800 610 614
- post to: PO Box 8146
PERTH BC WA 6849

Mandatory reporters can contact the Mandatory Reporting Service and request a blank mandatory report form to be sent via fax or mail if access to online facilities is not available.

INFORMATION PROVISION

There are three tiers of information to be provided in a mandatory report:

1. information that must be provided under the legislation
2. information that must be provided, if known, and
3. other important information.

In order for the Mandatory Reporting Service to assess the child's safety and determine the most appropriate response, it is important that mandatory reporters provide as much information as possible.

1. INFORMATION THAT MUST BE PROVIDED

There is some information that must be provided in a verbal and written report [124C(3)]. Information that must be provided includes the:

- reporter's name and contact details
- name of the child, or if this is not known, a description of the child
- grounds on which the reporter's belief of child sexual abuse has been formed.

Grounds for belief that the child has been sexually abused

Mandatory reporters must specify the grounds on which they formed the belief that a child has been, or is being, sexually abused. It is important to provide as much detailed information as possible, including:

- what the child has said or done to suggest they are being sexually abused
- if the child has disclosed abuse, what they said happened and who they disclosed to and when
- a description of any behaviours/interactions with the child that are of concern, including frequency and severity of behaviours
- whether the child has any injury, or medical needs.

2. INFORMATION THAT MUST BE PROVIDED, IF KNOWN

- The child's date of birth.
- The child's current address.
- The names of the child's parents or other responsible persons.

3. OTHER IMPORTANT INFORMATION

When a mandatory reporter makes a report, the Mandatory Reporting Service may ask for further information about the child and their circumstances.

This information does not have to be provided under the legislation, but it can assist in assessing the safety of the child.

For example, the mandatory reporter may be asked to provide information about:

- the child's current whereabouts
- the telephone number of the child's current address
- the child's school, day care centre or kindergarten
- the child's cultural background
- whether the child or family needs an interpreter
- the child's family arrangements, such as siblings and carers
- the name of the person alleged to have harmed the child, including whether they have threatened to further harm the child
- whether the child and the child's family/carers are aware of the report.

Mandatory reporters may not know all of the information they are asked to provide. It is important not to interview the child to obtain information, as this is the task of the Department for Child Protection and the Western Australia Police. Mandatory reporters should provide as much information as they can. Some of the questions may not seem relevant to the reporter but may greatly assist in determining the child's safety and circumstances.

The Mandatory Reporting Service will provide a 'feedback letter' to the reporter advising which District Office the report has been referred to, or whether no further action was recommended by Mandatory Reporting Service.

Refer to *Fact Sheet 7: What information should I provide?*

A complete set of fact sheets is available online at the Department's mandatory reporting website:
www.mandatoryreporting.dcp.wa.gov.au.

WHAT ARE REASONABLE GROUNDS FOR A BELIEF?

In Western Australia, it is only mandatory for certain professionals to report a belief of child sexual abuse. Mandatory reporters do not need proof of sexual abuse to make a report; a belief, based on reasonable grounds, is all that is required. Mandatory reporters must be able to state the grounds on which they formed the belief that a child has been, or is being, sexually abused.

REASONABLE GROUNDS

Professional judgement and objective observation which identifies warning signs or possible indicators of child sexual abuse informs and contributes to 'reasonable grounds'. Knowledge of child development and consultation with colleagues or other professionals can also contribute to 'reasonable grounds'.

'Sexual abuse', in relation to a child, includes sexual behaviour in circumstances where:

- (a) the child is the subject of bribery, coercion, a threat, exploitation or violence; or
- (b) the child has less power than another person involved in the behaviour; or

- (c) there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour.

Child sexual abuse occurs when a child has been exposed or subjected to sexual behaviours that are exploitative and/or inappropriate to his/her age and developmental level. Examples include sexual penetration, inappropriate touching, and exposure to sexual acts or pornographic materials, or using the internet for soliciting children for sexual exploitation.

Possible indicators of child sexual abuse include, but are not limited to, when a child:

- displays sexualised behaviours inappropriate to their age (including sexually touching other children and themselves)
- demonstrates knowledge of sexual behaviour inappropriate to their age
- makes a disclosure of sexual abuse either directly or indirectly through drawings, play or writing that describes abuse
- exhibits pain or bleeding in the anal or genital area with redness or swelling
- exhibits fear of being alone with a particular person

- implies that he/she is required to keep secrets
- exhibits the presence of a sexually transmitted infection
- exhibits sudden unexplained fears
- exhibits enuresis and/or encopresis (bedwetting and bed soiling).

Harm which may result from child sexual abuse includes significant emotional trauma, physical injury, infection, and impaired emotional and psychological development. The Department will consider contextual elements when trying to determine if a situation is abusive, such as the role of coercion or unequal power in a relationship. This is particularly important in relation to sexual behaviour between children, where the children's respective ages, developmental level and the nature of the relationship are important considerations.

Refer to *Fact Sheet 6: Indicators of child sexual abuse*.

Responding to a disclosure

It is critical that a mandatory reporter is sensitive to a child or young person who makes a disclosure of child sexual abuse.

