Elder Abuse Prevention Unit:

Position statement on Mandatory Reporting of Elder Abuse

The Elder Abuse Prevention Unit is funded by the Queensland Government Department of Communities and operates under the auspice of Lifeline Brisbane.

For further information on Elder Abuse and clarification on the EAPU's position on Mandatory Reporting contact us on 07 3250 1959 or email: eapu@lccq.org.au.

The Elder Abuse Prevention Unit (EAPU) has produced the following position statement on the mandatory reporting of elder abuse. Although this statement will apply specifically to Queensland, its arguments are seen as applicable to all Australian states and territories. The EAPU was the first Australian organisation funded specifically to respond to elder abuse and has over eight years experience in this area. Although Queensland based, it links with other recognised individuals and services across Australia and recently assisted the ACT government to establish their service based on the EAPU model and utilising many EAPU developed resources. The recently recommended elder abuse model for Victoria is also very similar to the EAPU response and in jurisdictions across Australia a rights based model has already, or is, being adopted.

Background

The EAPU was encouraged to make a statement about their opposition to mandatory reporting by its Brisbane reference group members at a meeting held on the 1st March 2006. This reference group is made up of a wide representation of agencies, service providers and individuals from the aged sector. Representation from residential aged care, advocacy, legal (private and agency based), multicultural, senior's and service organisations, and those government agencies that have a lead role in elder abuse prevention and older peoples issues including those dealing with impaired capacity, substitute decision making and guardianship. Although the position statement in no way binds or necessarily reflects the stance of the reference group members, the EAPU believes that it does generally reflect the thinking of members of the aged sector who have knowledge of elder abuse and mandatory reporting issues.

Statement

The EAPU believes that the mandatory reporting of elder abuse will not improve or will have a negligible impact on increasing the safety of older people and will divert resources away from addressing this issue. Further, the introduction of mandatory reporting denies the rights of seniors to make their own decisions, thereby reinforcing ageist stereotypes of all older people.

The Meaning of "Mandatory Reporting"

The term "Mandatory Reporting" is understood to refer to the introduction of specific elder abuse legislation to mandate the reporting of elder abuse situations. The setting up of a specific "Adult Protection" type service to investigate reports is an integral feature of the mandatory reporting model as can be found in most states in the US. The literature indicates that the intervention is commonly based on a child protection model. Those most frequently mandated under law to report abuse in the US are Health, Human Service and Law enforcement professionals although the definition of "Professionals" and requirements vary across the states. Aged care workers are mandated in twenty three states while sixteen states require that "everyone" must report abuse. Financial professionals and staff, "clergy" and "others" are also noted as categories that are required to report abuse in some US states. It should be noted that domestic violence advocates may also be required to report in certain states of the US, depending on their profession (counsellor, social worker etc) or if domestic violence advocates have been specifically named as a reporting agency. Sanctions for those mandated workers or private individuals who fail to report abuse also vary from state to state and include penalties such as Misdemeanour, Jail, Fine, Civil Liability or Report to Licensing Authority.

Decision Making Capacity

This position paper covers the effect of mandatory reporting on both older people with capacity to make informed decisions and those with diminished capacity. The EAPU believes that reporting of abuse for people without decision-making capacity should be compulsory, but does not warrant the introduction of specific legislation. The obligation for a worker to report abuse of an individual with impaired capacity is clear under duty of care requirements.

It is the position of the EAPU that mandatory reporting for those *with* decision-making capacity will not be effective and be in breach of their rights (UN, 1999). Furthermore, the EAPU believes that the introduction of mandatory reporting legislation would not necessarily improve or prevent abuse of people whose decision-making capacity is considered to be diminished due to power and control issues relating to family violence.

A summary of the arguments around this issue can be found in the Victorian Government's recent report "Strengthening Victoria's Response to Elder Abuse: Report of the Elder Abuse Prevention Project (December 2005) and Discussion Paper 4: Mandatory Reporting of Abuse of Older People (Mason & Cummins, 1997). The following points are also provided in support to the EAPU's position.

1. **LEGISLATIVE ISSUES:**

1.1. *Current discussions around the introduction of mandatory reporting overlooks the fact that existing reporting systems and legislation are already in place*

It should be recognised that the vast majority of elder abuse is already covered under Commonwealth and State/Territory legislation while some abuse can be addressed in civil courts. Service providers already operate under a plethora of legislation, as well as their own agency protocols, policies, procedures and guidelines. Professional bodies also impose service standards, position statements etc relating to their specific discipline. The problem identified by the EAPU is not the lack of legislation but a lack of understanding by some service provider's of their obligations under their duty of care to report abuse and where to report it. This is therefore an education and training issue for agencies to ensure that staff fully understands their duty of care and to have in place policies and procedures that can facilitate the response to elder abuse situations.

