Health Justice Australia

Health, justice and ageing

Health Justice Australia legal practitioner roundtable

21 February 2018

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Health justice partnerships

A quiet revolution is taking place across Australia that is transforming the way some of the most vulnerable in our community access legal services.

In a practitioner-led movement, community lawyers have been moving out of their offices and into the most unlikely of places – hospitals and community health settings – to collaborate with health services and their patients to address unmet, health-harming legal need.

Known as health justice partnerships, these collaborations work by embedding legal help into healthcare services and teams. They have formed in response to a growing body of evidence that shows there are groups of people who are vulnerable to intersecting legal and health problems, but who are unlikely to turn to legal services for solutions.

Over one-fifth of people in Australia experience three or more legal problems in a given year (Legal Australia Wide survey, Law & Justice Foundation of NSW 2012). People often report multiple legal problems and these problems tend to cluster – such as family breakdown and money issues or problems centred around poor quality housing.

One in five of the most disadvantaged in our community take no action in response to their legal problems, for reasons including not recognising the issue as a legal problem, stress, time, cost, fear of damaging relationships and having bigger problems to deal with. When people do seek advice, they are more likely to ask a non-legal advisor, such as a health professional, than a lawyer. That's why health justice partnerships make so much sense.

Health justice partnerships support populations that are particularly at risk of poor health, unmet legal need and difficulty accessing legal help, like people experiencing family violence, people at risk of elder abuse, Aboriginal and Torres Strait Islander people and people experiencing poverty.

Health justice partnerships provide legal support across a wide range of needs, such as:

- Advocating for public housing tenants needing repairs, such as removing mould, or having handrails and other aids installed to continue living independently in their own homes
- Assisting people with accumulated fines or debt that cause stress or act as a barrier to meeting health costs like filling prescriptions
- Advising on wills, powers of attorney and custody – the legal needs that can present at the most unexpected times, like following a diagnosis of serious illness.

Helping Mary live independently

Mary is an elderly woman with diabetes and some mobility issues. She lives independently at home, but struggles with the stairs.

An occupational therapist recommended a handrail be installed, but her landlord, a public housing authority, took no action. Mary fell at home and was taken to hospital.

Luckily for Mary, the hospital has a health justice partnership with a local community legal centre, so a community lawyer works in the hospital to help patients with their legal needs that also impact their health. The lawyer wrote immediately to the housing authority to point out its legal obligation to make minor modifications in Mary's home.

Four days later the handrail was installed and Mary could be discharged to return to living independently (and safely) at home.

About Health Justice Australia

Health Justice Australia is the national centre for health justice partnership. This national charity was established in 2016 in response to the growing interest in collaboration to better meet health and legal need.

Health Justice Australia supports the expansion and effectiveness of health justice partnerships through:

- Knowledge and its translation: developing evidence and translating that evidence into knowledge that is valued by practitioners, researchers, policy-makers and funders.
- Building capability: supporting practitioners to work collaboratively, including through brokering, mentoring and facilitating partnerships.
- Driving systems change: connecting the experience of people coming through health justice partnerships, and their practitioners, with opportunities for lasting systems change through reforms to policy settings, service design and funding.

Health justice partnerships embed legal help into healthcare services and teams to improve health and wellbeing at individual, service and systemic levels

Health, justice and ageing roundtable

On 21 February 2018, Health Justice Australia convened a roundtable on health, justice and ageing. Participants were drawn from community legal services within Health Justice Australia's network that were experienced in providing services to meet the legal needs of older people.

The roundtable was designed to inform Health Justice Australia's strategy for supporting approaches on evaluation, policy design and service expansion in the interests of effectively meeting the legal needs of older people, including those experiencing elder abuse. Key issues discussed at the roundtable included:

- **Knowledge and its translation**: What do we know about the extent of unmet legal need among older people and the service models already operating to meet that need?
- **Building capability**: To what extent can we examine the effectiveness of existing models to meet complex legal and health needs among older people?
- **Driving systems change**: What are the barriers to service effectiveness and expansion to better meet the legal and health needs of older people, particularly where those needs are complex or compound?

This report outlines the issues identified during the roundtable.

