Submission by the Australian Association of Social Workers

Regarding the proposed Mandatory Reporting of Domestic and Family Violence by health Professionals in the Northern Territory

CARING vs. CRIME DETECTION

AASW CONTACT:

Dr Bob Lonne, AASW National President

Phone: 0401960580

E-mail: aaswnat@aasw.asn.au

Kandie Allen-Kelly, AASW Senior Executive Officer

Phone: 02 6273 0199

E-mail: Kandie.Allen-Kelly@aasw.asn.au

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EXECUTIVE SUMMARY

The Australian Association of Social Workers (AASW) is the key professional body representing social workers throughout Australia. The AASW has a nationwide committee of experienced practitioners and scholars in the health care field who have participated in the development of this submission.

This submission addresses a range of concerns about mandating health professionals and strongly recommend that the Northern Territory Department of Justice does not amend the Northern Territory's ***Domestic and Family Violence ACT 2007*** to include provisions for mandatory reporting obligations for health professionals. It is the view of the AASW that mandating health professionals fundamentally alters the professional relationship with clients/patients and changes the role of the professional from a caring role to a crime detection role thus making them a quasi-surveillance system. For victims of violence the importance of regaining control and autonomy over life decisions is critical to becoming free of violence and health professionals provide a vital link in the chain of support required to achieve this end.

It is the view of the AASW that the arguments ***for*** the introduction of mandatory reporting are not sufficiently compelling. They are contraindicated by the research evidence, which points to the negative impact upon the victims of violence and the occupational health and safety of the workforce and by the diminishment of a person's rights to self determination (as stated in the AASW Code of Ethics).

Further, it is the view of the AASW that the substantial additional financial resources required for the introduction of a mandatory reporting system are prohibitive and do not augur well for the intended objective of preventing death and/or serious injury.

This submission draws on evidence from the child protection and elder abuse debates to support our recommendations. Further, we argue that the tragic death of Jodie Palipuaminni highlights the failure of the criminal justice system to adequately protect rather than a failure of health care professionals to notify. We note that there are multidimensional and complex issues surrounding the area of domestic and family violence that require a whole-of-government cross sector response.

The AASW recommends that

1. The Northern Territory Government ***NOT*** amend the legislation to include the mandatory reporting of domestic and family violence by health professionals in the Northern Territory.

2. The Northern Territory Government proactively protect and strengthen the uniqueness of health as an entry point for victims by providing training and by strengthening referral pathways and the current level of care that extends to follow up support.

3. The Northern Territory Government upholds the existing legislation, policies and procedures and strengthens intervention and responsiveness through training**.**

4. The Northern Territory Government adopt of a whole-of-government approach to address the multidimensional and complex issues of domestic and family violence.

INTRODUCTION

The Australian Association of Social Workers (AASW) is the key professional body representing social workers throughout Australia. The AASW has a nationwide committee of experienced practitioners and scholars in the health care field who have participated in the development of this submission. One of the key roles of the AASW is to advocate on behalf of our members and the profession generally as social workers are a key part of the health care field. Another key role is to advocate for and on behalf of vulnerable groups in society.

The social work profession is committed to social justice, self-determination, human rights and the pursuit and maintenance of human well-being. As a profession, social work acknowledges that domestic and family violence is a serious and pervasive issue in Australian society, involving significant human rights violation and which is likely to affect nearly 1 in 3 Australian women during their lifetime [1, 2]. The consequences of violence include considerable personal costs to the victims (who are in the main women and children), in addition to the social and economic costs to the community, which are estimated to be in the billions of dollars per annum [3, 4 & 5].

The AASW commends the proactive approach of the Northern Territory's Department of Justice for exploring the suitability of mandatory reporting of domestic and family violence for health professionals and for its commitment to improve the Territory's response to the needs of victims of domestic and family violence. The AASW welcomes the opportunity to be able to contribute to this process through this submission.

DEFINITIONS OF DOMESTIC AND FAMILY VIOLENCE

It is widely acknowledged that definitions of what constitutes violence vary greatly [6, 7]. The terms used to describe violence in the literature cannot be used interchangeably as each is loaded with assumptions and is often defined differently. Weeks (2000:276) argues that

> Different terminology and concepts are not simply linguistic debates but contain different assumptions, perspectives and experiences and lead to different responses to the extent and nature of violence against women [8].

Understanding violence as a coercive control tactic in intimate and family relationships is critical to providing adequate responses to the issue. Debates continue between those who argue that violence is a coercive control tactic and those who argue that violence is a conflict tactic [9, 6]. From each of these conceptual understandings of violence, a vastly different community response emerges.

