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Criminalising Silence — a precluded policy? An analysis of the child abuse reporting framework in New Zealand

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Abstract

This paper assesses the current framework facilitating child abuse reporting in New Zealand to determine whether the existing mechanisms preclude the need for a mandatory reporting law.

It concludes that the combined elements of the current framework, consisting of professional reporting policies, Crimes Act 1961 provisions and social pressures do not adequately fulfil the role that a universal mandatory reporting law would. Therefore, the criminalisation of failures to report child abuse through the introduction of a mandatory reporting law is not precluded by the current framework.

The various elements of the current framework are set out in detail and their weaknesses analysed from the context of what a mandatory reporting policy would additionally add and address. Key criticisms include the restricted class of persons to which legal incentives to report apply, varying and confusing professional standards, gender-discriminatory application of duties to protect and the lack of progress in creating social impetus to address New Zealand's child abuse pandemic.

Key terms: *"child abuse", "mandatory reporting", "duty to report"*

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"*In the end, we will remember not the words of our enemies, but the silence of our friends."*

– Martin Luther King Jr.

I Introduction

On the 29th of January 2020 a family violence incident in Flaxmere, Hastings, resulted in a 4-year-old boy being rushed to hospital in a critical condition. The child had extensive bruising across his body and sustained a severe head injury which left him permanently disabled.

Despite the gravity of this offending — some of the worst Detective Inspector Mike Foster had seen in his 30 year police career — no charges were laid.[1] The family closed ranks and withheld "crucial" information which would have allowed the police to ascertain who inflicted the abuse.[2] Public outcry was fierce, with threatened vigilante action and verbal abuse forcing the boy's father into hiding.[3]

Unfortunately, tragedies of this type are not rare in New Zealand. As a nation, we have some of the worst rates of family violence in the world. Police in 2018 conducted a total of 133,022 family violence investigations — one every four minutes.[4] In 2015, responding to family violence accounted for 41 per cent of frontline officers' time,[5] despite less than a quarter of family violence incidents being reported to police.[6]

Child abuse forms a notable proportion of these abhorrent statistics. By age seventeen, one in ten New Zealand children will have suffered some form of abuse or neglect.[7] On average

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[1] "Some of the most severe injuries seen on a child in 30 years: Police investigating" (11 February 2020) RNZ <www.rnz.co.nz>.

[2] Interview with Detective Inspector Mike Foster (Corin Dann, Morning Report, Radio New Zealand National, 12 February 2020).

[3] Jordan Bond "Father of beaten Flaxmere boy goes into hiding after receiving threats" (19 February 2020) RNZ <www.rnz.co.nz>.

[4] Mark Evans *Our Data – You Asked Us* (New Zealand Police, June 2019).

[5] Interview with Amy Adams, Justice Minister (Corin Dann, Q+A Episode 23, 2 August 2015) transcript provided by SCOOP media (Wellington).

[6] Research and Evaluation Team *2014 New Zealand Crime and Safety Survey* (Ministry of Justice, 2015) at 107.

[7] Bénédicte Rouland and Rhema Vaithianathan "Cumulative Prevalence of Maltreatment Among New Zealand Children, 1998–2015" (2018) 108 Am J Public Health 511 at 512.

nine children die nationally each year as a result of family violence, and many more suffer non-fatal (and often unreported) abuse.[8] Only a fraction of these cases garner the media attention necessary to elicit public outcry and become household names, such as the Kahui twins; Nia Glassie; Moko Rangitoheriri and James Whakaruru. Detective Inspector Foster compared the violent death of the latter, whose 6-year-old body was covered with bruises everywhere but his feet, with the extent of injuries in the Flaxmere case.[9]

Legislators have been grappling with how best to address this issue since the second-half of the last century.[10] In February 2020, in the midst of the Flaxmere tragedy, then-leader of the opposition Simon Bridges MP (Mr Bridges on subsequent references) proposed a new offence criminalising the non-disclosure of information relating to child abuse.[11] The offence would, in its essence, create and impose a rebuttable duty to report child abuse to authorities upon any person who has a reasonable belief that child abuse is occurring.

Currently in New Zealand, there is no universal requirement that *everyone* who knows of or suspects child abuse must report it to authorities. Rather, numerous ad hoc factors exist which encourage or require certain members of society to notify authorities of potential abuse.

These ad hoc factors cumulatively form the elements of the current child abuse reporting framework in New Zealand.

These elements include:

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[8] Family Violence Death Review Committee *Fourth Annual Report: January 2013 to December 2013* (Health Quality and Safety Commission, June 2014).

[9] Hamish Cardwell "Police say family of severely beaten child in Flaxmere must front up" (12 February 2020) RNZ <www.rnz.co.nz>.

[10] See generally the Children and Young Persons Bill 1986; The Children, Young Persons and Their Families Act 1989; The Children, Young Persons and their Families Amendment Act 1994 and associated reviews.

[11] Simon Bridges "New offence for non-disclosure in child abuse cases" (press release, 18 February 2020).

- reporting policies for professions in which professionals are likely to interact with vulnerable children;
- provisions in the Crimes Act 1961, which can, in some situations, be used to prosecute persons who fail to report abuse; and
- social pressures.

This paper will review and examine these elements to *solely* determine whether they preclude the need for a universal mandatory reporting law and concludes that they do not.

Given this sole purpose, this paper does not engage in any substantive discussion regarding other (perhaps more preferable) alternatives to achieve the proposed law's objectives, nor does it attempt to dictate the exact form the offence should take if introduced. It does not set out criminalisation as a necessary or desirable response, but rather analyses whether, if criminalisation is undertaken, a specific offence such as that proposed by Mr Bridges is required, or whether that offence's role is already being satisfied by existing reporting pressures.

The conclusion that the proposed law would not be redundant in light of existing reporting pressures is only *one* of many inquiries necessary before assessing the desirability of the overall proposal. Other investigations are equally important but fall outside the scope of this research project.

These include questions around the scope and desirability of omissions liability (especially where there is no direct harm), the efficacy of criminalisation as a tool for behavioural change, and whether the identified gap in the legal framework is one which should be filled by the criminal law at all.

As noted, this paper merely addresses the specific criticism that the purpose mandatory reporting would fulfil is already being achieved by the existing framework. It comes to the conclusion that this is not so, and that the policy should not be precluded on the basis of this criticism alone.

