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15 DEC 2006

**Elder Abuse Prevention Unit - Submission
For the
House Standing Committee on Legal and Constitutional Affairs**

BY: LACA

Inquiry into Older People and the Law.

Submission No.....	97
Date Received.....	

About the Elder Abuse Prevention Unit

The Elder Abuse Prevention Unit (EAPU) is funded by the Queensland Government Department of Communities and operates under the auspice of Lifeline Community Care, Brisbane Division. The EAPU responds to elder abuse occurring under the following definition:

Any act occurring within a relationship where there is an implication of trust, which results in harm to an older person. Abuse can include physical, psychological, financial, sexual and social abuse, as well as intentional or unintentional neglect. It does not include abusive acts committed by a stranger or self-neglect.

Therefore the EAPU does not focus on abuse by service providers but responds to abuse occurring in a relationship of trust, usually by another family member and usually in the older persons own home.

The ongoing funded areas of service include: a state-wide information, support and referral Helpline; a state-wide service provider training program; a state-wide awareness raising program; and a support network for remote and isolated workers responding to elder abuse. Funding has also been received for a project to develop resources for the Aboriginal, Torres Strait and South Sea Islander Communities (consultations across Queensland have now been completed and the development of a DVD/Video is to be undertaken in 2007). The EAPU has developed and supports community responses located in the Hervey Bay, Ipswich and Gold Coast regions as well as a taskforce to respond to abuse occurring in Culturally and Linguistically Diverse Communities.

The EAPU commenced operations in 1997 and was the first Australian organisation funded specifically to respond to elder abuse. Although Queensland based, it links with other recognised individuals and services across Australia and assisted the A.C.T. government to establish an elder abuse response. That particular response is based on the EAPU model and using EAPU developed resources and training material. The EAPU has also recently been providing assistance for the development of the Victorian Government's elder abuse response. The EAPU is also a member of the recently reactivated Australian Network for the Prevention of Elder Abuse (ANPEA) and is a Queensland representative for the ANPEA steering committee.

The EAPU operates from a human rights based perspective and therefore has a focus on empowering the older person to make their own decisions about their situation wherever possible.

Terms of Reference

Thank you for the opportunity to provide input into this inquiry. The Elder Abuse Prevention Unit (EAPU) submission will focus its response on **Financial Abuse** but will relate this to the other areas under the terms of reference.

EAPU's Involvement in Financial Abuse Awareness Raising

The EAPU identified Financial Abuse as a growing community issue in 2004 and targeted it for a major community awareness initiative in 2005. This initiative included focusing on financial abuse in EAPU's state-wide awareness raising activities, commissioning a report - "Financial Abuse of Older People: A Queensland Perspective"¹ and generating financial abuse material for the media. The media approaches had immediate success with several financial abuse articles being featured in metropolitan newspapers and stories also appearing in some regional papers. Several radio interviews also ensued including a feature story on financial abuse broadcast on Radio National's "Background Briefing" series. A major TV network also contacted the EAPU in 2005 as a result of the media coverage and aired a financial abuse story in 2006. The EAPU's approach is focused on empowerment through raising community awareness about the issue so that prevention measures can be taken. Community awareness raising is therefore seen as a major prevention strategy for this type of abuse.

Financial Abuse – Focus on Prevention

Responding to financial abuse should very much focus on prevention rather than cure as retrieval of cash/assets may prove harrowing for the older person, expensive and possibly futile. This statement is based on any number of Helpline calls and the following is provided as an example:

Case Study: An older man and his wife (aged 70+) loaned \$20,000 to their son (aged 40+) to help him and his family immigrate to Australia. The son was to repay the money when he obtained employment. The son eventually claimed the money was a gift (loan was a verbal contact) and the father took him to court to have the money returned. The father was successful but outlaid several thousand dollars in legal fees, he also said he totally destroyed the relationship with his son in the process. The son left Australia with his family shortly after the court case, leaving the father approximately \$25,000 poorer. The caller said that his and his wife's greatest regret was having lost contact with their grandchildren. He also said that he felt he had to try and recover the money as otherwise it would have been considered a gift and affected their pension.