Mandatory reporters should:

- Listen to the child and let them tell their story.
- Believe him/her and reassure the child that telling an adult was the right thing to do.
- Comfort the child if he/she is distressed, without making any promises.
- Avoid making the child repeat their story/disclosure to another person in their organisation.
- Write down what the child says and any relevant observations.
- Not confront the person alleged by the child to be responsible for the abuse.
- Not ask leading questions.
- Not interview or investigate the allegation, as this is the role of trained professionals.
- Make a report to the Mandatory Reporting Service as soon as practicable.

Refer to *Fact Sheet 5: How do I respond to a child who discloses sexual abuse to me?*

WHAT HAPPENS AFTER A REPORT IS MADE?

The Department will assess the information contained in the report to determine the most appropriate response. The Mandatory Reporting Service will provide a 'feedback letter' to the reporter advising which District Office the report has been referred to, or whether no further action was recommended. The Service must also give a copy of every written report to the Western Australia Police.

When the Mandatory Reporting Service receives a report regarding possible sexual abuse of a child, an initial assessment is undertaken. The assessment process may include reviewing, collating and evaluating information from existing sources, and contacting other professionals who may be working with the child and who may be able to provide further information.

The assessment process may result in a decision to investigate. An investigation may include workers from the Department for Child Protection and/or the Western Australia Police speaking with the child and the child's family or carers. A range of measures may be implemented to safeguard the child, if necessary, following an investigation.

Where possible, the Department works with the family to support them to care for their children within the family. As part of the assessment or investigation process, reporters may be contacted by workers from the Department and/or the Western Australia Police for further information.

Not all reports will result in an investigation or contact with the family. The action taken by the Department and/or the Western Australia Police will depend on the unique circumstances of each report and the information provided.

The Department will give a copy of all written reports of child sexual abuse to the Western Australia Police, as this is required under the legislation.

The Mandatory Reporting Service will provide any other information that may assist the Western Australia Police in the administration of their responsibilities. If the Mandatory Reporting Service does not receive a written report shortly after a verbal report is made, it is likely that they will contact the reporter to request the written report.

Mandatory reporters will be provided with an acknowledgment receipt when a report is made (either verbal or written).

The Mandatory Reporting Service will provide a 'feedback letter' to the reporter advising which District Office the report has been referred to, or whether no further action was recommended.

Mandatory reporters can contact the Department to request the outcome of the report and information will be shared with them if possible, after taking into account any legal restrictions or other relevant considerations (such as the status of any investigation).

QUESTIONS ABOUT MAKING A REPORT

If mandatory reporters have questions or are not certain about what they need to do, they can:

- contact the Mandatory Reporting Service and speak to an officer about how to fulfil their obligations as a mandatory reporter
- access the *Frequently Asked Questions* on the website at: www.mandatoryreporting.dcp.wa.gov.au
- refer to *Fact Sheet 1: General information* or *Fact Sheet 7: What information should I provide?*
- check with their employer about internal reporting procedures.

The important point to remember is that a report must be made if there is a belief, on reasonable grounds, that a child has been sexually abused or is the subject of ongoing sexual abuse.

CONFIDENTIALITY

The identity of a reporter is required to be kept confidential, except in limited circumstances. Reporters are also protected, when making a report in good faith, from breaching professional ethics or confidentiality.

REPORTER'S IDENTITY [s124F(2)]

Generally, the legislation protects a reporter's identity from being disclosed. Disclosing the identity of a reporter is an offence and carries a maximum fine of \$24,000 and imprisonment for two (2) years.

Department for Child Protection staff and other professionals who learn the identity of a reporter through the course of their work must not disclose the reporter's identity to another person unless it is allowed under one of the legislative exceptions.

Even where disclosure of a reporter's identity is allowed, care should be taken to ensure that the reporter's safety and other relevant considerations have been taken into account before revealing this information. There are some exceptions where revealing a reporter's identity is permitted.

For example:

- the Department must send a copy of every written report to the Western Australia Police, which includes the reporter's details
- the Western Australia Police may need to reveal a reporter's identity in order to investigate or prosecute a suspected offence relating to the child
- a Department officer may need to reveal a reporter's identity in performing their functions or in certain child protection, family law or adoption proceedings relating to the child
- a reporter may also provide written consent to their identity being disclosed.

CONFIDENTIALITY AND MAKING A REPORT

A person who, in good faith, makes a mandatory report about child sexual abuse is protected, in making the report, from breaching any duty of confidentiality or secrecy, professional ethics, standards or principles of conduct which would normally apply (for example, doctor/patient confidentiality).

Mandatory reporters must comply with the legislative requirements to report child sexual abuse, despite internal organisational policies, professional codes of conduct or confidentiality requirements which would normally apply.

For further information:

- refer to *Fact Sheet 3: Confidentiality issues and mandatory reporting*
- contact the Mandatory Reporting Service on free call 1800 708 704.

PROTECTION FROM LIABILITY

Mandatory reporters, making a report in good faith, do not incur civil or criminal liability.

The legislation provides legal protection to mandatory reporters who make a report, in good faith, about child sexual abuse. If reporters are complying with their obligation to make a mandatory report, they will not incur any civil or criminal liability by making the report.



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Mandatory Reporting Service

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