cohealth

justice connect
Seniors Law

ALRC elder abuse inquiry: health services

joint submission by cohealth and Justice Connect seniors law

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Melbourne Office
PO Box 16013
Melbourne VIC
Tel +61 3 8636 4400
Fax +61 3 8636 4455
justiceconnect.org.au/seniorslaw

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Faith Hawthorne
Lawyer
Justice Connect Seniors Law
Tel 03 8636 4416
Fax 03 8636 4455
faith.hawthorne@justiceconnect.org.au

Debra Barrow
Senior Manager, Better Health Outer West, FV and EADC
cohealth
Tel 03 8398 4154
debra.barrow@cohealth.org.au

Melbourne Office
PO Box 16013
Melbourne VIC
Tel +61 3 8636 4400
Fax +61 3 8636 4455
justiceconnect.org.au/seniorslaw

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recommendations

Question 35: How can the role that health professionals play in identifying and responding to elder abuse be improved?

recommendation 1: fund the development of an evidence-based PD program for health professionals. This would build on the Victorian Government's guidelines, With respect to age (2009)

recommendation 2: allocate dedicated funding to develop and implement the necessary elder abuse frameworks, build workforce capacity, support assessment and referral practices, and establish strategic partnerships

recommendation 3: establish an online directory of community services to complement existing family violence, aged and disability networks

recommendation 4: integrate dedicated culturally and linguistically (CALD) community workers within or be available to health services

Question 37: Are health-justice partnerships a useful model for identifying and responding to elder abuse?

recommendation 5: fund the establishment of HJPs to identify and respond to elder abuse

introduction

Justice Connect Seniors Law and cohealth welcome the opportunity to make a submission to the Australian Law Reform Commission's inquiry into elder abuse.

Our extensive experience working together with older people who are experiencing elder abuse has informed this submission.

the partners

Justice Connect Seniors Law

Justice Connect exists to help build a world that is just and fair – where systems are more accessible and accountable, rights are respected and advanced and laws are fairer

In pursuing this vision, Justice Connect:

- provides access to justice through pro bono legal services to people experiencing disadvantage and the community organisations that support them
- builds, supports and engages a strong commitment to lawyers' pro bono responsibility
- challenges and changes unjust and unfair laws and policies, using evidence from our case work and the stories of our clients to bring about reform
- undertakes legal education and law and policy reform aimed at improving access to justice

A team of Justice Connect, **Seniors Law** provides free legal help to older people experiencing elder abuse and other legal issues associated with ageing

Seniors Law provides free legal help to older people who are unable to afford a lawyer. Legal services are provided by Seniors Law lawyers and pro bono lawyers from Justice Connect member law firms.

The objective of Seniors Law is to improve the ability of older Victorians to age with dignity and respect.

As Seniors Law can draw on the capacity and resources of pro bono lawyers, we can assist older people with these extremely complex matters that can involve extensive negotiations and protracted higher court litigation.

collaboration with the health sector

In delivering its service, Seniors Law has developed a close connection with the health sector over 7 years.

Initially, pro bono lawyers provided free legal appointments at hospitals and health centres across Melbourne. Complementing this, Seniors Law delivered training on elder abuse and other legal issues associated with ageing to health and community professionals as well as its pro bono lawyers. These sessions aimed to increase the capacity of health professionals and pro bono lawyers to work with older people experiencing abuse.

However, co-located legal clinics and ad hoc training sessions did not necessarily translate into enduring relationships with different professionals and the necessary change in practice to address elder abuse. We were not reaching the clients we were trying to assist early enough or at all.

Available literature and experience from the USA indicated that a more integrated service, like a health justice partnership (**HJP**), could achieve better health and legal outcomes for clients.

Justice Connect has now established a HJP with cohealth (the **community HJP**) as well as with St Vincent's Hospital Melbourne (the **hospital HJP**). Building on the findings from these HJPs, Justice Connect has received funding to develop HJPs in Victoria - at Caulfield Hospital - and in NSW.

The Victorian Legal Services Board + Commissioner has generously funded the HJP with cohealth for three years, and La Trobe University is generously undertaking an evaluation of the partnership on an in kind basis. The Department of Health and Human Services and Victoria Legal Aid, through Seniors Rights Victoria, and St Vincent's Health Australia have contributed funding to the HJP with St Vincent's Hospital Melbourne (**SVHM**).

In expanding the service, generous funding has been provided by Equity Trustees and the Department of Family and Community Services New South Wales - to establish a HJP addressing elder abuse in NSW - as well as Perpetual Trustees for a 12 month pilot HJP with Alfred Health at Caulfield Hospital.

cohealth

cohealth, previously Western Region Health Centre, hosted one of Seniors Law's clinics.

cohealth is a rights-based community organisation of more than 850 staff, delivering health services from over 40 sites across 14 local government areas in northern and western metropolitan Melbourne.

Each year cohealth delivers almost half a million medical, dental, mental health, allied health, and community support services to over 110,000 people. At the core of these services are principles of human rights, client participation in the design of services and a social model of health.[1]

cohealth is an ideal partner for a HJP because of its commitment to social justice and human rights.