Some of the issues raised in the case study could have been avoided if a lawyer had been involved at the onset. Greater awareness raising about financial abuse and preventative measures should be undertaken and targeted at seniors, their family, as well as those who are assisting an older person to manage their financial affairs. This is another area where information and access to sound legal advice may prevent financial abuse or mismanagement of a senior's assets. Many of those who are acting under a general or enduring power of attorney (EPOA) are not aware of their responsibilities and would benefit from training in this area. Similarly, the older person and their family should also receive education about EPOA's, particularly around ways to make them safe and to ensure they are operated in the best interests of the older person.

¹ Prepared for the EAPU by Leonie Sanders BPsych (Hons), Dip. Mgmt and released in September 2005

Financial abuse from Aboriginal or Torres Strait islander communities is also prevalent according to EAPU consultations in these communities and therefore information and access to legal services will need to be culturally appropriate. Seniors from Culturally and Linguistically Diverse communities also experience financial abuse by their sons and daughters and therefore provision needs to be made for all communities.

Prevention revolves around sound planning by seniors who will therefore require access to legal expertise and information, particularly in the newly emerging field (in Australia) of "Elder Law" which specialises in the legal needs of older people. Currently the EAPU understands from its networks that there are very few Elder Law specialists in Australia, also lawyers generally are not fully conversant with substitute decision making legislation/instruments and Centrelink requirements and other areas affecting older people. Also the Attorney-General's Department's Community Legal Services (CLS) Program does not identify seniors or senior specific legal issues as an area to fund a particular legal response.

The Attorney General's Department did however fund the "Legal Outreach for Older Persons" (LOFOP) program which operated from the Caxton Legal Centre Inc (Brisbane) and paired a lawyer with a social worker to provide a holistic approach to legal matters affecting older people. This model recognised that older people may need the support of a social worker when accessing the law as an older person may require assistance with a number of unaddressed needs. The service also undertook outreach work thereby addressing the access issues older people may experience due to health and availability of transport. Unfortunately this service did not receive an extension of its funding. The Department of Communities Qld did however fund the "Seniors Advocacy Information and Legal Service" which uses the LOFOP model of a social worker and lawyer outreach service. Although funded to respond to seniors experiencing domestic and family violence, it also provides limited assistance in a range of matters affecting seniors. The Queensland government has recently provided additional funding to expand SAILS and to set up four similar services across Queensland. However this funding is on a trial basis and in no way ensures the continued existence of these needed services.

Before an effective preventative response to Financial Abuse can be achieved the EAPU believes that the following state and federal government strategies could be implemented:

- ***Undertake a national awareness campaign about financial abuse.***
- ***Awareness raising activities should be inclusive of Aboriginal, Torres Strait Islander and CALD communities.***
- ***Promote a greater emphasis on the specialist area of Elder Law within Australian universities.***
- ***Identify "Seniors" as a particular client group with specific legal issues under the Community Legal Services (CLS) Program and fund a national senior's legal service program.***
- ***Provide a long term funding commitment to establish generalist senior legal services nationally which should be based on the successful LOFOP and SAILS model.***
- ***Provide culturally appropriate senior's legal services wherever possible and based on the SAILS model***
- ***Promote training for generalist lawyers and those who can witness EPOA's in substitute decision making legislation including how to ensure the best interests of the senior is***

attained particularly when advising on and witnessing EPOA documents.

- **Undertake education of seniors and asset managers on substitute decision making legislation, responsibilities and instruments which is inclusive of other Aboriginal, Torres Strait Islander and CALD communities.**

Amounts and Costs Involved

This section draws on Helpline data for the period 01/11/02 to 30/09/06. A total of 2,102 separate elder abuse reports were recorded for that period, of which 1,121 reports (i.e. 53.3%) include some form of financial abuse. Of these financial abuse records only 89 (or 8%) mentioned an actual dollar amount of the financial abuse involved, this totalled \$9.2 million. The \$9.2 million is an alarming amount of money being lost to seniors as it represents only 8% of the total number of financial abuse reports that came in via the EAPU Helpline.