Research has found that while psychological and emotional abuse can occur without physical assault, the reverse is not the case. Where physical violence is used, psychological and emotional abuse is punctuated with physical force, assault and is often accompanied by sexual assault [10, 11].

It is noted that the Northern Territory Government has adopted a coercive control definition of domestic and family violence that incorporates a wider range of behaviours. To understand that coercive control violence is intentional and has purpose is critical to any debate about response and will be central to the AASW's position on the issue in question.

Many professional groups come into contact with domestic and family violence on a daily basis but health care has a special significance.

THE ROLE OF HEALTH PROFESSIONALS

Health care is a unique entry point for victims of violence, who can come in relative safety and access assistance should they choose. The Association highlights two key points about the unique role of health professionals:

Firstly, it has the protection of confidentiality (albeit limited) and the role of health care professionals is to provide care without prejudice. This allows victims to access confidential support and assistance, safely and without the knowledge of the perpetrator of the violence. The research evidence suggests that female victims of violence are

more likely to present to health care professionals than to call the police, following incidents of violence [11]. A change in this relationship is not only likely to disengage victims but to alienate them from health care. It is the view of the AASW that in many cases victims requiring medical assistance for injuries will choose to forego treatment for fear of these mandatory obligations.

Secondly, the AASW is concerned that if mandatory obligations were implemented the risk that health professionals would then become a quasi-surveillance profession rather than a helping profession would become a reality. This would dilute and diminish their primary role. Further it is critical to reflect on the issues raised where mandatory obligations already exist.

MANDATORY NOTIFICATIONS IN CHILD PROTECTION – LESSONS LEARNED

Mandatory reporting of child abuse has been implemented in all states and territories across Australia in a variety of forms [12]. Since the implementation of mandatory reporting legislation, there have been a number of studies critically analysing the impact of this legislation on the professional workforce and highlighting the low levels of such reporting [13, 14]. Two points of significance are highlighted by the research.

Low Levels of Reporting by Professionals

When asked about low levels of reporting professionals cite systemic failure; a lack of confidence in the system and the lack of clarity around what constituted sufficient evidence of abuse as key reasons for non-reporting [15]. Blaskett & Taylor (2003:5) found in their study on the facilitators and inhibitors of mandatory reporting of suspected child abuse that there were variations in reporting behaviours across different professional groups. Ten percent of professionals surveyed admitting to non-reporting [14]. The study found that most of the respondents feared recriminations resulting from notifications as a barrier to reporting [14]. Further, Blaskett & Taylor (2003:24-25) draw our attention to a range of studies both in Australia and overseas that highlight the difficulties rural communities face around the issue of mandatory notification & professional anonymity. This study builds on previous studies, which demonstrate that even with legislation compelling professionals to notify child abuse, compliance varied both across professional groups and metropolitan and rural communities. This raises questions as to whether mandating professionals to notify adequately, protects children.

Increase in Notifications

It has been reported that mandatory obligations have caused an exponential increase in notifications to the relevant state departments. Further, additional resources to respond to this increased demand have not been forthcoming to cope with the net widening effect this has had on service delivery, which has led to increased pressure on the existing workforce [13, 16 & 17]. A recent AASW submission on workforce issues in the field of child protection argues that due to high service demand the focus of service delivery has shifted to surveillance, hazard detection and risk assurance which has led to high workforce turnover in child protection services and a reduction in the systems capacity to respond proactively [13].

While many professionals agree mandatory notification for child abuse is a critical service in order to support and protect vulnerable children, who require the community to act [14], there are questions as to whether such a framework could work in an adult population where self determination is a fundamental human right.

MANDATORY REPORTING IN HEALTH CARE

Maltreatment of older adults is a serious issue for professionals working in aged care. This has resulted in the consideration of mandatory reporting obligations for health professionals with regard to elder abuse. Arising from this debate, The Elder Abuse Prevention Unit (EAPU) in Queensland issued a position paper articulating the Queensland Government's position on this issue. The AASW argues that the eight points raised as part of the EAPU's position paper should be taken into account in this current consultation for adult victims of violence.

The eight points are as follows:

- Current discussions around the introduction of mandatory reporting overlooks the fact that existing reporting systems and legislation are already in place.
- Service providers and Nursing Home staff have policies and procedures in place to guide safe work practices.
- It should be recognised that mandatory reporting will not necessarily enhance the initial detection of abuse.
- A mandatory reporting system, including the setting up of an adult protection service, will redirect resources away from addressing the problem of elder abuse.