For example, cohealth is committed to:

- identifying, building and strengthening strategic partnerships that support cohealth's work across service types and settings
- strengthening an understanding of the relationship between inequity, the social determinants of health and health outcomes
- creating a stronger voice in public debates that can be a catalyst for health equity and system reform
- cultivating innovative practice

The partners found that a culture that recognises the importance of collaboration to address complex social determinants of health on both an individual and systemic level is ideal when trying to integrate a legal service into a health care setting.

cohealth is also recognised for its capacity to work with groups and communities who are often regarded as hard to reach and difficult to service. This is consistent with Justice Connect's priority to improve access to justice for people facing disadvantage, especially those in culturally and linguistically diverse (**CALD**) communities.

[1] 'cohealth strategic plan 2015-2018' (Strategic Plan, cohealth) 4.

health services

Question 35: How can the role that health professionals play in identifying and responding to elder abuse be improved?

Given the sensitivities and complexities associated with elder abuse, and a reluctance to disclose it, trusted health professionals are in an ideal position to identify elder abuse. However, health professionals' ability to address suspected or disclosed abuse may be limited.

Drawing on our collective experience as health and legal organisations working together to address elder abuse, we recommend the following strategies to support the important role health professionals play in addressing elder abuse:

- building capacity with ongoing professional development (PD), complemented with the availability of secondary consultations with a lawyer
- establishing a model of care and a governance structure to underpin a whole-of-organisation response to elder abuse
- dedicating resources to screening, risk assessment and immediate response
- funding the expansion of HJPs to provide a more client-centred response to elder abuse
- promoting better awareness of local services through local networks and up-to-date service mapping
- integrating dedicated culturally and linguistically (CALD) community workers within or be available to health services

the role of trusted health professionals

Our experience suggests people are more inclined to seek treatment for the physical or social impact of elder abuse – outlined in the table below – rather than speak to a lawyer about the cause – a family conflict or concerns about substitute decision-makers.

impact of elder abuse [2]
depression and anxiety
psychological harm
declining physical health compounded by a decrease in resources available for healthcare
increased mortality
relocation to an aged care facility
fear and lack of trust
poverty and homelessness
behavioural problems

Given the sometimes subtle nature of elder abuse and a reluctance of those experiencing the abuse to disclose it, trusted health professionals are in the best position to identify elder abuse.

Almogue *et al* agree, concluding health and community professionals are generally best placed to assist older people experiencing elder abuse:[3]

> *"It is generally agreed that the healthcare team plays an important role in identifying, reporting and preventing elder abuse, particularly physicians and nurses as they are best placed to recognise these cases since most elderly people trust them."*

The time spent with clients and the range of questions asked when undertaking assessments, means that trained health professionals also have an opportunity to look beyond the presenting issue to identify risks and signs of abuse. Often they have developed an ongoing relationship of trust, making clients feel more comfortable disclosing what is going on at home.

Further, in relation to any legal problem, not just elder abuse, nearly 30% of people will initially seek

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[2] Peteris Darzins, Georgia Lowndes and Jo Wainer, 'Financial abuse of elders: a review of the evidence' (Protecting Elders' Assets Study, Monash University Medicine, Nursing and Health Sciences, June 2009) 8, 12, 18; Claudia Cooper, Amber Selwood and Gill Livingston, 'Knowledge, Detection, and Reporting of Abuse by Health and Social Care Professionals: A Systematic Review' (2009) 17(10) *The American Journal of Geriatric Psychiatry* 826-838, 827.

[3] A Almogue et al, 'Attitudes and knowledge of medical and nursing staff toward elder abuse' (2010) 51 *Archives of Gerontology and Geriatrics* 86.

the advice of a doctor, or another trusted health professional or welfare adviser.

If any potential legal risks are identified, health professionals can raise the possibility of getting legal help earlier on, thereby increasing the possibility of resolving the legal matter.

Due to the barriers to disclosure, some legal issues arising in the context of elder abuse can remain unresolved for extended periods of time. Generally, it is only when significant consequences transpire – such as the sale of the family home – that the older person seeks help. At this stage the legal avenues to resolve the matter, if any, can be lengthy, stressful and costly.

