



**Submission to the
Australian Human Rights
Commission
consultation: Youth
Justice and Child
Wellbeing Reform across
Australia**



30 June 2023

Health justice partnerships

Health justice partnerships (HJPs) embed legal help into health care services and teams to improve health and wellbeing for:

- individuals, through direct service provision in places that they access
- people and communities vulnerable to complex need, by supporting integrated service responses and redesigning service systems around client needs and capability
- vulnerable populations through advocacy for systemic change to policies which affect the social determinants of health.

HJPs support populations that are particularly at risk of poor health and justice outcomes, like people experiencing domestic and family violence, people at risk of elder abuse, Aboriginal and Torres Strait Islander people, culturally and linguistically diverse communities and people experiencing poverty and inequality.

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

- Advocating for public housing tenants needing repairs to address untreated 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; and
- 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.

These are just some of the many legal issues that people can face in life. By integrating legal services into health settings, we can improve access to justice, address the social determinants of health and increase wellbeing.

Health Justice Australia

Health Justice Australia is a national charity and centre of excellence supporting the effectiveness and expansion 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.

About this submission

Health Justice Australia welcomes the leadership of The National Children's Commissioner in initiating this project to investigate opportunities for reform of youth justice and related systems across Australia.

Our submission focuses on the opportunities for early support to tackle the intersecting health, legal and other problems that often drive notifications to the child protection system, and the flow on consequences in terms of people who have interacted with child protection being at heightened risk of interacting with juvenile justice.

As a centre of excellence for health justice partnership, this submission is informed by insights and evidence from our work with a national network of services and practitioners across health, legal and social sectors.

Whilst the law, and accessible legal assistance, play a critical role in protecting the rights of young people interacting with youth justice systems, health justice partnership more commonly responds to the upstream issues associated with poverty and complex disadvantage for families and children. These issues are often underlying drivers of interaction with systems such as child protection and out of home care, which in turn set the trajectories of many young people into youth justice.

In response to the project questions, this submission draws on recent work undertaken by Health Justice Australia, which looks specifically at the potential of legal assistance, through health justice partnership, as **early support** for children and families at risk of interaction with child protection systems.

The key findings from this work are summarised in this submission, with a Health Justice Australia insights paper *Health justice partnership as early support for children and their families*, due for publication in July 2023.

Unmet legal need in families, and the impact on children and youth

There is well-established evidence around environmental and social factors that drive poor health and wellbeing outcomes for children and their families.¹ These social determinants include complex and intersecting issues, such as poor-quality housing, barriers to education, unstable or insecure work, and family breakdown.

Legal need and access to justice data tells a similar story around the clustering of complex legal and social issues, most prevalent among people experiencing social disadvantage. A 2012 national survey of legal need in Australia² found that over one-fifth of people experience three or more legal problems in a given year. The experience of this legal need was found to be concentrated among certain groups, particularly those with chronic ill-health or disability, single parents, the unemployed and people in disadvantaged housing. With each additional indicator of disadvantage, the average number of legal issues experienced in a year also increases. Legal needs research also demonstrates how legal problems cluster together and with other life issues. For instance, women experiencing domestic and family violence are sixteen times more likely to experience family law issues, but also three times more likely to have problems related to employment, finances, government payments, health, housing, personal injury and rights issues, and criminal law.³

Broader evidence around child protection, out of home care and youth justice demonstrates the implications of compounding health, social and legal issues on children and young people. Issues such as domestic and family violence, alcohol and other drugs, and mental health increase a family's risk of interaction with child protection systems.⁴ Child protection interaction is intergenerational, with 1/3 of children in the child protection system having parents who have themselves been through child protection⁵. Children known to child protection are overrepresented in the youth justice system, with 38% of children sentenced or diverted in the Victorian Children's Court having been known to child protection.⁶ Mental health and disability is disproportionately seen across children who have contact with child protection services⁷, young people in the justice system⁸ and adults entering prison.⁹

¹ World Health Organization Commission on Social Determinants of Health, Closing the gap in a generation: Health equity through action on the social determinants of health, World Health Organisation (Geneva, 2008).

² C Coumarelos et al., Legal Australia-Wide Survey: Legal need in Australia (Sydney: Law and Justice Foundation of NSW, 2012), [http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)

³ Coumarelos, C (2019) Quantifying the legal and broader life impacts of domestic and family violence, Justice Issues 32, Sydney, Law and Justice Foundation of NSW

⁴ Australian Institute of Family Studies. (2017). Risk and protective factors for child abuse and neglect [CFCA Resource Sheet] [Risk and protective factors for child abuse and neglect | Australian Institute of Family Studies \(aifs.gov.au\)](https://aifs.gov.au/risk-and-protective-factors-for-child-abuse-and-neglect).