II The Proposed Offence

The offence aims to increase reporting rates to authorities by those who witness or suspect child abuse, leading to more abusers being held legally responsible for their actions. The primary aim of reporting is to stop child abuse. A secondary benefit is increasing perpetrator accountability and the deterrent effects which may result.

A mandatory reporting law would send a broader and more powerful social message as to who bears, and shares, responsibility for the harm being caused. Responsibility rests with active participants *and* those who turn a blind eye to abuse: child abuse is a truly national issue which requires a national and unified response.

In a press release Mr Bridges laid out broad parameters of the offence but with few details. The offence "would require someone to give police information unless they had a reasonable excuse not to".[12] It would impose a maximum penalty of up to three years in prison and be similar to Victoria's Failure to Disclose offence, introduced for child sex abuse cases.[13]

For the purposes of this paper, I draw on the Victorian Failure to Disclose law, and interpret Bridges' proposal as implying something like the following:

> If you are an adult and possess information that leads you to form a reasonable belief that another adult has abused a child, you must report that information to police as soon as possible, unless you have a reasonable excuse for failing to do so.

A "reasonable belief" is one where a reasonable person in the same circumstances as the defendant would have believed that abuse had occurred, for the same reasons the defendant did.

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[12] Bridges, above n 11.

[13] Crimes Act 1958 (Vic), s 327.

"Reasonable excuses" include, but are not limited to, a belief that information had already been reported to police, or fear for one's own safety or the safety of others (not including that of the suspected abuser).

III Existing Professional Reporting Policies

A Government Agency Guidelines

Various government agencies (most notably the Ministry of Health and Oranga Tamariki) have devised guidelines containing strong recommendations for the implementation of processes which help to recognise and report child abuse.[14] Public and private sector services such as DHBs and schools with close, consistent contact with children tend to model their individual procedures on these guidelines. For example, emergency departments nationally implement the same child protection checklist for children admitted under the age of two, which is contained in the Ministry of Health's *Family Violence Assessment and Intervention Guideline: Child abuse and intimate partner violence*.[15]

The Vulnerable Children Act 2014 (now the Children's Act 2014) introduced the requirement that all DHBs, school boards and certain prescribed state services must have child protection policies and reporting systems in place to recognise and report child abuse and neglect.[16] This legislation was the result of the *White Paper for Vulnerable Children* 2012. The *White Paper* also developed an information sharing agreement between government agencies involved with the Children's Action Plan — "a cross-sector programme established to protect vulnerable children by proactively reducing child abuse and neglect".[17] These measures were implemented to ensure proper communication

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[14] Fanslow JL and Kelly P *Family Violence Assessment and Intervention Guideline: Child abuse and intimate partner violence* (Ministry of Health, 2016); Child, Youth and Family [now Oranga Tamariki] *Working Together to keep children and young people safe: An Interagency Guide* (Child, Youth and Family, 2011).

[15] At 39.

[16] Children's Act 2014 ss (16)-(18).

[17] "Children's Action Plan programme" (30 May 2019) Ministry of Health <www.health.govt.nz/our-work/life-stages/child-health/childrens-action-plan-programme>. The participating agencies are: the Ministries of Social Development, Health, Education, Justice, Business, Innovation, and Employment (Housing), New Zealand Police and Te Puni Kōkiri.

between sectors interacting with children — for example between social workers and health practitioners — while also creating uniform definitions of abuse, reporting advice and procedures.

B The Code of Health and Disability Services Consumers' Rights

The Code of Health and Disability Services Consumers' Rights (the Code) sets out consumers' rights with respect to their interactions with health care or disability service providers, including mental health counsellors.[18] In certain circumstances the Code makes guidelines such as those mentioned above mandatory, and it is one of the primary mechanisms through which medical professionals may be legally liable for failing to report suspected child abuse.

Right 4 of the Code, the "right to services of an appropriate standard", is defined as services rendered in line with "legal, professional, ethical, and other relevant standards".[19] This allows non-legal standards and guidelines to become legally enforceable, subject to the nature of the guideline and the authority of the issuing body.[20]

In 2002, a doctor was found to have breached Right 4 of the Code for failing in a timely manner to report a suspected child abuse case to Child Youth and Family services.[21] In finding this breach, the Health and Disability Commissioner (the Commissioner) considered standards from a range of interagency protocols. These included protocols released by (then) Child Youth and Family, a guide for doctors produced by the New Zealand Medical Council, the voluntary reporting provision (s 15) of the Oranga Tamariki Act 1989 and the Guidelines and Procedures for the management of child sexual abuse in general practice compiled by Doctors for Sexual Abuse Care.[22]

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[18] Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996, reg 4.

[19] Regulation 2.

[20] Ron Paterson "The Code of Patient's Rights" in Ron Paterson and Peter Skegg (eds) *Health Law in New Zealand* (Thomson Reuters, Wellington, 2015) 27 at 43.

[21] *Dr B, A Report by the Health and Disability Commissioner* (Case OJHDC01802, 30 April 2002).

[22] Deborah Lawson "Is Mandatory Reporting Of Child Abuse An Appropriate Child Protection Tool For Adolescents?" (PhD thesis, University of Otago, 2009) at 40.

The Commissioner, upon finding a breach, may then make recommendations or report to the provider or anyone else considered appropriate, or refer the provider to the Director of Proceedings who may issue disciplinary and Human Rights Review Tribunal proceedings.[23]

This is a rather convoluted process. However, it allows voluntary guidelines developed by government agencies, independent bodies and common practice to become, through the Code, punishable via civil proceedings before the Human Rights Review Tribunal.

For professionals subject to the Code, this creates an extra incentive to be vigilant and proactive with respect to possible child abuse cases. Indeed, the possibility of severe penalties effectively makes reporting mandatory for this professional sector.

C Health Practitioners Competence Assurance Act 2003

Medical professionals may also be subject to disciplinary proceedings for failing to report suspected child abuse if that failure is found by the Health Practitioners Disciplinary Tribunal (the HPDT) to breach the Health Practitioners Competence Assurance Act 2003 (the HPCAA). The HPCAA is not restricted to doctors and nurses, instead covering a broad range of practice areas from podiatry to psychotherapy.[24]

The HPCAA established the HPDT,[25] which regulates the behaviour of health practitioners to ensure "health practitioners are competent and fit to practise their professions".[26] If the HPDT establishes a breach of the HPCAA it may cancel or suspend a health practitioner's registration, impose conditions on the practitioner's registration and in addition or in the alternative, impose fines or costs.[27]

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[23] Lawson, above n 22, at 41.