Therefore, lawyers not only rely on health professionals to identify abuse, but also to help support clients while they are seeking legal help.

barriers to addressing abuse

Elder abuse can be subtle and, without disclosure, may be difficult to detect. Health professionals may be constrained in their ability to address elder abuse, citing the following reasons for this:[4]

factors constraining health professionals' identification of, and response to, elder abuse
limited consensus and understanding of what constitutes elder abuse
lack of knowledge of reporting or referral frameworks
concerns about confidentiality
concerns referral may compromise therapeutic relationships
consequences for the older person
impact of the legal process on the older person
reluctance to become involved in legal process
outside scope of professional responsibility
dissatisfied with authorities response to elder abuse
lack of conviction that referral would improve outcomes
older person has denied mistreatment
abuse only involved subtle signs
difficulties in obtaining necessary evidence

Lynette Joubert and Sonia Posenelli provide an insight into how health care professionals may try to assist an older person experiencing elder abuse:[5]

> *"The complexity of family relationships and dependency issues surrounding suspected elder abuse of the aged are subtle and can make detection and referral difficult. Substantiating and gathering information may need to be done over time and involve multiple community contacts and resources. There is always a need to proceed with investigations of [elder abuse] very carefully and where possible involve other health care professionals, drawing on their perceptions, judgement and experience...Health care providers may not have the confidence, compounded by a lack of professional expertise, to take the matter further."*

The World Health Organisation (**WHO**) also recognises the important role of health care professionals in recognising elder abuse as well as the constraints on their ability to do so:[6]

> *"Primary health care workers have a particularly important role to play as they deal with cases of elder abuse regularly –although they often fail to recognise them as such."*

overcoming barriers

Drawing on our collective experience as health and legal professionals working together to address elder abuse – through outreach and, now, through HJPs – we recommend the following strategies to support the important role health professionals play in addressing elder abuse.

professional development

One of the key factors constraining health professionals' ability to identify elder abuse is the limited consensus between older people, carers and health professionals on what behaviours constitute elder abuse.

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[4] Peteris Darzins, Georgia Lowndes and Jo Wainer, above n 2, 86; Lynette Joubert and Sonia Posenelli, 'Responding to a "Window of Opportunity": The Detection and Management of Aged Abuse in an Acute and Subacute Health Care Setting' (2009) 48 *Social Work in Health Care*, 710; Claudia Cooper, Amber Selwood and Gill Livingston, above n 2, 833, 837; John Chesterman, 'Responding to violence, abuse, exploitation and neglect: Improving our protection of at-risk adults' (Report for the Winston Churchill Memorial Trust of Australia, 30 July 2013), 51.

[5] Lynette Joubert and Sonia Posenelli, n above 4, 711.

[6] *The Toronto Declaration on the Global Prevention of Elder Abuse*, World Health Organisation (17 November 2002), 2.

For example, Hempton found:[7]

> *"health professionals were more likely to correctly identify abusive and potentially abusive strategies than carers or healthy older people, but nonetheless between one quarter and two-thirds of health professionals did not identify the two 'definitely abusive' strategies."*

These two strategies were:

- locking someone in a house (23%)
- using an over chair restraint (40%)

Both strategies are considered abusive according to the Victorian Government's '*With Respect to Age*' guidelines.[8]

Given the limited consensus on what constitutes elder abuse, Hempton concluded:[9]

> *"There is a clear need for both community and professional education about abuse..."*

This sentiment is echoed by Lynette Joubert and Sonia Posenelli:[10]

> *"Staff knowledge and skills emerge as a clear deficit in detection, with the education of medical staff identified as the most effective way of improving the recognition of cases of [elder abuse] in the acute hospital setting"*

Page 16 details the positive impact of PD provided as part of a HJP. Health professionals cited an improved capacity, after the PD sessions, to identify abuse, ask questions about it and engage legal services.

Beyond our experience, evidence suggests training health professionals is an important intervention to address elder abuse. Professor P Darzins *et al* highlights the findings of research conducted by Boldy *et al* (2002):[11]

> *"...the intervention cited as being the most important was more education of health professionals, followed by education of older people to assert and protect their rights, while establishing abuse help lines was rated least important."*

According to Cooper "health professionals who had received some professional training relating to elder abuse were twice as likely to suspect physical abuse."[12]

Not only are professionals more likely to *suspect* abuse, but they are "more likely to record, report and discuss elder abuse if they have received professional training in managing elder abuse"[13]

In particular, health professionals are more likely to detect elder abuse if they: [14]

- routinely asked older people about abuse
- had an elder abuse protocol
- knew about the relevant law on abuse

Cooper, however, emphasised the importance of delivering professional training, face-to-face:[15]

> *"Current evidence would support the development and tests of face-to-face training interventions to increase professionals' detection and reporting of abuse that encouraged them to ask older people about abuse..."*

> **recommendation 1:** fund the development of an evidence-based PD program for health professionals. This would build on the Victorian Government's guidelines, With respect to age (2009).

[7] C Hempton et al, 'Contrasting perceptions of health professionals and older people in Australia: what constitutes elder abuse?' (2011) 26 *International Journal of Geriatric Psychiatry* 466-472, 466.
[8] Ibid 472.
[9] Ibid.
[10] Lynette Joubert and Sonia Posenelli, n above 4, 707.
[11] Peteris Darzins, Georgia Lowndes and Jo Wainer, above n 2, 28.
[12] Claudia Cooper, Amber Selwood and Gill Livingston, above n 2, 834.
[13] Claudia Cooper, Amber Selwood and Gill Livingston, above n 2, 835 citing V P Tilden et al 'Factors that influence clinician assessment and management of family violence' (1994) 84 *American Journal of Public Health* 628-633, 835.
[14] Ibid 834.
[15] Ibid 837.