If the average is calculated at \$103,370 the total dollar amount of financial abuse experienced by the 1,121 seniors during this period would be in the region of \$115,877,770. This represents nearly \$2.465 million per month or \$29.58 million per year potentially being lost by Helpline callers alone. It should be recognised that this would be a very small part of the financial abuse actually occurring in Queensland as guardianship jurisdictions (Office of the Adult Guardian, Public Trustee of Qld etc) and private and community legal services would be responding to the bulk of financial abuse situations directly, without ever coming to the notice of the EAPU. Still more financial abuse will remain undetected each year. Therefore to estimate a national figure would be impossible to determine although a description of "staggering amounts" would be appropriate.

The dollar amount is just one aspect of the cost of financial and other forms of abuse, overlaying this are the "hidden" costs. The emotional and sometimes physical trauma suffered by the victim will obviously have cost implications to those health, welfare and legal services that respond directly. The actual cost that elder abuse has for these services is hard to calculate, although a NSW study attempted to quantify this in a 1996 study² which derived a figure of \$311 per person per week, or over \$300 million per year for that state. Obviously this would now be considerably higher after allowing for inflation and the greater numbers of seniors in today's population. Although the NSW study indicated that most costs were associated with crisis care, the World Health Organisation³ notes that physical injury may be more severe for older people, while there are higher rates of depression and morbidity found in seniors who experience abuse. Therefore costs to the health system are likely to be inflated by older people accessing services for a range of physical and mental conditions that are the result of abuse, but possibly attributed to the ageing process.

One further area worth considering is that an older person usually has little opportunity to create more wealth once it is gone. A number of financial abuse calls involve informal (verbal) family agreements where cash or assets are either loaned to a son or daughter, or given to them with the expectation of receiving something in return e.g. future care. Unfortunately, calls where the son or daughter reneges on the agreement

² McCallum, J. and Suet-Lam-Mui (1996) 'Costing Abuse of Older People: Towards Cost Effective Responses' *Confronting Abuse: the Way Forward, Conference Papers and Proceedings*, the NSW Advisory Committee on Abuse of Older People in their Homes, Wesley Centre, 2-3 May 1996, Sydney. As referenced in "The Strategic Plan for the Prevention of Elder Abuse in Queensland", Prevention of Elder Abuse Taskforce (2001)

³ Krug EG et al., eds. World report on violence and health. Geneva, World Health Organization, 2002: (Ch 5 Abuse of the Elderly).

are common, often claiming the money/asset was given as a gift with no strings attached. The older person who could have been funding their own retirement may find themselves thrown onto the welfare system with no ability to recover the money other than through an expensive civil action. In some cases the older person may not only find themselves without cash or assets but the "gifts" have adversely affected their pension entitlements. Lifestyle, health and aged care choices could similarly be affected with reliance on the overstretched public systems often the only alternative.

Centrelink also has a role here to ensure taxpayer's money is used for the purpose intended, either to provide care under a carer's pensions/benefits or not ripped off by a person under a Nominee arrangement. An example of a nominee rip-off was a call involving a son who was operating his father's financial affairs using an EPOA but also managing his pension under a nominee arrangement. To collect more money he failed to notify Centrelink that his father lived with him and that he was renting the father's house for considerable profit (to the son). Centrelink discovered the situation and raised a \$12,000 overpayment against the father as the son knew he would not be responsible for any debt under Centrelink legislation. The son dropped the father off at his sister's house, emaciated and with only with the clothes he stood up in. Before the Adult Guardian could get involved in the retrieval of the rent money and protecting the remaining assets the son had already sold the father's house and moved interstate. Both the nominee form and EPOA were signed by the father well after he was deemed not to have capacity by the family doctor.