The following legislation is provided as an example of existing laws that are currently used to address elder abuse situations. Note that the focus is on Queensland legislation and does not claim to be all inclusive. The report by the Elder Abuse Prevention Program, "Strengthening Victoria's Response to Elder Abuse" (December 2005), also describes the relevant legislation and the services available to provide support for people reporting abuse.

- Criminal Code Act 1899 (QLD) covers criminal behaviour which occur in many elder abuse situations such as assault, theft and other property offences. The Act also provides for harsher penalties for offences involving rape or other sexual offences where the victim is intellectually impaired. Neglect is covered under Chapter 27 which relates to the Preservation of Human Life including the Duty to provide Necessaries. Police services are well placed to respond under this legislation.

- Health Rights Commission Act 1991 (QLD) established the Health Rights Commission of Queensland to resolve health care complaints including those within nursing homes. Although the legislation provides for extensive powers of investigation, the Commission attempts to resolve complaints firstly through informal conciliation processes wherever possible. An example of the Commissions handling of individual complaints and identifying systemic issues is highlighted in the investigation of complaints surrounding Dr Patel and the Bundaberg Base Hospital as provided in the Commission's 2005 Annual Report.

- The Aged Care Act 1997 (Commonwealth) sets the standards for Aged Care in Australia particularly under the *Quality of Care* provisions. This legislation is aimed at the agency level rather than individual staff member. Therefore, its relationship to this debate is that agencies should have in place policies and procedures for their individual staff so that the

agency can comply with this Act. Non-compliance to these standards can result in various sanctions such as withdrawal of funding and/ or accreditation.

- The Domestic and Family Violence Protection Act 1989 (QLD) provides for protection orders (Apprehended Violence Orders - in some states) to provide protection in domestic and family violence situations. In Queensland this legislation was amended in 2003 particularly to address elder abuse situations. Coverage was broadened from spousal relationships to also include Family, Informal Care and Intimate Personal Relationships categories. The act requires police to investigate and provides a civil/criminal response to abuse situations.

- The Guardianship and Administration Act 2000 (QLD) has a stated role to "protect the rights and interests of adults who have impaired capacity for a matter" (S174). One specific function that the Adult Guardian undertakes under S174 (2) (a) of this legislation is "protecting adults who have impaired capacity for a matter from neglect, exploitation or abuse". Extensive investigative powers were also established to undertake these functions. Along with bodies such as the Guardianship and Administrative Tribunal, Community Visitor's Scheme and the Public Advocate, and stated principles in relation to substitute decision-making; this legislation provides substantial protection for the rights of those with impaired decision making capacity.

1.2. Service providers and Nursing Home staff have policies and procedures in place to guide safe work practices.

Organizations and professionals can be sued under Duty of Care and Negligence. Organisations have a duty of care to residents to provide them with a safe environment to live and meet their needs, as well as prevent potential harm. Duty of Care also places onus on individual staff to act in a manner which does not harm the older person, or places them in a position that can pose foreseeable risk to their safety.

Individual service providers, residential and respite care facilities have their own organisational policies and procedures and should therefore ensure there is an adequate number of staff on duty and that staff members are trained appropriately and understand their rights and responsibilities.

Staff are not only bound by their work place's policies and procedures, but also by their professional governing body's practice standards and ethical guidelines. These protocols are monitored by professional associations, such as Australian Medical Association, Queensland Teacher's Union, Australian Psychological Society.

It is also the responsibility of staff members to approach the organisation and request training, a position description and their rights and responsibilities.

2. RESOURCING ISSUES

2.1. *It should be recognised that mandatory reporting will not necessarily enhance the initial detection of abuse.*

Identifying that abuse is occurring is the first critical step in an effective response to elder abuse and relies on staff awareness and training. Elder abuse covers a wide range of aggressive behaviours including psychological, social and financial abuse which can be hard to detect if the worker is not adequately trained. Again, this is not dependant on the introduction of mandatory reporting but relies on a commitment of the agency to undertake training to build an awareness of the signs of elder abuse and detection. The agency also takes on the responsibility of providing security for employees who responsibly act to protect older people accessing their services, such as residents in nursing homes.