For example, SVHM has developed a tiered education program, on the basis that three levels of competency training for hospital staff are essential to implementing its whole-of-organisation

Importantly, our experience suggests ad hoc training of health and community professionals does not necessarily translate into the systemic change of practice needed to effectively identify and respond to elder abuse. As outlined below, the value of PD sessions is maximised if it is:

- reinforced with the availability of secondary consultations with a lawyer
- supported by a whole-of-organisation elder abuse framework
- delivered as part of a HJP

secondary consultations

As detailed on page 16, we have found that the delivery of PD on elder abuse is more effective when it is reinforced with the availability of secondary consultations. The reasons for this are:

- information conveyed in PD sessions can be reinforced in the application to casework
- health and legal professionals can work together to identify whether a client's "life problem" is actually a "legal problem" and the appropriate services to assist
- if the client is eligible, referral initiated through a secondary consultation is more immediate and practical for the client and professionals

By investing greater resources in the initial assessment of a client matter, the worker and client also avoid having to spend time navigating the complex community services sector.

elder abuse framework

If health professionals are trained in asking about elder abuse, there must be clear guidance on what to do if abuse is suspected or disclosed, especially for high-risk clients. Ideally, given the sometimes narrow window of opportunity to help clients experiencing elder abuse or family violence, the response must be timely and client-centred, based on the trust placed in the health professional.

Policies and procedures that outline expectations of health professionals and management, define roles and responsibilities and provide clear referral pathways are useful to support staff in the event of suspected or disclosed elder abuse.

In the case of the community HJP, the lawyer joined a working group to develop cohealth's response to family violence, elder abuse and child abuse (**violence and abuse**). The working group comprised managers from different teams who had the relevant skills and experience. It was agreed that, where possible, cohealth would have a consistent response to clients experiencing violence and abuse. The group agreed on some general principles and practices, which were used as a basis for the PD sessions in the first and second year. It is anticipated the relevant policies and procedures will be finalised in the second year, which will form a basis for additional PD sessions.

The hospital HJP has the benefit of a very sophisticated approach to identifying and responding to elder abuse in its hospital-wide elder abuse policy.

For more than a decade SVHM has worked on developing an evidence based approach to identifying and responding to elder abuse. At SVHM the response to elder abuse is one of shared responsibility across the health service with a focus on active engagement by key health professionals.

In March 2013 SVHM introduced a new policy for the protection of Vulnerable Older People (**VOP**), a model of care and a governance structure which included the establishment a multidisciplinary VOP coordination and response group. The aim is to deliver an integrated and consistent approach to the detection and management of suspected elder abuse across the health service.

The work undertaken at SVHM has confirmed the importance of how data relating to suspected elder abuse notifications can be collected, analysed and promoted to raise awareness of elder abuse and to assist with training health professionals.

This framework is the foundation of an organisational response to elder abuse and reinforces all other activities of a HJP – such as PD sessions, secondary consultations, case conferences and service delivery – as outlined in our response to question 37.

dedicated resources

With greater emphasis placed on the role of front line staff to address elder abuse and family violence, dedicated funding is required to help health services meet this challenge.

As well as funding the development of an elder abuse framework, funding is needed for its implementation, including: attending PD sessions, time to undertake screening and sensitive enquiry, conducting risk assessments, preparing safety plans, and engaging the appropriate services.

Ensuring the organisational capacity to undertake these activities becomes more difficult when funding is tied to direct and discrete service-delivery activities. To support health organisations to better address elder abuse, in a meaningful and sustainable way, we make the following recommendation:

recommendation 2: allocate dedicated funding to develop and implement the necessary elder abuse frameworks, build workforce capacity, support assessment and referral practices, and establish strategic partnerships.

health justice partnerships

The reality is that "the 'window of opportunity' for responding to elder abuse in a health service is brief".[16] Additional screening tools and intake procedures may hinder the provision of immediate legal assistance required in these circumstances.

Acknowledging the realities of a working at a health service, Lynette Joubert and Sonia Posenelli suggested an integrated multidisciplinary response to elder abuse:[17]

"Early suspicion and identification of risk and an integrated multidisciplinary response across the health service could be effective in responding to the multiple and complex behavioural and social issues that contribute to aged abuse as it presents in emergency, acute, and sub-acute care. Effective use of this 'window of opportunity in health care' could extend the level of community response to this vulnerable group of people"

Lachs, *et al* agrees:[18]

"The most promising response to the complex nature of cases of elder abuse has been the development of interprofessional teams. Evidence suggests that interprofessional teams, also referred to as multidisciplinary teams, consisting of physicians, social workers, law-enforcement personnel, attorneys, and other community participants working together in a coordinated fashion, are the best practical approach to assisting victims."

