

Failing to Report: Potential Action for Breach of the Statutory Duty to Report Child Abuse in Victoria

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Abstract

This paper examines liability for breach of statutory duty of teachers who are mandated to report child abuse under the Victorian Children and Young Persons Act 1989. Starting from an assumption that there remains significant incidence of failure to report abuse, the paper then looks at a case heard in the Supreme Court of California two decades ago in a cautious attempt to illustrate the possible consequences of failure for a mandated professional. It examines the relevant sections of the Victorian mandatory reporting legislation that establish the statutory duty and finally the elements of breach of statutory duty action. The paper concludes that private action may well be taken under breach of statutory duty against a mandated professional who fails to report. As a matter of legal risk management, teachers need to consider this potential action carefully when they form a reasonable belief that a child may be the victim of abuse.

Introduction

In June 1996 the State of Victoria's Auditor General released his report, *Protecting Victoria's Children: The Role of the Department of Human Services*.¹ This report provided the first assessment of the State Government's child protection activities since legislative requirements were placed upon teachers, among other professionals, for the mandatory reporting of suspected incidents of serious physical or sexual abuse of children. The report's findings were remarkable. It concluded that the Victorian Department of Human Services was largely unprepared for the introduction of mandatory reporting. While anticipating an increase of 8% in notifications with the changed laws, the Department confronted an increase of 38% in the first year with the figure continuing to rise since then.² As a consequence, fewer than 50% of notifications are investigated. Although the Auditor General was of the view that this figure represented the maximum that could be achieved given the Department's resources, it was felt that up to 20% of notifications should have been investigated further instead of being closed.³ Among its further conclusions, it was found that where investigations led to further action, the Department's case management was often ineffective and that children were often given placements that were inappropriate.⁴

All of this presents a quandary to teachers and others faced with mandatory reporting requirements. Should they report, given the good chance that no investigation will be conducted or, if conducted, done poorly and with potentially damaging outcomes? Is the reporting of abuse an appropriate course where an educational relationship may be lost only to see a child suffer

more? Alternatively, is it appropriate to defy the requirement, break the law and be exposed to legal action?

Reporting Child Abuse

Research findings during the 1980s in the United States, where mandatory reporting has become law throughout, indicate that mandated professionals report only about one fifth of the instances of child abuse known to them, despite substantial increases in reports following the introduction of mandating provisions.⁵ This figure has been more or less supported by a variety of studies in the United States including one conducted by the US Department of Health and Human Services on the prevalence of child abuse and neglect which claimed that 60% of known incidents were left unreported.⁶ Self-evidently, it is not possible to provide an exact assessment regarding failure by mandated professionals to report known incidents of child abuse. However, it is fair to conclude that there are many instances in Victoria, as there are in the United States, where mandated professionals make conscious decisions not to report, even in an environment of increased reporting arising from the introduction of the mandatory provisions.

According to Bell and Tooman (1994), it is debatable whether legislation, (such as Victoria's mandatory reporting statute), is capable of overriding the concerns and apprehensions that many professionals have about reporting child abuse.⁷ Provisions in the United States, and in Australia, may impose a range of penalties for failure to report but such provisions have not been invoked in the courts. Bell and Tooman were unable to find any incidents of cases incurring such penalties against professionals in the United States to the time of their writing and they concluded that, '... fear of prosecution and conviction are unlikely to induce a professional to act'.⁸ This supports Paulsen's (1967) prediction regarding mandated physicians made more than two decades earlier, '... mandatory reporting provisions are not likely to prevent [them] from making judgements about reporting ... No one seriously expects that any physician acting in good faith will, in fact, be prosecuted'.⁹

Professional concerns, according to Bell and Tooman and other analysts,¹⁰ include fear (often of violence directed against themselves), concern that a report is not in the best interests of child or family, lack of confidence in protective agencies, belief in their own superior capacity to intervene and concern regarding legal implications including the fear of being sued. This last concern is ironic given that failure to report has much greater potential to expose teachers and other mandated professionals to legal action. The case of *Landeros v Flood* in the State of California provides an example.