Although, advocates for mandatory reporting argue that this would increase awareness and increase reporting rates, it should be noted that abused older people who are isolated and live independently with their family are still at risk of remaining undetected.

2.2. *A mandatory reporting system, including the setting up of an adult protection service, will redirect resources away from addressing the problem of elder abuse.*

Money should always be found to ensure that older people's safety issues are addressed. However, the EAPU believes that the establishment of an Adult Protection Service will require considerable funding that could be better used in providing resources that are required to address elder abuse situations. For example, the Australian Pensioners and Superannuants League Qld Inc and other services in Queensland who respond to elder abuse, have identified the need for community based legal services aimed at specifically meeting the legal and safety needs of older Australians. The Seniors Advocacy Information and Legal Service is the only specialist service in Queensland and has proven very effective in responding to a range of legal and safety issues that affect seniors. However, it is hampered by limited resources and geographic accessibility to older Australians outside the greater Brisbane district. Providing seniors with greater access to the law is seen as a more useful allocation of resources than by providing an adult protection service.

In addition to this, the resources that could be used to fund "awareness raising" and other preventative approaches would be at risk of funding being redirected to provide adequate resources for policing reports of elder abuse. Studies in the US by the National Center for Elder Abuse (Brandl, 2005) have identified that there are significant resource implications required for establishing and maintaining an efficient and effective program to investigate and assess allegations of elder abuse. These studies have also identified that although funding has been allocated there is a shortage of resources for providing intervention once the older person has been taken out of the abusive situation.

3. <u>HUMAN RIGHTS ISSUES</u>

3.1. *Mandatory reporting will adversely impact on Aboriginal and Torres Strait Islander Communities.*

High levels of family violence in indigenous communities has been identified in many domestic violence reports as well as in specific elder abuse research recently completed in Western Australia. Recently concluded EAPU consultations to develop elder abuse resources for Aboriginal and Torres Strait communities also indicate a high level of concern for this issue. As the elders who currently experience abuse are from the same cohort who represents the "Stolen Generation", it is of major concern that a mandatory reporting type response, which uses a child protection model, will remove large numbers of these elders from their community, many for the second time. This is not acceptable and will likely breach human rights in a number of areas, particularly as placement in mainstream aged care facilities, usually many miles from remote communities, is social, psychological and emotional abuse in itself. It is also safe to assume that older Aboriginal and Torres Strait Islander people will withdraw from the health care systems as these health workers will be obligated to report any abuse.

Indigenous families are over-represented in the welfare system, with older indigenous people often taking on the care of grandchildren. This issue alone creates problems for the older person or family which impact on their independence and social connection.

3.2. *There are significant negative implications for mandatory reporting on CALD communities.*

Older people from CALD communities are often family oriented and face major barriers when trying to overcome elder abuse including, language barriers, cultural identity conflicts, shame and ostracism for reporting family member for abuse.

The biggest predictors of elder abuse are isolation and a lack of knowledge of elder abuse and services available (Brandl, 2005 & Moskowitz, 1996). Older people in the CALD communities are at higher risk of isolation as a result of being in a minority in the wider society and not being able to communicate their desires, wishes and wants effectively and clearly through language. The language barriers in CALD older people places them in a vulnerable position as they are dependent on their family to help them communicate and support them in accessing services, such as social networks, doctors, and other professional services.

Another major issue for elders in the CALD community is that they feel embarrassed to disclose abuse by their children, and a sense of responsibility and guilt at being treated with disrespect by those they raised. Although, such emotions exist across culture, this is even more striking for cultures that place a strong emphasis on families and supporting elderly parents when they are sick and unable to care for themselves. Requesting help outside the family can be

seen as a major embarrassment to the family and they may fear "loosing face" in their community.

Furthermore, the older person may fear the repercussions such as ostracism and further isolation by the family and community for "turning against their family".

3.3. There is no convincing evidence that mandatory reporting creates better outcomes for older people living in the community.

A criticism that the EAPU has with studies of mandatory reporting is that they focus on the number of reports, substantiated cases or prosecutions but very little research can be found on the actual safety outcome for the older person (Brandl, 2005). There appears to be an assumption that because an elder abuse situation is reported and investigated and possibly the perpetrator convicted, that this is a successful outcome.