The authors also suggest a possible approach to successfully intervening in cases of elder abuse:[19]

"Successful treatment rarely involves the swift and definitive extrication of the victim of abuse from his or her predicament with a single intervention. Instead, successful interventions in cases of elder abuse are typically ***interprofessional, ongoing, community-based, and resource-intensive****."*

As detailed in our response to question 37, a HJP addresses the limitations of ad hoc training of health professionals and provides a more immediate response when there is a brief 'window of opportunity' to assist a client experiencing abuse.

better service mapping

As multiple services are generally required to address instances of elder abuse, professionals must have easy access to up-to-date information about local services.

One useful way to gain an understanding of local services is through dedicated family violence, aged and disability networks. However, this should be supported by an online directory of community services, especially for new services or professionals working in the sector.

recommendation 3: an online directory of community services to complement existing family violence, aged and disability networks

[16] Lynette Joubert and Sonia Posenelli, n above 4, 712.
[17] Ibid.

[18] Mark S Lachs and Karl A Pillemer, 'Elder Abuse' (2015) 373 *The New England Journal of Medicine*, 1947-1956.
[19] Ibid, 1951 (emphasis added).

dedicated CALD workers

There are many barriers associated with engaging older people from CALD communities: language barriers; overriding cultural beliefs; isolation and limited engagement with mainstream services. To overcome these barriers, we engage with trusted CALD community workers, who work to strengthen the connection between these communities and appropriate services.

As part of the community HJP, the lawyer works with dedicated workers for Chinese, Vietnamese, Italian and Turkish communities. This includes co-presenting CLE sessions, secondary consultations, multi-disciplinary client meetings and casework, and customised clinics with interpreters. These workers can help raise awareness in their communities, ask questions if abuse is suspected or disclosed, and support the client in engaging with services.

recommendation 4: recognising their important role in addressing elder abuse, integrate dedicated CALD community workers within, or be available to, health services. This generates opportunities for specific communities to learn about elder abuse, better education of professionals on how to best engage with CALD clients, and support clients in engaging with services.

To support the important work of CALD workers and community leaders, the Ethnic Communities' Council of Victoria (**ECCV**) have developed culturally appropriate messages and "train the trainer" resources about elder abuse, its prevention and pathways to support.

Question 37: Are health-justice partnerships a useful model for identifying and responding to elder abuse?

HJPs are an ideal model of service delivery to work with older people who are experiencing abuse. With a lawyer located on site in a health setting, and incorporated as part of a client-centred service, relevant professionals can help address instances of elder abuse that require an immediate and flexible response.

Ongoing PD, reinforced through the provision of secondary consultations, helps to bring about the systemic change in practice required to better identify subtle forms of abuse, earlier on, and facilitate a more holistic, preventative response for clients. This is particularly useful to identify legal issues that will often present initially as a health or social issue – such as "assets for care" arrangements.

A more intensive initial assessment of matters and the contribution of pro bono resources and expertise ensures resources are allocated effectively and promotes the sustainability of the HJP model.

In the first year of the community HJP, we found evidence of:

improved capacity to address elder abuse whereby health professionals are more likely to be able to identify abuse and engage with legal services integrated as part of a client-centred service.

better reach to help disadvantaged clients who otherwise would not have been able to access legal help. For example, clients who are reluctant to speak to a lawyer, or who find it difficult to get to a lawyer's office. It also helps to identify subtle legal issues, which may initially present as a health or social issue, providing an opportunity for preventative legal solutions.

By addressing these underlying legal issues, where formerly they would not have been, health professionals and clients can focus on other health and social issues:

> *"I couldn't work on [the client's] health issues with him because he could only focus on the conflict and potentially being homeless."*
>
> cohealth worker

health justice partnerships

HJPs embrace inter-disciplinary collaboration as a core component. They focus on creating a systemic change of practice to address the social determinants of health, providing more immediate legal assistance within a healthcare setting and promoting joint advocacy efforts.

Based on the United States' Medical-Legal Partnership, a HJP is a healthcare delivery model integrating legal assistance as an important element of the healthcare team.[20]

According to the HJP Network:[21]

> *"The model is built on an understanding that the social, economic, and political context of an individual's circumstances impacts upon their health, and that these social determinants of health often manifest in the form of legal needs or requirements."*

how is a HJP different?

Key elements that make HJPs better for older people who are experiencing elder abuse and professionals who work with them are:

- having a lawyer **colocated** at a health service or hospital
- integrating a lawyer as part of a **client-centred service**
- promoting the use of **secondary consultations** with a lawyer
- supporting workers with ongoing **professional development**
- harnessing **pro bono** capacity and resources

All these elements reinforce each other to deliver maximum value to the partners and older people experiencing abuse.

colocation

Being on site in the healthcare setting multiple days a week, the lawyer is in a better position to develop relationships with health professionals over a longer period of time. These interactions not only provide an opportunity to raise awareness about elder abuse and other legal issues, but also seek to demystify the legal profession.

While the lawyer may be formally based in one team – allied health or social work – the lawyer can also engage

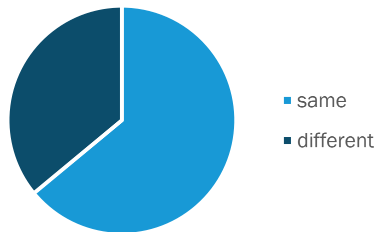
[20] *Health Justice Partnerships – Grants Program Video* (25 July 2016) Victorian Legal Services Board + Commissioner <http://lsbc.vic.gov.au/?p=4990>.