Landeros v Flood

On 26 April 1971 eleven months old Gita Landeros was taken by her mother to the San Jose Hospital where it was observed that she was suffering from a comminuted spiral fracture of the right tibia and fibula, apparently caused by twisting, bruising over her entire back, superficial abrasions elsewhere and a non depressed linear fracture of the skull which was in the process of healing. The child appeared fearful and apprehensive of approach. Her mother had no explanation for these injuries.

Subsequent to Gita Landeros' release from hospital further injuries occurred resulting from traumatic blows to her right eye and back, punctures to the left leg and across her back, severe bites on her face and second and third degree burns on her left hand. On 1 July the child was taken to a different hospital where a diagnosis was made of battered child syndrome, and a report was given to the police and juvenile probation authorities who took her into protective custody. The child's mother and her common law husband, 'one Reyes', fled the State of California but were apprehended, tried and convicted of child abuse.

Dr. Flood, who carried out the examination at the San Jose Hospital, and the hospital itself were later sued by Gita Landeros who alleged that their negligent failure to diagnose the battered child syndrome from which she suffered, and their breach of the statutory duty to report that diagnosis to State authorities as mandated by the California Penal Code, had led her to suffer permanent painful injuries, mental distress and the probable loss of use or possible amputation of her left arm.

Dr. Flood and the San Jose Hospital were alleged to have breached ss.11160, 11161 and 11161.5 of the Penal Code. The last of these sections requires a physician to report appropriately where it appears to the physician that a minor has suffered injuries inflicted by another in a manner that was not accidental:

In any case in which a minor is brought to a physician and surgeon for diagnosis or treatment, or is under his charge or care, and it appears to the physician and surgeon from observation of the minor that the minor may have been a victim of a violation of Section 273a, he shall report such fact by telephone and in writing to the head of the police department of the city or city and county, if the observation is made in unincorporated territory, or to the nearest child welfare agency offering child protective services.¹¹

Landeros' action was ultimately heard on appeal before the Supreme Court of California. The findings in this case, discussed subsequently, provide lessons for Victoria where similar mandatory reporting of child abuse was introduced in phased stages starting in 1993, including teachers among the professionals who must report from 18 July 1994.

The Children and Young Persons Act

The relevant portions of the Children and Young Persons Act 1989 (Vic) ('the Act') as amended¹² are as follows:

A Child in Need of Protection:

s.63 For the purpose of this Act a child is in need of protection if any of the following grounds exist:

s.63(c) The child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type.

s.63(d) The child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type.

Mandatory Reporting:

s.64(1A) A person referred to in any of the paragraphs of s.64(1C) ... who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as described in that paragraph, forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in s.63(c) or (d) must notify the Secretary of that belief and of the reasonable grounds for it as soon as practicable:

- (a) after forming the belief; and
- (b) after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.

s.64(1B) Grounds for a belief referred to in sub-section (1A) are -

- (a) matters of which a person has become aware; and
- (b) any opinions based on those matters.

Mandated Reporters:

s.64(1C)(d) A person registered or provisionally registered as a teacher under the Education Act 1958 or permitted to teach under Part III or Part IIIA of that Act.

s.64(1C)(e) The head teacher or a principal of a State school within the meaning of the Education Act 1958 or of a school registered under Part III of that Act.

s.64(1C)(g) A person with post secondary qualification in youth, social or welfare work who works in health education or community or welfare services who is not working as a youth and child care worker in the specified group.