The domestic violence sector recognise that obtaining a domestic violence protection order (DVO) or even securing a criminal conviction does not guarantee the safety of women and children in these situations (Brandl, 2005). It is the domestic violence services acting in coordination with a well trained police intervention, backed up by the legal system, that provides the safety. Since the police interventions and the family violence legislation is already in place for responding to elder abuse, duplicating any of these will necessarily draw resources away from the support services urgently needed to make older people safer in the community (Brandl, 2005).

Further, the National Center of Elder Abuse (cited in Brandl, 2005; National Center on Elder Abuse, 2003) has identified that mandatory reporting may actually have a negative impact on elder abuse victims, in the following ways:

- People over 60 or 65 may still have the ability to make clear and rational decisions. Mandatory reporting would deprive them of the right to make informed choices regarding their lifestyle and action regarding their future.

- Older people would be less inclined to seek professional assistance if they believed that their conversations with professionals were no longer confidential.

- Ageist perspectives would reinforce the mentality that older people are weak and incapable of making well educated and rational decisions.

3.4. Potential to reinforce an ageist perception of older people as frail and unable to make rational decisions based on evidence.

The United Nations Principles for Older Persons is based on empowering older people and maintaining their dignity. Mandatory reporting places onus on professionals and/or community members to report abuse regardless of the older person's desire to report or their individual ability to protect themselves,

reinforcing the ageist perspective that older people are fragile and need protection.

Senior citizens have a lifetime of experience and knowledge. Mandating a reporting system similar to that of Child Protection strips older people of dignity to make their own decisions and their right to make mistakes. The UN Principles (1999) provides a guideline whereby older people have a right to live independently in their community and maintain a lifestyle of their choice, with dignity and respect. To enforce mandated reporting would deprive older people their right to chose who receives personal information, not to mention breaking confidentiality and trust in professional services.

CONCLUSION

The EAPU had identified that mandatory reporting would at present not meet the needs of older Australians, but also pose a negative impact on their lifestyle and freedom. This report has outlined that although there have been studies arguing in favour of mandatory reporting they have not addressed key issues such as follow-up with older people, to identify whether the intervention they received met their needs, with dignity and respect for their wishes.

The research in preparing this paper has shown that mandatory reporting has an impact on both older people who have decision-making capacity and those without decision-making capacity. The impact of mandatory reporting has the potential to create a culture of acceptance of ageist beliefs about older people as frail and unable to rationally assess a situation. The consequences of mandatory reporting would have a major impact not only on elder people but also on their families and communities, as additional resources would be required to set up, develop, maintain and monitor the effectiveness of an organisation mandated to investigate reports of elder abuse. Studies in countries where mandatory reporting of elder abuse exists have found that there are major issues with the processes and funding to appropriately investigate and intervene.

RECOMMENDATIONS

The EAPU has identified several recommendations that could be implemented to address the issues relating to reporting of elder abuse in both residential care facilities, community and respite care facilities:

- A 24 hour hotline for victims of elder abuse for support, information and referral to appropriate professional services.
- A register of regular perpetrators. This system is used in the UK to alert banks and financial institutions of repeat offenders of financial abusers who target older people (Naughtin, 2005)
- Education and awareness raising campaign targeting health, allied health, legal and financial professionals.
- Community information and awareness raising campaigns as a means of empowering older people and preventing elder abuse.

- Including ageing and elder abuse components in tertiary education courses (Office of Senior Victorians – Consultation Paper, 2005)
- Implement a Gate-keeper model – include postal workers, electricians, plumbers, etc in raising awareness of suspicions of elder abuse. Refer to Appendix "A"
- Door-to-door knocking by volunteer police as a means to prevent elder abuse and possibly raise awareness of elder abuse, in the communities.
- Reviewing current legislation to identify gaps and tighten procedures and protocols to encourage professionals to report abuse in nursing homes and residential care facilities.

It has been identified that major abuse prevention factor is a knowledge and understanding of elder abuse and planning for later life. Training and awareness raising has been a key factor for people who are willing to report abuse and are able to identify signs of abuse.

Some useful sites for further information about elder abuse.

Website of the Elder Abuse Prevention Unit: www.eapu.com.au

Website of the Victorian Government's Report "Strengthening Victoria's Response to Elder Abuse: Report of the Elder Abuse Prevention Project (December 2005):
http://www.youth.vic.gov.au/web19/osv/dvcosv.nsf/AllDocs/346E383A5EE99A2ACA2570FB007934F4?OpenDocument

National Center of Elder Abuse: http://www.elderabusecenter.org

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Office for Senior Victorians, (2005). Elder Abuse Prevention: Consultation Paper. Hampton Press Pty Ltd, Melbourne.