[21] Health Justice Partnership Network, Health Justice Partnerships (21 May 2015) <https://www.justiceconnect.org.au/our-programs/seniors-law/get-help/health-justice-partnerships/starting-hjp> citing Elizabeth Tobin Tyler et al (eds) *Poverty, Health and Law, Readings and Cases for Medical-Legal Partnership* (Carolina Academic Press, 2011), 74.

with other teams who are expected to work with older people.

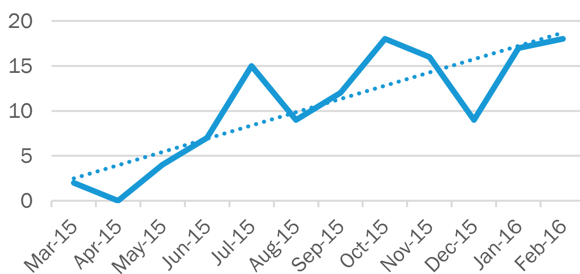
The value of colocation in the community HJP was evident in the number of requests for secondary consultations, a majority (64%) coming from professionals based at the same site as the lawyer, who is funded to service multiple sites at cohealth.

sites requesting consultations



As word spread there was a lawyer at the community health service, the rate of secondary consultations and referrals increased over the first year.

instances of legal help



client-centred service

A HJP is not just about colocating a lawyer at a health service or hospital. The partners aim to deliver a service that is flexible, transparent and responsive to the needs of older clients and their trusted health workers.

A client-centered service is achieved in the following ways:

responsive to urgent needs: interviews with health professionals highlighted how important flexible and responsive service delivery is for clients, especially those likely to require legal assistance.

"Some clients are not OK on the phone...some of them are patient, but some are very demanding and want someone straight away. They calm down (if the response is quick), and it's fine."

"Older people present with more complicated issues than younger people."

"If you say 'you may hear from me in three days', their mobile phone may be out of credit or switched off. Things escalate if the response is slow. This way [the legal service] shows the client [their problem] can be resolved."

cohealth workers

"It's timely - when a patient has disclosed, we can jump on it right away. The lawyer can be brought to them. And they've got time to work through things in hospital before they go home and back into survival mode"

SVHM worker

coordinated appointments: lawyers at the community HJP and hospital HJP generally do not have set "clinic times" to see clients. Rather, appointments with the lawyer are coordinated with health professionals' meetings or home visits, if possible.

"Before, if a patient needed legal advice, we could only tell them to go to Victoria Legal Aid. Nothing could be done while the patient was in hospital."

"The benefit of getting legal help in hospital is that it creates an opportunity, a safe space to get someone legal advice they might not necessarily be able to get when they go home; because at home, they can't get out the house, or think of an excuse to leave the house..."

SVHM workers

Likewise, social workers also support clients for legal appointments, including court appearances, which can be a deeply traumatic experience for the client.

Li's story on page 15, illustrates the value of coordinated appointments, especially for isolated older people experiencing elder abuse.

multi-disciplinary meetings: the presence of a health professional during initial meetings with a lawyer is invaluable. If the health professional has developed a long-standing relationship with the client, they are able to elicit, verify or even challenge information from the client about their legal matter to assist in the provision of more accurate advice.

For example, the HJP lawyer met with an older person who wanted her carer to cease her abusive behaviour but still wanted to maintain the caring relationship. During the meeting, the social worker was able to ask about specific instances of previously reported abuse to provide a more complete picture for the lawyer to

conduct a risk-assessment and provide legal advice. In this instance, while the older person decided not to take legal action, the social worker was still able to discuss a range of strategies to improve the caring relationship and the older person's safety.

providing for the "feedback loop": feedback systems and practices facilitate updates between professionals on how their respective matters are progressing, subject to obtaining client consent.

Simply recording that there had been contact between the HJP lawyer and the client, without any subsequent detail, was considered helpful by one health professional interviewed - both in terms of knowing that something had happened, and also for highlighting to other staff that legal solutions can be relevant across a range of situations.

This is another aspect of a HJP that demonstrates its value: updates between professionals engenders trust, helps inform interventions and saves the client having to repeat themselves.

promoting trusting relationships: whereby legal help is provided in accordance with the priorities and needs of the client.

The HJP lawyer is able to achieve this through incidental and formal interactions with community groups aimed at demystifying the legal profession. For example, CLE sessions are an opportunity to reassure clients that a lawyer cannot force them to take legal action or disclose their legal matter without consent – while reassuring them their concerns will be taken seriously and addressed, if and as possible.

"[The HJP lawyer] understands health. She is getting involved with clients—like going to a community kitchen event—and she's seen as a normal person."

cohealth worker

If a client does seek help, the legal response should take into account the client's relationship with the perpetrator, as this is often important to the client and their worker. In complex elder abuse matters, the ongoing provision of health and community services is essential to complement legal assistance.