The Statutory Duty to Report

Both the Californian penal code and the Victorian statute impose similar reporting requirements for the mandated professional on the basis of a child's appearance to the professional and that professional's belief formed in good faith. The standard of care required in forming this belief is according to the Californian Court, measured according to the ordinary standard exercised by other members of the profession in similar circumstances.¹³ The court in *Landeros* had no difficulty in concluding that a diagnosis of battered child syndrome could be made by a physician exercising the ordinary standard of care.¹⁴ Stemming from this conclusion, the court went on to find that the plaintiff in that case was entitled to prove, in the circumstances of the case, that a reasonably prudent doctor would have made such a diagnosis thus triggering the Californian mandatory reporting requirements and, one would foresee, preventing subsequent deliberate and malicious abuse of the child. Moreover, the court held that a physician and hospital could be held

liable for further injuries sustained by a child on return to abusing parents if it were proven that such a diagnosis and report were not made.¹⁵ Similarly, in Victoria were it to be shown that a mandated professional failed to report in circumstances where required, this breach of statutory duty to report could be seen as evidence establishing breach in negligence.¹⁶ The plaintiff may choose to pursue this under the tort of negligence or, possibly more easily proved, under an action for breach of statutory duty.

Belief on Reasonable Grounds

The statutory duty in Victoria obliges a series of professionals to notify Child Protection Victoria or the police if, in the course of practising their profession, they form a belief on reasonable grounds that a child is in need of protection because the child has suffered, or is likely to suffer, significant harm as a result of neglect, physical injury or sexual abuse and the child's parents as defined in the Act¹⁷ have not protected, or are unlikely to protect the child from harm of that type. The key to exercising the required judgement is found with reference to 'belief on reasonable grounds' which arises from matters of which the professional has become aware, and any opinions that the professional forms based on those matters. Once a teacher in the course of her or his professional duties forms a belief on reasonable grounds that a child is in need of protection as defined by s.63, a report of that belief becomes mandatory.

An objective or subjective standard?

The standard by which a teacher would be judged if accused of negligently failing to form a belief on reasonable grounds is an objective one based on that possessed by a competent, prudent and ordinarily skilled teacher operating in similar circumstances.¹⁸ The ordinary standard will include some capacity to identify signs of abuse. While physical abuse will often leave physical signs, this may not be the case with sexual abuse where the only indicators are sometimes behavioural and difficult to identify. Regarding this, Myers (1985) has written:

While the physical injuries of the battered child are arguably more susceptible to objective verification and less subject to misinterpretation than the psychological indications of sexual abuse, the growing body of scientific literature describing the sexually abused child supports the conclusion that such children share a constellation of signs and symptoms absent in non-abused children.¹⁹

This 'constellation' together with a series of indicators of physical and emotional abuse and neglect are issued to teachers in Victoria through publications including those of the previous Department of Health and Community Services, now the Department of Human Services.²⁰ The difficulty for the teacher is that these indicators provide no more than guidelines. Many are reliant on the child's ability to communicate, problematic with the very young, and many others may be suggestive of different problems, particularly with adolescents. The teacher's need to exercise discretionary judgement remains crucial.

An aspect of the belief is that the child has suffered significant harm or is likely to suffer significant harm as a result of physical or sexual abuse. No definition is offered of 'significant

harm', although some help is available from the court's finding in *Director-General of Community Services of Victoria v Buckley and Ors.* where O'Bryan J dealt with the words 'significant damage' regarding emotional or psychological abuse of children and deemed, 'significant' as 'more than trivial or insignificant', although not necessarily as 'serious'²¹. Regarding the damage, O'Bryan J said that it must be 'important' or 'of consequence' to the child's emotional or intellectual development, but it does not need to be lasting, permanent or treatable. In most Western countries it is accepted in policy that parents may strike their children without constituting assault. The question is, when does such conduct constitute child abuse? While evidence of a mere infrequent and light disciplinary slap would be unlikely to meet an objective reporting standard, obviously the injuries suffered by Gita Landeros or anything approaching them go well beyond it as would, invariably, sexual interference.

A further requirement is that the obligation to report only arises where the reporter has reasonable grounds for believing that the abused child's parents have either failed to take adequate steps to protect the child in the past, or they are unlikely to do so in the future. Again, this belief would be assessed in negligence by the same objective standard.