⁵ NSW Department of Family and Community Services (FACS). (2017). The prevalence of intergenerational links in child protection and out-of-home care in NSW [FACSAR Brief]. https://www.facs.nsw.gov.au/_data/assets/pdf_file/0016/421531/FACS_SAR.pdf cited in *Health justice partnership as early support for children and their families*, Health Justice Australia (2023) forthcoming.

⁶ Sentencing Council of Victoria. (2019). Crossover Kids: Vulnerable Children in the Youth Justice System Report 1. <https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-youth-justice-system-report-1-xx> cited in *Health justice partnership as early support for children and their families* Health Justice Australia (2023) forthcoming.

⁷ Green, M. J., Hindmarsh, G., Kariuki, M., Laurens, K. R., Neil, A. L., Katz, I., Chilvers, M., Harris, F., & Carr, V. J. (2019). Mental disorders in children known to child protection services during early childhood. *Medical Journal of Australia*, 212(1), [online]. <https://doi.org/10.5694/mja2.50392>

⁸ Australian Institute of Health and Welfare 2020. Australia's children. Cat. no. CWS 69. Canberra: AIHW. [Australia's children, Children under youth justice supervision - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://aifs.gov.au/children-under-youth-justice-supervision) accessed 24 June 2023

⁹ Australian Institute of Health and Welfare 2022 [Health of prisoners - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://aifs.gov.au/health-of-prisoners) accessed 24 June 2023.

The justice system and the role of legal assistance

When considering youth justice reform, advocacy and investment commonly focuses on criminal justice; police, courts, community supervision, and youth detention. There is undoubtedly systemic and structural reform required in a criminal justice system that is increasingly punitive and discriminatory against many young people in our community.

The role of the law, and accessible and appropriate legal advice and assistance, is critical to protect and promote the rights of young people interacting with criminal justice systems and processes. There are also programs that work to divert young people from the criminal justice system, drawing on collaborative and community led approaches with services that sit outside ‘justice’, such as education, health and social services.¹⁰

As evidenced in the data, criminal justice interaction is a symptom of, and contributor to, childhood adversity, and the youth justice system is a function and consequence of structural drivers and systemic biases across different services and systems.¹¹ Across these services and systems that sit outside criminal justice, access to legal assistance can play a significant role in individual and family outcomes.

For example, family and civil law outcomes and processes can have major implications (both positive and negative) for parents and children across all aspects of life, from housing and safety, to parenting and family stability. In addition to lawyers assisting individual clients, legal advocacy around policy and law reform can have population level impact, such as the recognition of family violence as relevant in family law proceedings, including in relation to child custody decisions.

But, whilst the law has the potential to uphold and defend the rights of families and children, this assumes that legal help is accessible to people when and where they need it.

Early support for children and families

Child protection systems across Australia aim to protect children at risk of abuse and neglect. Yet these systems are not working. *Safe and Supported: The National Framework for Protecting Australia’s Children 2021-2031*¹² identifies key focus areas for reform, including a national approach to ‘early intervention and targeted support’, also known as ‘early support’. This focus area recognises that the best way to protect children is to prevent child abuse and neglect from happening in the first place by

‘In the context of child protection, early intervention’ or ‘early support’ is often defined in relation to the timing of the statutory child protection process. However, ‘early’ in a statutory child protection process may be ‘late’ in the progress of underlying issues for families (Forell 2015). In addition to child protection processes, families may also have a range of other complex legal issues (such as family law of family violence). Rather than focusing on ‘early support’ solely in relation to the timing of the statutory child protection process, we propose ‘early support’ in a broader sense of responding to the early signs of a problem and intervening before a problem grows or gets worse’.

Health justice partnership as early support for children and their families Health Justice Australia (2023) forthcoming

¹⁰ For example, Justice Reinvestment, see [home - Just Reinvest NSW Inc](#)

¹¹ Forell, S (2023) Adversity Symposium: policy, research and service priorities for Australia (forthcoming)

¹² Australian Government. (2021). *Safe and Supported: The National Framework for Protecting Australia’s Children 2021-2031*. <https://www.dss.gov.au/the-national-framework-for-protecting-australias-children-2021-2031> p.16

providing ‘families with the assistance they need before they come into contact with the statutory child protection system’.¹³

Governments have invested in early support programs, including through ‘family support services’ designed to build the capacity of parents and families. There are however multiple pathways to support for families, including through universal services such as health care and educational settings where complex issues in the lives of families can be recognised and responded to as a collaborative prevention and early intervention system.¹⁴

A gap in most family support services, and in the policy directions around early support, is the role of legal help. Legal help given before child protection processes have begun, can help to educate and inform families around the importance of acting on risk factors that may give rise to child protection concerns (such as family violence, mental health or homelessness), and assist families with practical intervention on legal issues related to these risks. Legal assistance can help to address the imbalance of power for families, recognising that statutory child protection processes are legal processes that are categorised by ‘a dramatic power imbalance between the state and people who already face significant barriers to justice’.¹⁵