[24] "Responsible authorities under the Act" (17 February 2020) Ministry of Health <www.health.govt.nz/our-work/regulation-health-and-disability-system/health-practitioners-competence-assurance-act/responsible-authorities-under-act>.

[25] Section 84.

[26] Health Practitioners Competence Assurance Act 2003, s 3(1).

[27] Health Practitioners Competence Assurance Act, s 101(1).

Section 100(1) of the HPCAA states the HPDT may find a practitioner guilty of misconduct and subject to further disciplinary action for:

> (a) … any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence…; or
> (b) … [has] or was likely to bring discredit to the [practitioner's] profession...

Guidelines are relevant in determining whether a practitioner departed from the accepted standard, with "the preponderance of guidance" establishing correct practice as being to refer and/or report suspected victims to Oranga Tamariki or the Police.[28] Failing to report may therefore be considered malpractice or something likely to bring discredit to the profession, resulting in a formal finding of misconduct and possible disciplinary action.

D Employment Law

Almost all schools and health providers have their own policies for when suspected child abuse should or must be reported. Such institutions usually base their policies on Oranga Tamariki guidelines.

School policies generally require staff to report suspected abuse either to the school's senior leadership team or head counsellor, who then decides whether it meets the criteria to be passed on to authorities.[29] In medical institutions, policies differ depending on the protocols each practitioner is subject to, and vary between different institutions — for example a public hospital and a private clinic.

Staff employment contracts will usually require staff members to comply with an employer's policies, including those regarding child abuse reporting. This means possible

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[28] Lawson, above n 22, at 43.

[29] See Westlake Girls High School Management "Child Abuse Policy" (March 2017) <www.westlakegirls.school.nz/policies/>; "Child Protection Policy" (June 2017) Rangitoto College <www.rangitoto.school.nz/our-school/policies>; "Abuse Recognition and Reporting" (2019) Mt Albert Grammar School <www.mags.school.nz/school-policies/>.

disciplinary action the result of a failure to carry out their employer's reporting policies acts as another incentive for professionals in these groups to report.

E Analysis of Existing Professional Reporting Policies

Viewed in concert, these policies approximate a mandatory reporting regime for a limited class of people. However, they are insufficient to render a universal mandatory reporting law unnecessary.

The processes as they stand are often inconsistent, unclear and convoluted. Individual institution's policies contain varying definitions of abuse and distinct thresholds for when (if at all) a person subject to a policy is required to report.

This is particularly so in the health sector, in which one medical professional may be subject to numerous different standards from their immediate institution of work, the College they register with and Ministry of Health guidelines.[30] There are also differences depending on whether a practitioner works in the public sector (where each DHB has mandatory reporting policies), or a private hospital, where reporting may not be mandatory.[31]

A universal standard would reduce confusion and promote efficiency by ensuring consistency regarding who has a duty to report and in what circumstances. This could prevent harm to victims such as "M" and James Whakaruru — two severely abused children (the latter fatally) who were in contact with medical professionals during and prior to periods of intense abuse, but who were never appropriately referred.

James Whakaruru was seen by various practitioners 40 times before his death,[32] while "M" (a nine year old girl) interacted with nine health sector organisations before her abuse was

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[30] Louisa Jackson "Child Abuse Intervention: Reporting Protocols in the New Zealand Health Sector" (2013) 44 VUWLR 17 at 23.

[31] Jackson, above n 30, at 24.

[32] *Executive Summary of the Report into the Death of James Whakaruru* (2000) at 4.

identified.[33] Failures such as these led to the *White Paper for Vulnerable Children* and subsequent reforms, particularly regarding information sharing, but the base inconsistency in reporting standards among professions and in the private sector still needs to be addressed.

There is also evidence of support for a universal mandatory reporting scheme within these professions. In 1991 a Ministerial Review of the Children, Young Persons and Their Families Act 1989 (CYPF Act 1989) was requested by the then Minister of Social Welfare, Jenny Shipley.[34] The Review Team found that the mandatory reporting law then being mooted (which was limited to certain professionals) had support from teachers and the New Zealand Medical Association.[35] This support was partly on the basis that it would provide certainty and remove any potential conflicts of interest or community judgment because of the legally-prescribed nature of the reporting duty.

As they currently stand, these policies apply only to particular sectors and professionals such as public servants, health professionals and school staff. These are persons whose job it is to best promote children's health and wellbeing. As such, they are a group which (subject to confidentiality concerns) are potentially the most likely to report suspected abuse regardless of legal coercion. The effectiveness of focusing legal coercion on them alone is therefore questionable.

These professionals by themselves can only do so much. They are impaired by their social and relational distance from children and their abusers. Child abuse is a society-wide issue, and a society-wide response is required. The onus of detection should not lie solely with professionals. The proposed law would instead target those with greater exposure to

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[33] *Mel Smith Report to Hon Paula Bennett, Minister for Social Development and Employment: Following An Inquiry into the Serious Abuse of a Nine Year Old Girl and Other Matters Relating to the Welfare, Safety and Protection of Children in New Zealand* (31 March 2011) at 29.

[34] Ministerial Review Team *Review of the Children, Young Persons and their Families Act 1989: Report of the Ministerial Review Team to the Minister of Social Welfare* (1992).

[35] Ministerial Review Team, above n 34, at 16.

children and their families in day-to-day life and in their home environments — people such as the extended family in the Flaxmere case.

IV Provisions in the Crimes Act 1961

A Section 152: Duty to provide necessaries and protect from injury

Section 152 of the Crimes Act 1961 imposes duties on parents, guardians or those with "actual care or charge of a child" to provide the child with necessaries and to take reasonable steps to protect that child from injury. The latter provision of the duty was introduced in 2011,[36] largely in response to the court's finding that protecting a child from foreseeable injury was not a "necessary of life" within the meaning of the section.[37] Reasonable steps to prevent harm to a child suffering from abuse would in most, if not all cases, include some reporting obligation.[38]

Under s 150A(2), a person may be held criminally liable "for omitting to discharge or perform a legal duty" so long as the omission can be classified as grossly negligent. To be considered grossly negligent the act or omission must be "a major departure from the standard of care expected of a reasonable person to whom that legal duty applies".[39]

The duty may be applied to any offence capable of being committed by omission. In the context of preventing injury caused by child abuse, the relevant offences are omissions-based manslaughter under s 160(2)(b) and ill-treatment or neglect of a child or vulnerable adult under s 195.