The defence in *Landeros* contended that the plaintiff could rely s11161.5 of the California Penal Code only if she could prove that Dr. Flood *in fact* observed the injuries she had suffered and *in fact* formed opinion that they were caused by means other than accidental and by another person. In other words, that his failure to report was intentional rather than negligent. The court observed that for the purposes of a criminal prosecution 'the more reasonable interpretation of the statutory language is that no physician can be convicted unless it is shown that it actually appeared to him that the injuries were inflicted upon the child'.²² Mosk J continued:

... the presumption of lack of due care is predicated inter alia upon proof that the defendant 'violated a statute', here Section 11161.5. If plaintiff wishes to satisfy that requirement, it will therefore be necessary for her to persuade the trier of fact that defendant Flood actually observed her injuries and formed the opinion they were intentionally inflicted on her.²³

On the words of the Act in Victoria it appears that a similarly subjective standard may need to be applied for breach of statutory duty. Unlike in a negligence action where a teacher will be judged by the objective standard of the ordinary teacher acting in similar circumstances, a breach of the Act is triggered by the failure to report after forming a belief on reasonable grounds - not by a failure to form the belief. As unpalatable as it may seem, this subjective standard may leave it open in a breach of statutory duty action for the defence to claim that the defendant's judgement was of such poor quality that no reasonable belief was formed.

The Elements of Breach of Statutory Duty Action

There are important differences between the way in which breach of statutory duty is approached in the United States and in Australia. In the United States the standard of conduct prescribed by statute, here the requirement to report, is adopted as a specification of measures that must be taken to satisfy the standard of reasonable care in negligence actions. In most States in the United States

breach of a statutory duty is treated as 'negligence per se'.²⁴ Thus, breach of statutory duty in the United States is seen as an element of the tort of negligence. In Australia however, as in England, breach of statutory duty is a separate action in itself,²⁵ (although, as indicated above, breach of statutory duty may also be used as evidence of breach in negligence). For these reasons, some caution needs to be used in applying the findings of *Landeros* to Australian jurisdictions.

Is Private Action Possible?

A threshold question for breach of statutory duty action is whether or not the legislation in question evinces an intention that a private action for damages lies in its breach. The Act, like most legislation, is not explicit on this matter. It provides only for a penalty under s.64 (1A) of up to \$1000 for breach of mandatory reporting requirements, and it may be argued that, prima facie, Parliament intended no further sanction against those in breach arising from the action of a private individual.²⁶ However, in discussing the question of legislation evincing an intention regarding action for breach of statutory duty, Kitto J in *Sovar v Henry Lane Pty Ltd* said:

The legitimate endeavour of the courts is to determine what inference really arises, on a balance of considerations, from the nature, scope and terms of the statute, including the nature of the evil against which it is directed, the nature of the conduct prescribed, the pre-existing state of the law, and, generally, the whole range of circumstances relevant upon a question of statutory interpretation ... It is not a question of the actual intention of the legislators, but of the proper inference to be perceived upon a consideration of the document in the light of all its surrounding circumstances.²⁷

More particularly, Atkin LJ said in *Phillips v Britannia Hygienic Laundry Co*:

... the question is whether these regulations, viewed in the circumstances in which they were made and to which they relate, were intended to impose a duty which is a public duty only or whether they were intended, in addition to the public duty, to impose a duty enforceable by an individual aggrieved.²⁸

The question is not so much the meaning of the statute, but rather its appropriate use. It is not unusual for a plaintiff to pursue an action for breach of statutory duty where the statute referred to provides only for a penalty of a set amount for breach.²⁹ It is not enough however, to show simply that there has been carelessness in the exercise of the duty. The plaintiff must also show that the circumstances were such as to raise a duty of care at common law, or in other words show that one party carries a duty to take precautions for the safety of another - as is usually the case between a teacher and students encountered in teaching. As Dixon J put it in *O'Connor v SP Bray* :

... I think it may be said that a provision where the person upon whom the duty laid is, under the general law of negligence, bound to exercise due care, the duty will give rise to a correlative private right, unless from the nature of the provision

or from the scope of the legislation of which it forms a part a contrary intention appears.³⁰

If this can be done, given the range of potential damage to the abused and the nature of the evil of child abuse, it is more likely rather than less that the Act will be found to evince an intention that a private action is possible.