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The legal needs of older people

As our population ages, it is likely that the impact of older people's vulnerability to unmet legal need and poor health will also increase. Relevant issues might include:

- the impact of increased isolation and/or dependency on others
- the impact of growing rates of chronic illness and disability
- the way that legal need can compound and be compounded by poor health or other circumstances of life
- the likelihood that existing gaps in service effectiveness will be exacerbated, especially for people who are hard to reach and experience complex needs.

Consequently there is a growing need to ensure that health, legal and other service infrastructure is capable of identifying and meeting the needs of older people, particularly those vulnerable to legal need.

The vulnerability of older people to complex legal need has been targeted by the work of health justice partnerships particularly in relation to elder abuse. Health justice partnerships have been found to provide 'improved capacity to identify and assist' people experiencing elder abuse, through the integration of a lawyer within a healthcare setting (Justice Connect, 2018. 'Working together: a health justice partnership to address elder abuse, year two interim report). Other legal services working in health justice partnerships are also exploring alternative models to meet the legal needs of older people broadly, through seniors law and seniors rights services.

In addition, health practitioners have sought out health justice partnerships because of their growing interest in bringing lawyers into care teams to address legal issues arising in the care and treatment of older people, beyond elder abuse. These issues include:

- advanced care planning and directives
- supported and assisted decision making
- end of life care and palliative care
- assisted dying legislation.

Is there a role for health justice partnerships to play in driving service effectiveness to meet the needs of older people, including ageing with dignity?

1. The legal needs of older people interacting with health services

Roundtable participants discussed a range of unmet legal needs already facing older people; what health justice partnerships and other service models were doing to meet these needs; and what role and capacity exists to build capability between different practitioners and service settings.

The range of legal and other needs that are being identified among older people accessing community legal services included:

- Elder abuse
- Care arrangements and decision making:
  - Wills
  - Guardianship
  - Powers of attorney
  - Advice about appointing a trusted person
- Contracts
  - Retirement contracts
  - Aged care contracts
  - Insurance (e.g. funeral insurance)
- NDIS

i. Complexity in model of funding

  - Only applies to approved NDIS patients
  - Issues with contracts and coverage of services
  - High levels of unmet legal need for people with disabilities

ii. Changing needs as population ages

The older we get, the more complex our needs e.g. changing nature of capacity; and changing wishes at end of life or in the face of options (and ongoing uncertainty) around assisted dying.

- Mobility: isolation due to,
  - physical needs/disability
  - geography
  - infrastructure or lack of it, e.g. walk-ins to legal services when older people don't have anywhere else to ask for help
  - reduced income, particularly for women with limited superannuation
- Housing
  - Evictions from housing
  - Homelessness, noting older women face increasing risk of homelessness
  - Social security (ie housing benefits)
  - Difficulty ensuring homes are appropriate, especially in public or rental housing, e.g. need for minor modifications for people to continue living independently in their own homes
- Social security, particularly pensions
- Finances:
  - Credit and debt issues
  - Independence for people (particularly women) over 70 who haven't had control of their own finances previously
- Digital inclusion
  - Ability to interact with mygov and digital information
  - Flow-on effect when people have problems with internet usage, connection and security
  - Need for building skills in tech use
- Specific needs of particular populations are not necessarily well-met by mainstream services, including for Aboriginal and Torres Strait Islander communities; lesbian, gay, bisexual, transsexual, queer and intersex people and culturally and linguistically diverse communities.

2. System drivers

Discussion explored how system drivers might create a different set of interests between older people and those caring for or accommodating them.