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[36] Crimes Amendment Act (No 3) 2011, s 6.

[37] *R v Lunt* [2004] 1 NZLR 498 (CA). The Court did however recognise a common law duty on parents "to take reasonable steps to protect his or her child from the illegal violence of the other parent or of any other person
where that violence is foreseen or reasonably foreseeable" at [22].

[38] Brenda Midson "The Helpless Protecting the Vulnerable? Defending Coerced Mothers Charged with Failure to Protect" (2014) 45 VUWLR 297 at 298.

[39] Crimes Act 1961, s 150A(2).

Liability would be found under the latter provision where a parent or person with "actual care or charge of a child" omits to discharge or perform their legal duty to take reasonable steps to protect a child from injury, where that omission is a major departure from the reasonable standard of care *and* is likely to cause suffering, injury, adverse effects to health, or any mental disorder or disability to the child.

For manslaughter liability under s 160(2)(b) the parent/guardian must fail to take reasonable steps to protect the child from the injury which led to their death, where that failure was grossly negligent. In *R v Kuka* a mother was found liable despite denying knowledge of any abuse to varying extents throughout her trial — the jury nonetheless finding that a reasonable person would have been aware of and taken steps to protect the children from risk.[40]

The scope of this duty is narrow and does not extend to non-parents/guardians who share a household with a child. The Law Commission emphasised this in their 2009 *Review of Part 8 of the Crimes Act: Crimes Against the Person*:[41]

> No duty to intervene in such cases presently exists. It is a situation that falls beyond the scope of any of the existing statutory duties… this means that household members who are neither perpetrators of, nor (legally speaking) parties to, ill treatment or neglect cannot be held liable for their failure to intervene, no matter how outrageous or how obvious the ill treatment or neglect of the child may be.

It was for this reason that the Commission recommended what is now s 195A.

B Section 195A: Failure to protect child (or vulnerable adult)

Section 195A was duly introduced by the National government in 2011 as part of its child abuse response strategy.[42]

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[40] *R v Kuka* [2009] NZCA 572.

[41] Law Commission *Review of Part 8 of the Crimes Act: Crimes Against the Person* (NZLC R111, 2009) at 5.26.

[42] Crimes Amendment Act (No 3).

The provision places a duty on members of the same household who have frequent contact with a child and know the child is at risk of death, grievous bodily harm or sexual assault to "take reasonable steps to protect the victim from that risk".[43]

Liability for child protection is thus broadened from the common law duty of parents or guardians enunciated in s 152, to persons in the same household as the victim at the time of the act or omission giving rise to the risk of harm.[44] The Commission considered that while it is appropriate for people sharing a household with an at-risk child to be subject to "a degree of liability, the extent of such liability needs to be clear and circumscribed".[45] For that reason, the Commission neglected to extend s 152 to members of the same household, viewing possible liability under *any* duties-based offence as too broad.

A member of the same household does not necessarily have to be living in the same residence as the victim.[46] What matters is whether a person is "so closely connected with the household that it is reasonable, in the circumstances, to regard him or her as a member of the household".[47] When making this determination, relevant considerations include the frequency and duration of visits to the household, any familial relationship with the victim and all other relevant circumstances.[48]

At first glance, section 195A appears to substantially widen the scope of any duty to report. This is because in most cases reporting abuse will be one of the "reasonable steps" necessary to protect the victim under the section. However, closer analysis reveals that such appearance is, in practice, illusory. Since the offence's introduction in 2011 it has been successfully prosecuted in only two cases relating to a failure to report.

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[43] Section 195A(1)(b).
[44] Section 195A(4)(b).
[45] Law Commission, above n 41, at 5.27.
[46] Section 195A(4)(a).
[47] Section 195A(4)(a).
[48] Section 195A(5).

Both cases were particularly strong in that the defendants clearly had awareness of the abuse and deliberately neglected to take action where they should have done. If s 195A were appropriately plugging the "gaps and deficiencies" in the existing criminal framework concerning child neglect and ill treatment we would expect to see more prosecutions on less startling facts.[49]

The cases are discussed in the following sections.

1 Taylor v R

Taylor v R was a case involving what Kós P described as "the most dreadful neglect".[50] The case concerned the death of Ms Dung, a 79-year-old woman rendered immobile by numerous fractures. In *Taylor* the court disregarded any distinction between children and vulnerable adults under s 195A.[51]

Ms Dung lived with her daughter, Cindy Taylor, who was primarily responsible for her care, and also Luana and Brian Taylor. At a certain point Cindy Taylor stopped caring for her mother. When ambulance officers found Ms Dung's body she was lying on a tarpaulin in a pool of her own urine and faeces. She had been in this unhygienic state for so long that her bodily waste had started to chemically burn her skin. She had pressure sores and ulcers all over her body, insects were prevalent in the room and she was emaciated. The court concluded that, after a period of weeks of intense suffering in the most degrading circumstances, Ms Dung had passed away primarily as a result of malnutrition and dehydration.

Cindy Taylor was charged with omissions-based manslaughter for failing to provide her mother (being a vulnerable adult) with the necessaries of life.[52] Relevant for present purposes are the convictions of Luana and Brian Taylor, who were charged

[49] Law Commission, above n 41, at iv.
[50] *Taylor v R* [2017] NZCA 574 at [1].
[51] At [15].
[52] Crimes Act 1961, ss 150A, 151, 160(b), 171 and 177.

under s 195A. The pair knew Ms Dung was at risk of death as a result of Cindy's failure to carry out her legal duty towards her mother. Despite this, they turned a blind eye to Ms Dung's pain and suffering. Indeed, they took measures to minimise their own incidental inconvenience stemming from the neglect Ms Dung was suffering — the couple purchased a tarpaulin to protect the bed the dying Ms Dung lay on, as well as scented products and insecticide to address the smell and bugs emanating from Ms Dung's room.

2 S v New Zealand Police

The second case where s 195A has been applied for a failure to report is *S v New Zealand Police.* There S, the victim's mother, was convicted under s 195A for failing to protect E — her six-year-old daughter — from sexual assault "knowing it was an appreciable risk" (knowing that E was at risk of sexual assault).[53] S was also convicted of four charges of ill-treatment and neglect under s 195.