Is the Plaintiff a Member of a Class to be Protected by the Legislation?

For an abused minor to succeed regarding a breach of statutory duty in Australia a number of elements must be satisfied. The first is that the plaintiff minor must be a member of the class of persons that the legislation is designed to protect.³¹ It may be argued that the statute is designed for the general public interest rather than an individual's interest. If so, the courts will be reluctant to see it confer a private right.³² This was the viewpoint adopted recently by the House of Lords in an action taken against a local authority in England on behalf of abused minors who claimed damages for breach of a statutory duty to have regard for their welfare:

The purpose of the child care legislation was to establish an administrative system designed to promote the social welfare of the community and within that system very difficult decisions had to be taken ... In that context and having regard to the fact that the discharge of the statutory duty depended on the subjective judgement of the local authority, the legislation was inconsistent with any parliamentary intention to create a private cause of action against those responsible for carrying out the difficult functions under the legislation ... Courts should be extremely reluctant to impose a common law duty of care in the exercise of discretionary powers or duties conferred by Parliament for social welfare purposes. In the abuse cases a common law duty of care would be contrary to the whole statutory system set up for the protection of children at risk, which required the joint involvement of many other agencies and persons connected with the child, as well as the local authority ...³³

It needs to be emphasised that this decision dealt with discretionary rather than mandatory duties and that it arose from action against local government for vicarious liability rather than against mandated individual professionals. This is quite different to an action for breach of the statutory duty to report. As the plaintiff's action arises from the statute in a breach of statutory duty matter the action may only be taken against the person who carries the duty imposed by the statute.³⁴ There is no question of vicarious liability regarding the mandatory reporting provisions. Furthermore, it is strongly arguable that the express provision in the Victorian statute is concerned with personal safety and, like other such provisions, this is likely to prompt the court to assume that breach gives rise to private action even though the actual words of the statute do not say so.³⁵ The purpose of the Act expressed in s.1(b) is to provide for the protection of children and young persons. The purpose of the amendment introducing mandatory reporting, 'to require the members of certain professional groups to report cases where they believe on reasonable grounds that a child is in need of protection',³⁶ needs to be seen in this context.

Is the Harm Suffered Within the Scope of the Risk?

The second element in a successful breach of statutory duty action is that the plaintiff must demonstrate that he or she has suffered the kind of harm against which the statute was directed so that the injury suffered is seen to fall within the 'scope of the risk'.³⁷ The Act deals with a scheme to prevent significant harm and, as discussed earlier, a court may view this as meaning more than insignificant, but not necessarily serious harm. In cases of physical and consequential harm suffered by children in the circumstances of Gita Landeros this does not pose difficulties for a plaintiff, but one may assume that as the degree of intensity or seriousness involved in the abuse is seen to be less the connection between the injury and the scope of the risk becomes more problematic.

Does the Statute Impose a Duty on the Defendant?

Third, the court must be satisfied that the legislation imposes a duty of mandatory reporting upon the defendant and that the duty had been breached.³⁸ The Act is clear regarding the persons who carry the duty to report. In s.64(1C) it mandates registered and provisionally registered teachers or those permitted to teach under the Education Act 1958 (Vic), as well as head teachers and principals of government schools and registered non-government schools. The obligation imposed is expressed in absolute terms. The teacher *must* notify once a belief on reasonable grounds is formed that a child is in need of protection. If the earlier elements are satisfied, to succeed against a mandated teacher in Victoria the plaintiff need only show that the absolute obligation to report was not met.³⁹

Did the Breach Cause the Injury?