- Is health justice partnership a useful model to assist health professionals/services, when the legal needs of a health service may differ from the legal needs of its patients or their carers?
    - It is challenging for lawyers working in health settings when a health professional says, 'can you confirm if this person has capacity' or 'can you validate their power of attorney/advanced care directive etc?' There aren't definitive rules about capacity; lawyers struggle with interpretation in the same way health professionals do.
    - HJP lawyers are there to meet patient needs, not those of the health professionals or service, particularly when they might be at odds. While a health justice partnership might provide a framework to address such tensions collaboratively, stand alone or in-house legal advice might be needed in some cases.
    - Some of these challenges can be addressed through community legal education or other ways of lawyers training health professionals collectively.
- How do we advance the needs of particular groups within an ageing population? These groups include:
    - Older people within Aboriginal and Torres Strait Islander communities who can be particularly targeted by predatory practices of insurance providers (such as for funeral insurance); and by institutional racism.
    - LGBTIQ+ groups who can be particularly effected by lack of visibility or social isolation; and by stigma or discrimination within institutional settings or services.
    - Women, particularly given the heightened risk of homelessness for older women.
- Elder abuse is poorly/narrowly understood; as are its broad ramifications compared to what is commonly defined by funders or in policy settings.
    - Elder abuse can be hidden; there are many forms that we don't see.
    - Often the only pathway to addressing elder abuse is through a trusted healthcare setting, where people at risk of or experiencing elder abuse are away from those exerting control over them (family/friend/carer).
    - Age discrimination is often a factor; it may not cause the abuse, but it does cause vulnerability to it.
    - Where abuse is being addressed, it is usually restricted to individual abuses (e.g. by a family member, friend or carer) but not to institutional abuses (e.g. financial abuse by an accountant, lawyer, or aged-care home).
    - There is limited scope for prevention and early intervention activity within existing funding and policy frameworks.
- Related, contractual arrangements in aged-care packages can create challenges.
    - Housing and aged-care providers can be difficult settings in which to address elder abuse, especially if the service provider has a conflict of interest in terms of being the employer of people committing abuse, or is in a contractual arrangement with a family member or carer who is also the perpetrator.
    - How to protect, guard and respect the dignity of older people in the service system.

3. Service models

Key challenges in advancing innovative service models to meet the legal needs of older people include:

- Whether preventive work sits in the scope of funded work.
    - If funding includes people 'at risk of abuse', that should cover preventive approaches.
    - Some services find scope in their generalist civil law programs to undertake preventative work.
- Eligibility: May be determined via means testing, other methods of prioritisation, or not at all (as is currently the case for domestic and family violence services).
- Location of service setting: Can be helpful to see people in their own home, especially in cases of elder abuse, because that's where 'cracks can start to show'. However, home visits are an expensive model.

The challenges in choosing service models were summed up by one participant commenting, 'the model has to fit the community, not the other way.'

4. Issues raised for evaluation

The lack of an evidence base around elder abuse and the broader legal needs of older people was affirmed.

- There is a need for outcomes measures. Evaluation needs to engage with the multi-faceted and complex realities of elder abuse and the legal needs of older people; and of the collaborative approach that underpins health justice partnerships and other integrated responses.
- There is a need for a shared language around the nature of the problems we are trying to solve and the different service models to solve them.
- Funders/funding constraints can lead to service narrowing, e.g. 'we could address that legal problem, but we aren't funded to do it.'
- There are gaps in referral pathways: Who will take on a particular issue when there is no one funded to do it? There is also a need for greater clarity about referral pathways.
- There is a need for information from people working in integrated practice: what's happening elsewhere/what is happening differently?
- There is a need to define the population, e.g. in elder abuse, we need research about the population needs and then also about sub-groups within it, e.g. Aboriginal communities or people experiencing family violence.
- Classifications differ, e.g. 65 and over or 60 (or 55/50 for Aboriginal and Torres Strait Islander people).

5. Other relevant agencies and interests

A range of organisations are relevant to any effort to improve service responses to the health and legal needs of older people. Some of these are already working with older people as a priority or target population, such as elder persons and seniors rights services. Beyond this, there is a range of other service and representative organisations that are likely to come into contact with older people who are vulnerable to legal need and its impact on their health. These include community legal services and private practitioners engaged in the provision of pro bono legal services; housing services (including residential parks); border or lodger associations and tenancy services; social services such as family mediation centres; health services and representative bodies such as Cancer Council, Dementia Australia and palliative care advocacy groups; residential and community based aged care services and disability services including the National Disability Insurance Agency and the many services funded through NDIS packages.

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Health Justice Australia ABN 55 613 990 186

Health Justice Australia acknowledges the Traditional Custodians of the lands on which we work, and pays respect to Elders past, present and emerging.