Health justice partnership as an early support strategy could prevent children entering youth justice

Health justice partnership (HJP) is a response to the body of evidence around unmet legal need, as well as the evidence on the social determinants of health. These partnerships embed legal help in health care settings and teams, to address unmet legal need for those who are vulnerable to intersecting legal and health problems, but who are unlikely to turn to legal services for solutions. There are currently 105 justice services in Australia that combine legal assistance and health and other forms of social support, including formalised partnerships, outreach, integrated services and service hubs. A number of health justice partnerships specifically support young people, including in criminal justice processes.¹⁶

Most health justice partnerships are between legal and health and other social services and operate in diverse settings that are likely to encounter child protection issues, for example in hospitals, child and family centres, community health centres, drug and alcohol services, maternal and child health services, and Aboriginal community-controlled health organisations. Partnerships may target certain kinds of issues in response to community need (for example, family and domestic violence) or clients (for example, people experiencing economic disadvantage), but commonly they all seek to identify and respond to legal needs that intersect with health and other social issues.

Health justice partnership is well placed to address the complexity experienced by families and their children at risk of interacting with child protection systems. As noted above, child protection concerns often co-occur with domestic and family violence, alcohol and other drug issues, and mental health issues, and there are often multiple risk factors involved. These are the contexts in which health justice partnerships already operate. Health services and maternal and child health settings are also obvious potential sites for early support and legal intervention, being common sources of notifications. In a 2019

¹³ The Allen Consulting Group. (2008). Inverting the pyramid—Enhancing systems for protecting children. Australian Research Alliance for Children & Youth [Publications and Resources - Australian Research Alliance for Children and Youth \(ARACY\)](#)

¹⁴ *Health justice partnership as early support for children and their families* Health Justice Australia (2023) forthcoming

¹⁵ Carmody, T. (2013). Taking responsibility: A Roadmap for Queensland Child Protection. Queensland Child Protection Commission of Inquiry. [Publications - QCPCI \(childprotectioninquiry.qld.gov.au\)](#) p.455.

¹⁶ Health Justice Australia. (2022). Health justice landscape [Snapshot]. [November 2022 Health justice landscape report](#)

census, 31% of health justice partnerships identified the care and protection of children as one of their most common legal issues, with this being especially common for partnerships targeting family and domestic violence.¹⁷ Evidence from health justice partnerships across the country demonstrates that this collaborative service approach is already working to provide children and their families with early support in the contexts where child protection concerns are likely to arise. Health justice partnerships:

- Provide information and advice about child protection processes and the rights of clients
- Support families to access relevant services such as safe housing and drug and alcohol treatment
- Support and advocate for their clients in their interactions with the child protection system and other legal processes
- Reconnect people into health services and settings, especially where previous interactions may have fractured trust or confidence in those services, including under mandatory reporting requirements.

Health justice partnerships can provide holistic support in a timelier way, where the role of legal help may not necessarily be recognised or provided by family support services. For example, where a health practitioner may identify risk during pregnancy, they can work with a lawyer to engage their client to address these risks before child protection services become involved. Health justice partnerships have been found to strengthen the capacity of clients, practitioners and systems, through:

- Empowering clients to know and understand their rights and helping health staff to understand and advocate for their patients.
- Building the capacity and capability of both health and legal practitioners through a mix of training, informal interaction and secondary consultation
- Building trust between service providers and facilitating client-centred collaborative services responses.¹⁸

The potential for reform

Health justice partnership offers a promising approach to incorporate legal assistance into early support for children and their families, with a focus on restoring the health, justice and wellbeing of people who already (or are likely to) engage with the child protection system. This collaborative service approach provides the opportunity to remedy gaps in access to timely legal assistance, through health and other social services pathways where parents are engaged and seeking support. Health justice partnership can also help to address the complexity that emerges when multiple services are responding to issues that drive child protection concerns. If we reduce pathways into the child protection through primary prevention, we can anticipate a reduction in the consequent flow of these same children and young people into the juvenile justice system.

Whilst there is more to learn around the potential and long-term outcomes of health justice partnership, we recommend that the Commission consider the role of legal help as part of 'early support' for families. Legal help alone cannot address the complexity of issues in the lives of families at risk of interaction with child protection systems, but by enabling earlier access to legal assistance to those who may not seek, or have access to that support, there is the opportunity to centre the wellbeing of children and families in service responses and identify and tackle issues before they become crisis.

¹⁷ Health Justice Australia. (2019). *Joining the dots: 2018 census of the Australian health justice landscape*. <https://healthjustice.org.au/?wpdmdl=3069Download>

¹⁸ *Health justice partnership as early support for children and their families* Health Justice Australia (2023) forthcoming



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