"The approach is very crucial – how they [HJP lawyer] approach the person and the whole situation. If they're too strong, the client may close up and say I don't want to talk to you anymore. Or stop coming to the service altogether if they sense the approach is too rigid. It's the human approach – how they approach things."

"[The HJP lawyer] is very caring. She has a high level of empathy. Not all lawyers have this."

"Staff are likely to raise [family elder abuse issues] with [the HJP lawyer] as long as the outcome wouldn't be as dramatic as saying "your kids have to move out". Workers want everyone to be happy. Unless [the client] really hates their kids and things are terrible, they don't want to break up relationships."

cohealth worker

addressing systemic issues: when a systemic legal issue presents, the partners can coordinate an effective response.

For example, as part of the community HJP, a cohealth worker and the HJP lawyer arranged a CLE session on POAs for a community group for older people who had been diagnosed with early-onset dementia, a recognised risk factor for elder abuse. No one at the CLE session had prepared a POA but, at the end of the session, participants indicated that they wanted to.

Subsequently, the worker and HJP lawyer arranged for pro bono lawyers and interpreters to attend the group to do a "POA clinic" for participants, who the worker had assessed as being at high-risk of losing legal capacity or experiencing financial abuse. This was easier for the clients, who would otherwise have to individually arrange their own interpreting services and POAs.

secondary consultations

The availability of secondary consultations between the HJP lawyer and health professionals are important because it means:

better access to legal help, sooner: there are many reasons why an older person does not want to seek legal help if they are experiencing elder abuse. With the availability of secondary consultations, older people in this situation can still receive the benefit of legal information through a trusted worker who can continue to support them and build their capacity.

By being informed of a potential legal solution and any associated time limits, the older person may be more likely to seek legal advice in the future. If the older person still decided not to seek legal help, at least the decision is informed, which is in itself empowering.

building trust and relationships: by providing a convenient and immediate source of legal information, the HJP lawyer can add value to the health service and build trust and credibility with colleagues, who may be more likely to make subsequent referrals to the service

and encourage others to do so. This is illustrated by the following comments from colleagues:

> *"Sometimes I use [the HJP lawyer] just to sound her out. Some situations haven't advanced to a referral, but [the HJP lawyer] has had good ideas about how to work with the situation."*
>
> *"It's a God-send. To be able to ring someone with a really knotty problem and talk those over."*
>
> cohealth worker
>
> *"The beauty of having a lawyer is access to on site consultations."*
>
> SVHM worker

easier intake process: for eligible matters, the process of secondary consultations also makes the intake process quicker and easier. If the client decides they do want to seek legal help, they do not have to repeat their story to the HJP lawyer, who has already received information on the background facts and key legal issues. Health professionals also do not have to comply with the formal intake process, which can at times be impractical.

better navigation of the community legal sector: the HJP lawyer can increase health professionals' awareness of other relevant legal services for non-eligible matters. The lawyer can also monitor requests to identify systemic, recurring legal issues and engage a relevant legal service to provide legal help, CLE and PD to address unmet legal need.

Li’s story

The only time Li could speak to a lawyer was during her physio appointment. Health justice partnerships provide a small “window of opportunity” to assist older people experiencing elder abuse.

Social isolation and dependence on the perpetrator can be both a cause and a consequence of elder abuse. This makes it difficult for older people to access services to address elder abuse, especially legal services.

Li’s story illustrates the potential of HJPs to promote access to justice for older people experiencing abuse.

Li, 66, has been married to her husband, Chen, for 35 years. When Li and Chen emigrated from China with their children they relied on her occupation as a teacher to support the family – she was the main “breadwinner”.

Li’s health has deteriorated – she had a stroke a year ago and now receives physiotherapy treatment. She now relies on Chen as her primary carer, while her children also provide support. As Li is unable to work, and Chen is her primary carer, they are reliant on government benefits. They also own their home but, with limited income, they are finding it hard to make repayments on their mortgage. While the house is in Chen’s name, Li contributed $50,000 to the purchase price. If the mortgage repayments can’t be made, Chen plans to sell the house but he denies Li’s entitlement to her $50,000 contribution.

Li has superannuation and a small amount of savings. Chen has been pressuring her to access this money to make payments on the house. Instead, she would prefer to leave her remaining superannuation and savings to her children, thereby reflecting the contribution already provided to Chen

Chen is very controlling – he doesn’t let her go out on her own and manages all the family’s finances. He attends all her medical appointments. Because of this controlling behaviour, Li cannot visit a lawyer to help her with a will and to protect her interest in the family home.

Chen is also verbally and physically abusive. Unfortunately, with her complex health conditions and care needs, there are limited housing and care services available for Li to live independent of her main care-giver, Chen. The police have taken out an intervention order for Li against Chen, which allows him to remain living at the house but prohibits family violence. Since the police have taken out the order, his behaviour has improved, but Li believes that if Chen hears about any will he may become violent.