- Mandatory reporting will adversely impact on Aboriginal and Torres Strait Islander Communities.
- There are significant negative implications for mandatory reporting on CALD communities.
- There is no convincing evidence that mandatory reporting creates better outcomes for older people living in the community.
- Potential to reinforce an ageist perception of older people as frail and unable to make rational decisions based on evidence [18].

The EAPU state that:

> *...the introduction of mandatory reporting denies the rights of seniors to make their own decisions, thereby reinforcing ageist stereotypes of all older people [18].*

While the EAPU have a clear position with regard to mandatory reporting obligations, it is important to note the issues raised in the debate for mandating professional groups.

ARGUMENTS FOR MANDATORY REPORTING FOR PROFESSIONAL GROUPS

Compelling professional groups to report any suspected domestic or family violence cases may force these professionals to take the issue seriously [11]. This viewpoint has been forwarded as evidence supporting mandatory reporting. The health system has been criticised for many years for ignoring, overlooking and dismissing disclosures of violence [19, 20, 21, 22&23].

The supporters also argue that it forces state actors to treat domestic and family violence in the same manner as they treat other crimes [11]. It is argued that the removal of discretion eliminates racial and other discrimination as it ensures that all perpetrators, regardless of race, are treated similarly [11].

It is the view of the AASW that it is vital that health professionals respond to cases of domestic and family violence. However, there is insufficient evidence to substantiate the proposal to compel health professionals to also embrace a regulatory role.

ARGUMENTS AGAINST MANDATORY REPORTING FOR PROFESSIONAL GROUPS

In no other area does the burden rest so heavily on the victim as it does in domestic, family and sexual violence crimes.

Mills (1999) asserts that there is insufficient evidence to support the claim that mandatory reporting by health professionals is effective in preventing future incidents of violence. In fact, it could be argued that given the violence is intentional as a means of gaining power and control over the victim, accessing health care where mandatory obligations are in place could then place the victim and the health professional at increased risk of retaliatory harm from the offender.

Occupational health and safety issues for staff

Workers in the area of domestic and family violence are all too aware of the personal safety issues relating to their work. Members of the AASW who are specialist practitioners have highlighted levels of risk for staff working in domestic and family violence specific services. Members have reported that specialised worker safety management training has been developed which include a range of worker safety protocols for the staff both at work and at home. This has been combined with workplace policies to assist in maintaining a safe work force in an attempt to minimise the risk of high worker turn over due to burnout [24]. Many workplaces have implemented the training in an attempt to lower the associated risk and to minimise worker compensation claims. While the training was helpful to staff in the metropolitan areas, implementing any risk minimisation and management strategies in rural and regional services was identified by staff as problematic due to the lack of anonymity of members in their local communities.

The AASW has concerns that there will be added risks for rural and remote health and allied health staff if mandatory obligations to notify become a requirement. This is primarily due to the high visibility and lack of anonymity of these staff in such communities. Lessons already learned from child protection reveal that where there is potential risk to themselves, professionals are likely to be non compliant [14].

Cost and resource issues

To adequately implement mandatory obligations in the health system as reported in S9 of the 'Discussion Paper' it is likely that millions of dollars will be needed to support the introduction of such a system (much of this has been identified in the dot points of

section 9). The AASW is concerned that the level of funding required will be substantive and that despite this, the intended objective of preventing death and/or serious injury will be no further advanced.

The AASW argue that the tragic death of Jodie Palipuaminni, as cited in the 'Discussion Paper', does *NOT* highlight a failure in the health system, but rather a challenge for the criminal justice system. It is noted that Jodie's partner was charged on four separate occasions and that criminal justice interventions alone, cannot guarantee a woman's safety.

The AASW acknowledges that addressing the multidimensional and complex issues surrounding domestic and family violence requires a coordinated and integrated response. Such a response should not be the burden of just one government department, but rather, a 'whole-of-government' approach should be explored more fully as discussed in point 7.1.of the Discussion Paper There are a number of examples on integrated 'whole-of-government' responses to domestic and family violence demonstrating a commitment to reduce family violence and aims to improve safety for all victims[1].

In addition to the potential increased risk of harm, occupational health and safety of the workforce and the prohibitive cost involved in implementation, the AASW would argue that mandating professionals has ethical implications.