S and her four children lived with S's parents. S was the children's full time carer, however would attend parties several times a week, leaving the children alone for days and nights at a time. When S was in the house she was often so heavily intoxicated she could not remember a lot of what occurred.[54] S's father, A, was often found in the children's bedroom when intoxicated. E asked her mother why she could not make A "get out".[55] While S considered A's presence "weird",[56] she claimed she did not consider E may have been sexually abused at the time, explaining that she "ignored what was going on around her… because of her drunken state".[57] E and one of her younger siblings did not like having baths and complained to S that their genitals were sore. Other indications of abuse included swollen and red genitals, often becoming distressed when their mother left them and behaving inappropriately in a sexual manner.

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[53] *S v New Zealand Police* [2019] NZHC 2784 at [2].
[54] At [10].
[55] At [14].
[56] At [12].
[57] At [14].

The way s 195A has been applied in these cases does not suggest it widens reporting liability so much as to render a universal mandatory reporting law unnecessary.

In *S* the defendant was the victim's mother, who had a s 152 duty to her child and was culpable under s 195 regardless of s 195A liability. Section 195A's extension to the rest of the household was in no way material in this case. Indeed, charges were not laid against S's mother — the children's grandmother and abuser's wife — who also shared the house and would often cook for the children when their mother was absent, suggesting the bar for liability is high.

The scarcity of cases relating to a failure to report under this section — only two in nearly ten years — also suggests an incapability, or at least hindrance, to successfully prosecuting under this arm. *Taylor* reinforces this idea. While a successful conviction was obtained the prolonged, evident nature of Ms Dung's suffering and degradation made the callousness of the defendants' actions and failure to report or intervene particularly abhorrent.

If successful prosecution under s 195A requires facts analogous in severity to those present in *Taylor* and *S* the provision does not eliminate need for a universal mandatory reporting law to target less confronting incidents of unreported abuse.

It is also possible that the lack of cases is the result of a resistance at charging level to criminalise failures to report. Authorities may be unaware of their ability to charge or be otherwise hesitant to impose liability for such an omission. Explicitly making failures to report a separate offence with a reduced maximum sentence and requiring less elements to be proved by the prosecution would demonstrate clear legislative intention that such behavior is nonetheless culpable. This in turn may reduce inhibitions at a charging level, furthering the aims of both s 195A and the new offence.

C Secondary Parties

A person who witnesses or otherwise facilitates child abuse may be seen as having a duty to report emanating out of possible liability as a secondary party. While theoretically possible, such a circumstance would be incredibly unlikely.

Parties liability derives from s 66 of the Crimes Act, subs 1 of which states:

> (1) Every one is a party to and guilty of an offence who—
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> (a) actually commits the offence; or
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> (b) does or omits an act for the purpose of aiding any person to commit the offence; or
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> (c) abets any person in the commission of the offence; or
>
> (d) incites, counsels, or procures any person to commit the offence.

Where a person witnesses child abuse and does not intervene or report it there may theoretically be an avenue for prosecution under s 66(1)(c). "Abetting" essentially means encouragement.[58]

However, during the course of my research, no cases were found using s 66(1)(c) as an avenue for prosecuting those who failed to report child abuse, likely reflecting the fact that any prosecution, if possible, would be subject to a number of significant legal hurdles.

These legal hurdles are analysed below.

1 Derivative liability

Liability as a secondary party for an offence is derived from the guilt of the principal offender. In many child abuse cases the identity of the principal offender is unknown — hence the need for a duty to report.

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[58] S France and J Pike *Laws of New Zealand* Criminal Law (online ed) at [73].

Where there is a group of possible offenders — for example the Flaxmere boy's immediate family — but it is not known who the principal offender is, the prosecution can charge suspects as parties to the offence in the alternative.[59] A charge in the alternative alleges that the defendant is guilty as either a principal or as a secondary party under any of the provisions in s 66(1). While the prosecution would not have to prove exactly who in the group undertook what role, they would have to prove that the crime was committed by one or more of the accused as principal(s), abetted by their co-accused(s).[60]

2 Actus reus for abetting

The second issue regards what actually counts as encouragement. For the purposes of this paper the abetting action must be a failure to report. The "act" of failing to report is essentially "mere presence" — being physically present while a crime occurs yet doing nothing to prevent or resolve it. The courts have held that mere presence is not enough to constitute encouragement.[61]

However, exceptions have been postulated. Hawkins J in *R v Coney* (subsequently endorsed by the Court of Appeal)[62] stated:[63]

> It is no criminal offence to stand by, a mere passive spectator of the crime, even of a murder. Non-interference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it, though he might reasonably be expected to prevent and had the power to do so, or at least to express his dissent, might under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged and so aided and abetted.

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[59] *R v Renata* [1992] 2 NZLR 346; *R v Witika* (1991) 7 CRNZ 621 (CA).

[60] Isabella Clarke "A Kahui Exception? Examining the right to silence in criminal investigations" (LLB (Hons) Dissertation, University of Otago, 2007) at 16.

[61] *R v Clarkson* [1971] 3 All ER 344, [1971] 1 WLR 1402; *R v Witika*, above n 59.

[62] *R v Schriek* [1997] 2 NZLR 139 (CA); *R v Lewis* [1975] 1 NZLR 222 (CA).

[63] *R v Coney* (1882) 8 QBD 534 at 557 per Hawkins J.

This suggests a defendant could be liable through their presence if they were in a position of authority or could reasonably have been expected to interfere to prevent the offending. In the present context this may occur when, for example, a homeowner is aware of abuse taking place on their property, or where a defendant has a relationship of control over the abuser (for example, a parent and adult child).

3 Establishing intention

Even if a court did interpret the actus reus in this way, the mens rea of intention must still be satisfied. A defendant "cannot be held guilty as an abettor unless an actual intent to encourage is proved".[64]

Manifestation of this intention requires proof that the defendant had knowledge of the essential details of the offending and that they intended to encourage the principal to carry out that offending.[65]

Cooke P in *R v Witika* said such a standard may be reached where a party deliberately absents themselves from the scene of an expected or foreseen assault "with the intention of creating an opportunity for it"; or where a person witnesses an assault "in circumstances intended to give and in fact giving the other encouragement" to carry out the offending.[66]

This is a much higher standard of intention than the proposed mandatory reporting law: it requires actual intention to encourage the commission of the crime, rather than mere awareness/a reasonable belief that the offending was taking place. It wouldn't catch, for example, the person passing down a hallway with a fleeting view of abuse. Such a person, despite having more than a reasonable belief that abuse occurred (thereby satisfying the proposed reporting provision), could not be said to have been "voluntarily and purposely present" with an intention to encourage the principal's behaviour.