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The Brisbane City Council is currently undertaking a trail of a "Social Inclusion Project" in the effort to target isolated older citizens and "consolidate established community networks" (Office for Seniors, 2006).

Reducing the social isolation of older people

With a link between communication and interaction with others and mental and physical well-being, it is important that older people have the opportunity to be socially connected and, if they wish, to participate in community life.

Social isolation encompasses both social and emotional isolation – that is, both a low level of social participation and also the subjective experience of loneliness.

There are many individual, social, cultural and environmental factors influencing a person's connection with their community. These include relocation, being a carer, living in a rural or remote area, having a mental illness and being from a different cultural and linguistic background to most other community members.

Although many older people are socially connected, some factors combine to more commonly impact on older people than other age groups. These include leaving the workforce, physical disability and ill health, loss of relationships, and loss of transport options.

The government's approach

The Cross Government Project to Reduce Social Isolation of Older People aims to identify leading practice models that can reduce social isolation in older people and are transferable across communities of similar types. It is expected that these models will also contribute to the reduction of social isolation of other population groups.

The project provides the opportunity for agencies to work together for an improved outcome for older people. As the lead agency, the Department of Communities, through its Office for Seniors, acts as project manager.

The project has five phases and is now in its fourth phase.

Phase 1   Research and analyse current responses to social isolation.

Phase 2   Identify local responses to social isolation across the state.

Phase 3   Identify innovative approaches to social isolation based on the research findings of phases 1 and 2.

Phase 4   Develop, implement and evaluate demonstration projects based on innovative approaches and leading practice models.

Phase 5   Disseminate information about best practice models that prevent and reduce social isolation, and finalise project.

Major funders of the project are the Commonwealth Department of Veterans' Affairs and the Home and Community Care and Mental Health Units of Queensland Health.

Other stakeholders providing significant 'in kind' support are the Department of Communities, the Commonwealth Department of Health and Ageing, Queensland Transport, the Australasian Centre on Ageing, Multicultural Affairs Queensland and the Office for Women from the Department of Local Government, Planning, Sport and Recreation.

Demonstration projects

Five demonstration projects have been funded to reduce social isolation of older people and improve the quality of live for many ageing Queenslanders. These projects will inform future funding decisions.

**Brisbane City Council
(Social Inclusion Project)**

This Social Inclusion Project aims to enhance the whole-of-community response to socially isolated older people by consolidating established community networks, increasing referral pathways and training, and linking local points of contact for older people (such as churches, funeral services and home services) with the existing infrastructure. The project will develop a manual and will concentrate on strategies that foster

independence and enhance natural social networks of older people.

Multicultural Development Association (Culturally Appropriate Volunteer Services)

The Culturally Appropriate Volunteer Services project will assist participating agencies to address social isolation in the community for older people from culturally and linguistically diverse backgrounds.
The project will resource and support agencies to develop and expand culturally appropriate volunteer services, recruit and skill volunteers from culturally and linguistically diverse backgrounds, and form a pool of volunteers to support older persons from these backgrounds who are socially isolated.
The project will provide a central point of contact to link referrals for agencies, potential volunteers, clients and carers. It will develop a model of volunteer service provision that is transferable to other culturally and linguistically diverse communities and community organisations.

Fitness Queensland Association (Steady Steps Falls Prevention Program)

A number of registered fitness instructors have been trained to deliver 10-week Steady Steps gentle exercise and falls prevention programs. These instructors will be given additional training to increase their knowledge of social isolation issues and improve their skills in mentoring, friendship development and building social connectedness.
This project will be conducted in Logan, Townsville and Toowoomba.

Hervey Bay City Council (Connecting Points Project)

The Connecting Points Project will directly build on the findings, information and relationships that have resulted from work previously undertaken with older people in the community. It will develop a collaborative partnership approach with key agencies and socially isolated people to enhance existing successful strategies, identify available resources and services, and strengthen direct access of isolated persons to services and activities. The project includes community forums, development of an action plan, and a resource kit implementing a "buddy" system.

Greenvale State School Parents and Citizens Association (Senior Connecting)

Senior Connecting targets people aged 55 years and over, in particular isolated graziers. The project will establish a regular fitness program, an art program and a swim program. This project focuses on transportation, positive ageing, up-skilling and self-governing issues for older people, and aims to integrate town and district seniors.

Further information

For more information, contact the Office for Seniors, Department of Communities, on (07) 3224 2625.