The EAPU believes that any funding to reduce elder abuse including financial abuse will result in an overall cost saving for the government. However, this should be a secondary consideration given the government's responsibility to protect the rights and safety of older people. There should be a whole of government(s) approach to this, including:

- ***a review of Centrelink legislation as it refers to Nominee arrangements and regular checks to determine if this arrangement is being abused.***
- ***If Centrelink becomes aware that an individual who is receiving a Carer pension/benefit is not providing adequate care, then this should be a mandatory report to the relevant guardianship body if the person does not have decision making capacity and reporting policies and procedures developed around situations where the person does have capacity.***
- ***Legislation conflicts and barriers to cooperation between State/state and state/federal jurisdictions should be investigated and addressed by a standing committee or similar mechanism representing the relevant state and federal jurisdictions to ensure a seamless response to financial and elder abuse issues.***

Types of Financial Abuse

Often financial abuse involves substantial amounts of money as a number of calls are in relation to the family home or other large assets. However, even small sums of money can adversely affect a person on a fixed income.

Family Agreements and Granny flats: One risky area identified by the EAPU is entering into a "Granny Flat" arrangement without some form of legal protection. The EAPU has had a number of calls where it would appear family relationships have radically changed when the mother (in-law) sells up and constructs a granny flat at their son or daughter's house. Other than the host family living in a construction site for a number of months, apparently little things like cloths line space, when dishes are being done or perceived comments on poor parenting etc have led to major breakdowns in relationships and various types of abuse of the older person. The calls to the Helpline often occur when a marital breakdown in the host family has led to assets being split during a property settlement and the realisation by the older woman/man that they don't have a separate deed of title to the flat. Even when ownership is not an issue, sometimes the caller will say they are trapped in a war zone and have no way out, even literally as one daughter-in-law had put a new pad lock on the back gate making it impossible for the older woman to leave the property. Selling the granny flat can become a problem while the son/daughter may not have the means to buy the mother/father out. A variation on this in rural areas is where the older person signs over the property for the son to manage and the son promptly sells the property or evicts the parent from another dwelling on the property. Usually there was an expectation on the part of the older person that this arrangement was in return for care when needed. A "family agreement" type of document would be a very useful tool in many of these situations. It should be noted that the transfer of large assets could be considered a gift and therefore affect the older person's pension. Several callers to the EAPU Helpline were in the situation of not being eligible for the age pension due to gifting regulations and of having been stripped of their assets.

Family agreements are seen as a useful tool for a senior's future planning and recommends that:

- **An education campaign be targeted at Lawyers and training on the use of "Family Agreements".**
- **Any financial abuse awareness campaign mentions "Family agreements" as a method of clarifying and safeguarding financial arrangements made within families.**
- **Any financial abuse awareness campaign recommends that legal advice should be sought prior to entering into a granny flat type arrangement.**

Theft, Fraud etc: Misuse of ATM cards, theft and forging names on documents including bank withdrawal forms and the sale of an older person's property without permission etc have all been reported through the EAPU Helpline. Although a crime, callers often report that police are limited in their ability to bring a charge against a person because of lack of evidence. Often the reason given is the evidence will be one person's word against the other and therefore will lack the weight of evidence to gain a conviction. From those accessing the EAPU Helpline there also appears to be a lack of will by some police to follow through with gathering evidence or even to take complaints where older people are the victims of crime. Most callers in these situations have been advised by police to take legal action i.e. sue the son or daughter as the weight of evidence is less. Although the EAPU believes that the police should be more active in their dealing with senior victims of crime, the option of taking other legal action should also be made more accessible to older people. Again this should be an

area for CLS program to be enhanced to support the victim to take action or to advocate for greater action from police.

The EAPU recommends that CLS programs provide greater support to seniors who are victims of fraud and theft by family members, including the provision of advocacy in relation to police action.

There are other forms of financial abuse coming through the EAPU Helpline, such as the son/daughter/grandchild running up of an older person's phone bill and refusing to contribute, or situations where grandparents are providing care for their grandchildren but not receiving financial support. Cultural norms also add to the complexities of financial abuse in certain situation. Generally however, the EAPU believes that greater access to legal services, particularly prior to making financial or lifestyle decisions will greatly reduce the level of financial abuse experienced by older people. The EAPU therefore encourages the House Standing Committee on Legal and Cultural Affairs to consider this submission and its recommendations to increase older peoples access to the law.

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