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[64] *R v Pene* CA63/80, 1 July 1980 at 5.

[65] *Ahsin v R* [2014] NZSC 153.

[66] *R v Witika,* above n 59, at 4.

4 Contemporaneity

Finally, there are issues around contemporaneity. The act of encouragement required for abetting under s 66(1)(c) must occur before or during the commission of the offence. A defendant cannot report abuse that has not taken place, or be criminally liable for failing to protect someone on the suspicion that they may at some point in the future be subject to abuse.

In the present context, the relevance of s 66 is therefore limited to persons aware of abuse as it is being inflicted. The inability of s 66 to prosecute those who become aware of abuse at a later stage is a significant limitation and deviation of this provision from the proposed law.

The mandatory reporting proposal targets both direct witnesses of abuse and those who become aware of abuse after the fact. The usefulness of imposing a duty to report only in circumstances where a person is physically watching the abuse take place is questionable. If it is only this harm, rather than future harms, which the law seeks to prevent it would be more effective to impose a duty to intervene and actually prevent the harm from continuing (although perhaps with an exception relating to fear for safety of oneself).

It is also worth noting that this contemporaneity hurdle cannot be avoided by instead charging a defendant as an accessory after the fact under s 71. Receiving, comforting or assisting under that provision requires active involvement rather than a mere omission to act: "mere silence or non-disclosure, for example by failing to report an offence to the police, will not attract liability".[67]

D Analysis of the Crimes Act Provisions

While these offences make it possible, in certain circumstances, to prosecute those who have failed to report child abuse, their existence does not preclude or render unnecessary mandatory universal reporting.

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[67] Simon France and Jeremy Finn (eds) *Adams on Criminal Law 2019 Student Edition* (looseleaf ed, Thomson Reuters) at [CA71.02(3)].

These offences were not made with the non-disclosure of child abuse in mind, and are an ineffective way of enforcing this ideal. A tailor-made law would better address low rates of reporting than trying to manipulate the existing provisions to criminalise failures to report.

There is a fundamental conceptual distinction between the existing provisions and the proposed offence. The criminal law (as it is currently configured) is punitive. It is primarily designed to punish the offender who is committing the abuse, rather than to further the broader purpose of stopping offending by reporting it – whether anyone is charged or not. This primarily punitive (rather than preventive) purpose means the standard and onus of proof and other legal elements necessary to secure conviction are difficult to satisfy.

Relying on the current offences is detrimental because of their limited applicability and the gendered nature in which they tend to be applied. These failings are canvassed in the following sections.

1 Restricted Applicability

The s 152 duty is impeded by its restriction to parents or guardians. Furthermore, where this duty relates to manslaughter such charges can hardly be seen as an effective solution to abuse given that conviction relies on a child dying. This is too late for the law to step in if the goal is, as it should be, prevention of such tragedies. The gross negligence standard imposed by s 150A(2) requiring a "major departure" is also inhibitive when compared to the proposed law, where simple negligence would suffice. This lower standard for conviction is reflected by a lower maximum sentence of only three years, meaning fairness is not compromised.

The extension of liability s 195A provides is insufficient. The fact that only two charges concerning a failure to report have reached the courts, one of which related to a parent who had s 152 duties anyway, demonstrates this. Instances of people failing to report abuse of children they share a household with are not being reflected in cases. One might reasonably

have expected s 195A to be applicable to the boy's family in the Flaxmere case — numerous close family members had been in and out of the house the day the boy was hospitalised and in the days preceding. Yet, no charges were laid.

This highlights an important issue. To convict, the prosecution must prove the defendant(s) had *knowledge* of a risk of death, grievous bodily harm or sexual assault. But in these situations no one is coming forward with information suggesting the defendant(s) should have been aware of a risk to the child at all because they have close relationships (often familial) with the probable perpetrators. This leaves no evidence from which a jury may ascertain the defendant's knowledge or lack thereof.

A mandatory reporting law would be more effective because it places a duty on those whose actions are not restricted by personal relationships with the alleged perpetrators. The extended duty it envisions captures not only those so closely associated with the perpetrators to be considered part of the "household", but also more distanced acquaintances without these conflicts of interest.

R v Kuka provides an example of a situation where such a law may have been effective. *Kuka* concerned the death of Nia Glassie, who passed away aged three as a result of injuries sustained by adult abusers, including her mother's partner. Nia's mother was charged with two counts of manslaughter for omitting to provide the necessaries of life causing death, and failing to protect a child from violence thereby causing death.

At trial evidence emerged of an abusive episode where a neighbour, Mr Simiona, witnessed Nia frantically holding on to a clothesline which was spun by her abusers until she fell to the ground crying and screaming.[68] This was repeated until Mr Simiona, hearing Nia's screams and observing the behaviour, intervened. Mr Simiona knew the behaviour was wrong and interfered to stop the abuse. However, he did not (nor was he under any duty to) notify the police of the incident. Mr Simiona, along with another witness of Nia's abuse,

[68] *R v Kuka*, above n 40, at [6].

later said family violence was so common in Rotorua they simply hadn't thought a lot of it — "it had just seemed like your normal domestic violence".[69]

Mr Simiona's behaviour in stopping that particular abusive episode and his willingness to intervene to prevent a worsening situation suggests, had he been under a duty to report, he may have done so. However, this cannot be known.

It may be that other, non-criminal influences such as a public education campaign on the harms of child abuse would be equally or more effective. The comparative efficacy of criminalisation versus other means of altering behaviour is not a focus of this paper. However, a mandatory reporting law would be a notable influence encouraging these detached witnesses of abuse to come forward — potentially avoiding fatal outcomes.

It is interesting to note that *Kuka* and the media attention the case garnered was a key influence leading to the development and implementation of s 195A. Yet, none of the persons involved who allegedly could have protected Nia by reporting the abuse (other than her mother who had a separate s 152 duty) would be liable under s 195A, due to its limitation to persons in the same household.[70] This demonstrates the limited scope of s 195A liability.

2 Gender-discriminatory

A universal mandatory reporting law could also prove beneficial to ameliorate the gendered nature of current failure to report laws. Duty to protect laws "almost exclusively" prosecute women.[71]

This has been a concern for some time. Select Committee submissions regarding a 1993 amendment to the CYPF Act 1989 voiced fears that the reporting burden as it stood was

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[69] Catherine Masters "Nia Glassie case: behind the neighbours' silence" *The New Zealand Herald* (online ed, New Zealand, 19 November 2008).