Finally, a successful plaintiff in an action for breach of statutory duty to report will need to prove on the balance of probabilities that the failure to report caused or materially contributed to the injuries suffered.⁴⁰ In cases of child abuse subsequent to a failure to report, the court may ask itself how likely it is that the injuries would have occurred but for the failure. A related question is whether the abuse qualifies as a new intervening act so as to sever the causal connection between failure to report and injury. Obviously, it could be found that the injuries would not have occurred but for both the failure of the mandated professional and the action of the abuser. It is recognised though that there may be multiple sufficient causes and that the voluntary or deliberate actions of a second wrongdoer will not necessarily exclude liability by the original wrongdoer.⁴¹ As expressed in *Landeros* the intervening acts of the parents would not amount to a superseding cause relieving a negligent defendant of liability for failure to report if it was reasonably foreseeable that subsequent abuse would occur arising directly from the risk created by the original act of negligence.⁴² The court in California reiterated its previous view that this would be the case whether the subsequent act in question was innocent, negligent, intentional, tortious or criminal.⁴³ The same may be concluded regarding damage which arises from the risk created by the failure of a statutory duty to report.

Conclusion

This paper concludes that failure to report by teachers in Victoria may expose those persons to an action for breach of statutory duty. In Australia breach of statutory duty is a distinct action separate from negligence, although it may also be used in evidence to support a finding of negligence. An analysis of the Act in Victoria leads to the conclusion that it is likely to be found to evince an intention that a private action for breach of statutory duty could arise from a failure to report. To succeed in such an action, the plaintiff will need to be seen as a child in need of protection who suffers harm of a kind that the Act was designed to prevent. Further, the harm suffered will need to be seen as consequent upon the failure to report by a person carrying the statutory duty. The disadvantage for a plaintiff in a breach of statutory duty action like this one is that a subjective test is likely to be applied in examining the conduct of a mandated teacher. The advantage is that if this is done and the other necessary elements of the action are met, the successful plaintiff need only show that a report was not made. This paper argues that, while the case of *Landeros v Flood* was determined in a different jurisdiction, with different approaches to breach of statutory duty actions, it provides some lessons for consideration here. Maybe the most important of these is that failure to report has the potential to expose teachers to successful legal action by those who suffer harm as a result.

Keywords

Victoria; Teachers; Child abuse; Statutory duty; Mandatory Reporting.

Endnotes

- ¹ Auditor General of Victoria, (1996) *Protecting Victoria's Children: The role of the Department of Human Services*, Special Report No. 43.
- ² *Id.* 33.
- ³ *Id.* The high incidence of re-notifications of suspected abuse, 32 percent of all notifications in 1993-94, was seen as a reflection on cases that should have been investigated further in the first instance.
- ⁴ *Id.* 4.
- ⁵ Bell and Tooman, (1994) Mandatory Reporting Laws: A Critical Overview. 8 *International Journal of Law and the Family*, 337 at 343.
- ⁶ *Id.*
- ⁷ *Id.* 344.
- ⁸ *Id.* 346.
- ⁹ Paulsen, (1967) Child Abuse Reporting Laws: The Shape of the Legislation. 67 *Columbia Law Review* 1.
- ¹⁰ For example Collier, (1983) Reporting Child Abuse: When Moral Obligations Fail. 15 *Pacific Law Journal* 189.
- ¹¹ *Landeros v Flood* 551 P.2d 389 (Cal.1976).
- ¹² CAL.PEN.CODE s11161.5. The general provisions of ss.11160, 11161 mandate reporting by persons conducting a hospital or pharmacy or any physician to whom is brought any

person suffering from any wound or other injury, self-inflicted or inflicted by another, by means of a knife, gun, pistol or other deadly weapon, or in cases where injuries have been inflicted in violation of any Californian penal law. CAL.PEN. CODE ss.11160, 11161. The reference to s.273a is to that section of the Penal Code which penalises persons who wilfully cause or permit any child to suffer, inflict upon a child unjustifiable physical pain or mental suffering, injure the health of a child or wilfully cause or permit such child to be placed in such situation that its person or health is endangered. CAL.PEN. CODE s.273a.