THE ETHICS OF CARE

The AASW has a Code of Ethics for social work professionals which have enshrined the notions of human rights and self determination as core practice principles. There are many aspects of mandatory reporting, which are incompatible with the AASW Code of Ethics and Code of Conduct. These are detailed below:

4.1.1 *Respect for human dignity and worth*

c) Social workers will respect the right of individuals to make informed decisions about their own well-being and about service and resource alternatives.

4.2.1 *Priority of clients' interests*

[1] See Victoria's Statewide Steering Committee to Reduce Family Violence, co-chaired by the Office of Women's Policy and the Victoria Police; Duluth Minnesota USA & Hamilton New Zealand

a) Social workers will maintain the best interests of clients as a priority, with due regard to the respective interests of others.

4.2.3 *Client self-determination*

a) Social workers will promote the self-determination and autonomy of clients, actively seeking to enable them to make informed decisions on their own behalf.

d) Social workers will endeavour to minimise the use of legal or other compulsion. Any action which violates or diminishes the civil or legal rights of clients must be ethically, professionally and legally justifiable. Action of this kind should be taken only after careful evaluation of the situation and, if possible, in collaboration with clients and other professionals.

4.2.5 *Information privacy/ confidentiality*

a) Social workers will respect the right of clients to relationship of trust, to privacy and confidentiality of the information and to responsible use of information obtained in the course of professional service. This includes: determining to whom clients wish such information to be given or not to be given, and in what detail.

4.4.1 *Service provision*

d) Social workers should appropriately challenge, and work to improve policies, procedures, practices and service provisions which:

- Are not in the best interests of clients
- Are inequitable
- Are in any way oppressive, disempowering or culturally inappropriate
- Demonstrate unfair discrimination [25].

The AASW strongly opposes any legislation that has the potential to diminish the right to self-determination in an adult population. We encourage the Northern Territory Government to seek alternatives that actively strengthen self-determination in victims of domestic and family violence.

OTHER ISSUES

Would a mandatory report obligation assist victims of physical abuse who are too scared to report the abuse to Police or other agencies? Would this allow victims access to the relevant welfare and support systems that are available for victims of this type of crime? (Discussion Paper, Section 5.1, p9).

The central component of domestic and family violence perpetration is power and control over another. For the victim to move away from violence, it is well known that the regaining of personal power and control over their life and their decision making is critical [11, 26 & 27]. If the state were to act in a way that removed the power and control around decision making and autonomy for their own welfare from the victim, the state interventions then replicate the power and control the perpetrator exercises. This only achieves a shift in the centre of power and control from the perpetrator to the state. It in no way enhances or empowers a victim's sense of self determination, which the AASW believes is a core human right and fundamental in achieving ongoing and long lasting change in the victim's ability to reclaim their life.

CONCLUSION

The AASW is a key professional group in the delivery of health care in Australia and as such recognises the importance of community consultation where fundamental change is proposed. Our Association has welcomed the opportunity to consult our membership and to consolidate a clear position on this issue.

We have argued that power and control is central to definitions of domestic and family violence. As such, any response to victims requires support toward self determination rather than a coercive response of notification. Health care is a unique entry point for support for victims of violence. Any fundamental change to the professional relationship risks alienating the very group this proposed legislation seeks to assist.

This submission has drawn from research and the practice wisdom of our members to highlight the need to acknowledge the issues presented in the child protection and elder abuse debates around mandating professional groups as evidence questions the efficacy of such interventions. We have demonstrated that the arguments against mandating health professionals far outweigh the arguments for the introduction of the proposed changes. In addition, we have presented sections of the AASW Code of Ethics that are incompatible with this intervention strategy. As a result the AASW

strongly encourages the Northern Territory government to consider the overwhelming arguments put forward as reason **NOT** to amend the legislation to mandate health professionals to notify should they suspect or detect domestic and family violence in their adult populations.

RECOMMENDATIONS

The AASW recommends that

1. The Northern Territory Government ***NOT*** amend the legislation to include the mandatory reporting of domestic and family violence by health professionals in the Northern Territory.
2. The Northern Territory Government proactively protect and strengthen the uniqueness of health as an entry point for victims by providing training and by strengthening referral pathways and the current level of care that extends to follow up support.
3. The Northern Territory Government upholds the existing legislation, policies and procedures already in place and viewed as adequate, and which assist professionals to fulfil their duty of care to notify police when confronted with domestic and family violence.
4. The Northern Territory Government adopt of a whole-of-government approach to address the multidimensional and complex issues of domestic and family violence.

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