[70] Midson, above n 38, at 299.

[71] Jeanne Fugate "Who's Failing Whom? A Critical Look at Failure-to-Protect Laws" (2001) 76 NYU L Rev 272 at 274.

"shared inequitably" and fell "particularly on women".[72] While partially explainable by the preponderance of single-parent households being run by women —[73] meaning women are more likely to have a duty over children — this alone does not explain the prevalence of female failure to protect convictions.[74]

Rather, there is strong evidence that more nuanced influences, social prejudices and norms have led to mothers' behaviour being judged against "idealistic standards of parenting to which we would not hold fathers".[75] This idealistic standard requires mothers to be "all-sacrificing, chaste, and selfless nurturers regardless of their circumstances".[76] Such circumstances include possible fear for their own safety or further harm becoming their children.

Eighty-eight per cent of violent crime in New Zealand, inclusive of child abuse, is perpetrated by men.[77] Applying this to the context of a typical heterosexual nuclear household the adult witnesses of abuse are most likely to be the female partners of these abusers. These women may be victims of the abuser themselves — 85 per cent of serious partner offences in New Zealand in the period 2006–2009 were perpetrated against female victims.[78]

The current duty to protect laws have been accused of failing to "accommodate the dynamics of domestic abuse when appraising the responses of a mother" who is herself a

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[72] Lawson, above n 22, at 67.

[73] In 2013 84.2 per cent of single parent families with dependent children were led by women in New Zealand. Statistics New Zealand (2015) *IDI Data Dictionary: 2013 Census data* (November 2015 edition). Available from <www.stats.govt.nz>.

[74] Fugate, above n 71, at 274.

[75] Julia Tolmie "The Duty to Protect in New Zealand Criminal Law: Making it up as we go along?" [2010] NZ L Rev 725 at 728.

[76] Jane Murphy "Legal Images of Motherhood: Conflicting Definitions From Welfare 'Reform', Family and Criminal Law" (1998) 83 Cornell L Rev 688 at 689.

[77] Statistic is as at 2005. Julia Tolmie "Women and the criminal justice system" in Julia Tolmie and Warren Brookbanks (eds) *Criminal Justice in New Zealand* (LexisNexis, Wellington, 2007) 295 at 318.

[78] Research and Evaluation Team *2009 New Zealand Crime and Safety Survey* (Ministry of Justice, 2010).

victim of the perpetrator's violence.[79] There is no defence available to battered women who neglect to fulfil their duty in order to preserve their own safety or what they perceive as the continued safety of their children. This means they often suffer legal sanctions the result of physical harm to their children which they did not cause.[80]

Judicial nonchalance regarding the circumstances of these women when applying the duty provisions was exemplified in *R v Witika*.[81] The defendant in that case was charged with manslaughter after failing (among other things) to provide medical care for her daughter. She argued that her partner and co-accused dominated her "physically, mentally and sexually" and had prevented her from seeking medical attention for her child.[82] Justice Gault, delivering the judgment of the court, said that while "the position of battered women indeed calls for sympathy… there can be no justification for broadening the grounds on which the law should provide excuses for child abuse".[83]

A mandatory reporting law would help to alleviate the gender-discriminatory nature of existing laws by extending the reporting onus from those in the household (most likely to be female intimate partners) to anyone with a reasonable belief of abuse. Furthermore, the law would not prosecute mothers who are prevented from reporting abuse due to the threat of (more or worsening) violence.

Unlike existing failure to protect laws the mandatory reporting law would be subject to a defence of fear for one's safety or the safety of another. This would operate to exempt mothers who have a genuine belief that reporting their child's abuser (who may also be violent towards the mother) could cause further harm to the child or others.

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[79] Tolmie, above n 75, at 728.

[80] Justine Dunlap "Sometimes I Feel Like a Motherless Child: The error of pursuing mothers for failure to protect" (2004) 50 Loy L Rev 565 at 575.

[81] *R v Witika* [1993] 2 NZLR 424 (CA).

[82] *R v Witika*, above n 81, at 433.

[83] *R v Witika*, above n 81, at 436.

Care would need to be taken when applying this defence to give credence to the beliefs of abused women rather than to impose an objective standard of reasonableness which does not equate with the complex dynamics and realities of a battered women's actions, including the possibility that they are subject to coercive control.[84] The universally applicable, clearly-circumscribed steps required (reporting the abuse), precludes any application of gendered norms surrounding what is or is not reasonable in the circumstances. Such delineation has been touted as a positive change by theorists to avoid unfair, gendered expectations being placed on women who are aware of abuse.[85]

Of course, there is always scope for apparently neutral laws to be subject to conscious or unconscious bias which effects the gender-neutral implementation of that law in practice. However, risk of imperfect implementation should not be used as an excuse to stultify what would still be a positive change. The law would widen the scope of liability to place a reporting onus on a class of people less likely to be exclusively female, and removes the reasonableness standard for what steps must be taken which has been criticised as allowing gendered expectations of parenting standards into the law.

V Social Pressures

Finally, it is important to consider existing social influences regarding child abuse reporting practices. There is a clear social attitude that child abuse is morally wrong in New Zealand. One need only look at the backlash of the Flaxmere case to identify this — the boy's father was forced into hiding the result of death threats.[86] Yet, this social pressure is evidently not enough to convince many witnesses of abuse to come forward. Social attitudes denouncing child abuse do not necessarily translate to social attitudes demanding people report abuse of which they are aware.

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[84] Unfortunately, analysis of the intricacies of this defence falls outside the scope of this paper. However, coercive control is arguably just as inhibiting to women charged with a failure to protect as physical abuse. See Midson, above n 38.

[85] Fugate, above n 71, at 276.

[86] Jordan Bond "Father of beaten Flaxmere boy goes into hiding after receiving threats" (19 February 2020) RNZ <www.rnz.co.nz>.

Julia Tolmie argues that parents who fail to protect their children from the predictable violence of others "will have already infringed strong cultural and moral imperatives in order to do nothing and the likelihood of the criminal law having an additional deterrent function is slim".[87] However, the focus of a mandatory reporting law would be on persons other than parents, who would already be liable under s 152 or s 195A. These people, with no duty to or responsibility for the child victim, are subject to less pervasive non-legal imperatives to report.