13 The principal act was amended by the Children and Young Persons (Further Amendment) Act 1993.

14 *Landeros v Flood* above 394. The same standard is applied in Australia. See *Mount Isa Mines Ltd v Pusey* (1970) 125 CLR 383 at 397-8 per Windeyer J.

15 The Court in California had previously found this syndrome was an accepted medical diagnosis and had been for some time. *People v Jackson* (1971) 18 Cal.App. 3d 504.

16 *Tucker v McCann* [1948] VLR222; *Medved v Dunlop Olympic Ltd* (1991) 104 ALR 340.
17 Including by definition in s3(1), natural parents, the spouse of a parent, a de facto partner of a parent, any person who has custody of the child, a father whose name is on the birth certificate or who acknowledges his fatherhood or a person whose relevant paternity has been declared or found in a court.

18 See Windeyer J in *Voli v Inglewood Shire Council* (1963) 110CLR 74.

19 Myers, (1985-86) *The Legal Response to Child Abuse: In the Best Interest of Children?* 24 *Journal of Family Law* 149.

20 Child Protection Victoria, Victorian Government Department of Health and Community Services, (1993) *Reporting Child Abuse* 5-7.

21 *Director-General of Community Services of Victoria v Buckley and Ors.*, unreported 11 December 1992 C No 9534 of 1992 in Edney and Schepis, (1994) *Mandatory Reporting of Child Abuse*. 68 *Law Institute Journal* 738.

22 Quoted from the California Legislative Approach to Problems of Wilful Child Abuse (1966), 54 Cal. L. Rev. 1805, 1814.

23 *Landeros v Flood* above 397.

24 This approach is favoured by Fleming, (8th ed, 1992) *The Law of Torts* 124-34. In some other States the violation of a statute raises a presumption of negligence which may be rebutted and in still others the situation is the same as in Australia, i.e. breach of statute may be evidence of negligence.

25 This has been emphasised by the High Court on many occasions. See *O'Connor v SP Bray Ltd* (1937) 56CLR 464 at 477-8 per Dixon J; *Downs v Williams* (1971) 126 CLR 61 at 74-

5 per Windeyer J; *Sutherland Shire Council v Heyman* (1985) 157 CLR 424; 60 ALR 1

per

Mason J.

26 *Doe v Bridges* (1831) 1 B&Ad 847 at 859.

27 Kitto J in *Sovar v Henry Lane Pty Ltd* (1967) 116 CLR397 at 405. The passage was later endorsed by Brennan J in *Sutherland Shire Council v Heyman* above at 482.

28 *Phillips v Britannia Hygienic Laundry Co* [1923] 2 KB 832
29 See Davies, (1995) *Torts* 188.
30 *O'Connor v SP Bray Ltd* above at 478.
31 *Cutler v Wandsworth Stadium Ltd* [1949] 1 All ER 544.
32 *Chordas v Bryant (Wellington) Pty Ltd* (1988) 20 FCR 91; 91 ALR 149.
33 *X and Ors (minors) v Bedfordshire CC, M (a minor) and Anor, v Newham London BC and*
Ors, E (a minor) v Dorset CC and Other Appeals [1995] 3 All ER 353 at 356, 357.
34 *Id.*
35 Davies above.
36 Children and Young Persons (Further Amendment) Act s.1(a)
37 *Gorris v Scott* (1874) LR 9 Exch 125.
38 *Darling Island Stevedoring and Lighterage Co Ltd. v Long* (1957) 97 CLR 36.
39 Davies above 161-2.
40 *Bonnington Castings Ltd v Warlaw* (1956) AC 613; [1956] 1 All ER 615.
41 *March v E & M H Stramare Pty Ltd* (1991) 171 CLR 506.
42 *Landeros v Flood* above 395.
43 *Vesely v Sager* 5 Cal.3d, 95 Cal. Rptr. 623, 486 P.2d 151 at 164.