Tolmie's acknowledgement of people's behaviour being heavily influenced by cultural and moral influences, rather than only legal influences, is reflective of reintegrative shaming theory. This is the notion that "shaming and reintegrative appeals to the better nature of people" may be more effective than state-enforced punitive measures to prevent crime and change the behaviour of possible offenders.[88] However, reintegrative shaming theory is of limited applicability in relation to the reporting of child abuse for two reasons.

Firstly, it is only effective if acquaintances are aware of the shaming action. Where a person witnesses child abuse there is no easily-identifiable positive act they undertake from which their peers can surmise guilt. Failing to report abuse is an omissions-based offence. There is no perceivable consequence of the action because the abuse (and the non-reporter's awareness of that abuse) is undisclosed to the rest of the community. This may be contrasted with a burglary for example, which would elicit media attention and exhibit clear evidence of criminality.

Shaming pressure for non-disclosure of child abuse (where that abuse has not already been brought to light) is reliant on the witness telling someone who was not present what they saw yet failed to report; and then that person passing on the information to create the shame-inducing "gossip" necessary to create "pangs of conscience" within the community.[89] Where abuse has already been recognised the abuser's disclosure is

[87] Tolmie, above n 75, at 738-739.

[88] John Braithwaite *Crime, Shame and Reintegration* (Cambridge University Press, New York, 1989) at 80.

[89] Braithwaite, above n 88, at 82.

unnecessary to induce this gossip — the outside observer may of their own accord think things like "you should have known". However, this is not relevant to the effectiveness of reintegrative shaming to *prevent* the crime — here failing to report the abuse, because it is too late for that action to be effective.

Secondly, in order for such social disciplining to occur the offender's action must be viewed by their community as so bad that social judgement, possible intervention or alienation is justified. It is unclear whether a failure to report child abuse (as opposed to actual infliction of child abuse), is so spurned. It is arguable that legislative change is required to precipitate this social consciousness.

A mandatory reporting law is one mechanism which could create social impetus allowing shame theory to become effective. This sentiment is recognisable in a 1992 review of the CYPF Act 1989.[90] In recommending the implementation of (a more limited form) of mandatory reporting to the then Minister of Social Welfare Jenny Shipley, the report stated: "there is need for a policy which spells out that the community will no longer tolerate this state of affairs".[91]

The Department of Social Welfare protested that a mandatory reporting policy would be too costly and overwhelm an already under-resourced CYFS;[92] meaning the provision was not passed into law and nearly thirty years later, New Zealand's "totally unacceptable" child abuse pandemic has only worsened.[93] The introduction of a mandatory reporting regime would be highly-publicised, creating awareness of liability arising from a failure to report and clearly signalling that looking the other way is still culpable: "Mandatory reporting would express reprehension not only at child abuse, but also at people turning a blind eye towards abuse, and would emphasise the community responsibility to protect

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[90] Ministerial Review Team *Review of the Children, Young Persons and their Families Act 1989: Report of the Ministerial Review Team to the Minister of Social Welfare* (Ministry of Social Development, 1992).
[91] At 16.
[92] Ministerial Review Team, above n 90, at 13.
[93] Ministerial Review Team, above n 90, at 16.

children."[94] The law would reflect the reality that child abuse permeates every sector of society, the onus of reporting cannot be limited to those in frequent contact with what are considered at risk families, or with families themselves who may be precluded for various reasons from being able to take the action required.

VI Conclusion

Existing laws and pressures do not preclude the need for a mandatory universal reporting law for child abuse in New Zealand. The current procedures have developed on an ad hoc basis over a period of decades as prominent child abuse cases come to light and are placed under media scrutiny before fading back into the collective subconscious. The result is a patchwork of confusing laws ineffective at approximating a universal mandatory reporting scheme.

The current approach lacks both cohesion and communality. A universal reporting law would target everyone in New Zealand and impose shared responsibility for addressing New Zealand's disheartening rates of abuse.

Concurrent implementation of a government campaign emphasising the importance of child abuse detection would further the aims of the legislation and generate social discourse and reprehension surrounding the issue, stimulating community self-regulation through reintegrative shaming.

A universal reporting law would provide clarity to those operating under the existing regime which is currently lacking. The law would create greater certainty for professionals and, through the media, for the general public (many of whom are likely ignorant to the possibility of prosecution under the current Crimes Act provisions).

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[94] Lawson, above n 22, at 65.

Importantly, a universal reporting law would also remove the gaps surrounding current duties to report. Extending the duty to everyone (rather than solely professionals, parents or those in the "household") would encourage witnesses of abuse who are not inhibited by either relational distance or possible allegiance to the abuser to report abuse. In many cases these will be the people best placed to recognise *and* go on to report suspected abuse.

While imposition of such a law undoubtedly gives rise to myriad other issues which unfortunately fall outside of the scope of this paper — for example concerns around omissions-based liability and the possible strain it would place on welfare services — it cannot be said that the implementation of a mandatory reporting law is rendered unnecessary by the current reporting framework. It is important to note that mandatory reporting of child abuse in some form has been considered for some time.[95] It has been scrutinised in several reviews.[96] While these reviews varied in their conclusions, not one considered the existing reporting framework an inhibiting factor.[97]

In light of the conclusion that a mandatory reporting law is not a redundancy given current reporting frameworks, more research is needed to determine whether criminalisation in the manner proposed is in other aspects a desirable approach.

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[95] Many of the mandatory reporting proposals considered in the past focused on a specified list of professionals — for example doctors, social workers, teachers and the police. However, given these are the people subject to the most reporting pressures under the current system (yet this wasn't considered as inhibiting), it does not weaken the argument in favour of a mandatory universal reporting law.

[96] Department of Social Welfare *Review of Children and Young Persons Legislation: Public Discussion Paper* (1984); Department of Social Welfare *Review of the Children and Young Persons Bill, December 1987: Report of the Working Party on the Children and Young Persons Bill* (1987); Ministerial Review Team, above n 90; Michael Brown *Care and Protection is About Adult Behaviour: The Ministerial Review of the Department of Child, Youth and Family Services, Report to the Minister of Social Services and Employment* (Ministry of Social Policy, December 2000); *The White Paper for Vulnerable Children* (2012) Volumes I and II.

[97] The reviews referred to all came out prior to the implementation of s 195A. However, given the restricted way in which this section has been applied in relation to failures to report the introduction of the section is unlikely to have made a substantial difference in analysis.

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