With Li’s consent, her care coordinator contacted the HJP lawyer, who attended Li’s next physiotherapy appointment. While Chen remained in the waiting room, the HJP lawyer advised Li on preparing a will and lodging a caveat. The lawyer also checked Chen’s ongoing compliance with the intervention order.

The HJP lawyer then arranged for specialist pro bono lawyers to prepare the will and to attend Li’s next physiotherapy appointment. Li signed the will and binding nomination form for her superannuation but she did not proceed with lodging the caveat because Chen would receive notice of the lodgement. She was fearful of how he might respond and didn’t want to disrupt the family, especially since things had improved since the intervention order. The pro bono lawyers were able to store Li’s will at their office so Chen would not be able to find it.

*name and identifying details have been changed

If cohealth staff, the HJP lawyer and pro bono lawyers were not able to work together, Li would not have been able to receive the legal advice she required without Chen knowing.

professional development

Trained professionals can look beyond a presenting health condition or social issue to identify the risk factors and signs of elder abuse, and facilitate an appropriate response, which may involve legal assistance.

As part of the community HJP, PD sessions for health professionals have been provided on:

- the relationship between health and legal issues
- elder abuse
- legal issues for older people
- working with lawyers
- duty of care

Where possible, the sessions are co-presented by a HJP lawyer and a social worker who can provide practical strategies on:

- how to ask questions about abuse
- common signs – for example, if a client advises a worker not to speak to a certain family member, this may indicate a level of family distrust, fear or conflict
- building an older person's capacity to seek legal help
- non-legal interventions that may help mitigate harm if the person does not want to seek legal help, including case studies highlighting successful non-legal interventions

These insights provided a more complete discussion on what each professional can do to help older people experiencing elder abuse.

To deliver the most value to health professionals, PD sessions are tailored to accommodate the varying expectations and experience of individual teams. For example, topics that reflect the level of involvement with cases of elder abuse as well as case studies that address issues likely to arise in casework.

These sessions are evaluated, to inform subsequent sessions, and provided on an *ongoing* basis, alongside communications and events on elder abuse throughout the year. Importantly, sessions are reinforced by supporting policies and procedures. For example, if health professionals are trained on asking about elder abuse, there must be clear guidance on what to do if abuse is suspected or disclosed.

post-PD findings

Findings from the post-PD surveys and interviews with health professionals indicated an improved capacity and confidence amongst participants to address elder abuse, other legal issues, and to work with older people who have diminished capacity for decision-making.

In particular, findings from the post-PD surveys indicated:

an improved capacity to identify and address elder abuse

98% agreed, after PD, they are more likely to – or already confident in their ability to – *identify* elder abuse

100% agreed, after PD, they had a better idea of – or already know about – *the questions they can ask* about elder abuse

an improved capacity to address legal issues and work with lawyers:

100% agreed, after PD, they are more – or were already – confident in their ability to *identify legal issues*

98% agreed, after PD, they have the necessary skills and knowledge to *refer to a lawyer*

98% agreed, after PD, they have a better understanding of – or already knew – how to *work with lawyers*

an improved capacity to work with people with diminished capacity

98% agreed, after PD, they feel more confident working with *older people who have diminished capacity* for decision-making

a change in practice to be more aware of elder abuse and other legal issues; to ask about abuse and to refer to the HJP lawyer

100% agree, in future, they will be – or are already – *alert to risk factors, signs and symptoms* of abuse

100% agreed, after PD, they will be more – or were already – *aware of urgent legal issues*

98% agreed, in future, they will *ask about abuse*

100% agreed, in future, they *will* – or already do – refer to the HJP lawyer

PD reinforced with secondary consultations

The partners to the community HJP found the combination of PD sessions and secondary consultations were important in building the capacity of health professionals to address elder abuse and other legal issues.

For instance, PD sessions outlined common legal issues Seniors Law can help with, but they were framed as “life issues” in the context of someone's care, agency, living arrangements and finances. After a PD session, common feedback was “I had no idea that was a legal issue – that happens all the time”.

Combining these PD sessions with the availability of secondary consultations, a HJP lawyer and a health professional are able to work together to identify whether a client's "life problem" is actually a "legal problem". By investing greater resources in the initial assessment of a matter, the worker and older person avoid having to spent time navigating the complex community services sector.

pro bono capacity

A distinctive element of these HJPs is Justice Connect's ability to utilise the capacity and resources of its pro bono member firms. Select firms have dedicated capacity to receiving referrals from Seniors Law, and Seniors Law provides training to pro bono lawyers on specialised areas of law.

While the HJP lawyer can assist with one-off or discrete legal issues – such as powers of attorney or intervention orders – more significant, resource-intensive matters are referred to pro bono firms – such as property disputes or advising on "assets for care" arrangements.

This approach means the HJP lawyer can dedicate greater time to developing relationships with health professionals and community groups, building their capacity to address elder abuse, or anticipate it, and conduct a more intensive initial assessment of legal matters.

The resources and specialist skills of our pro bono partners can then be carefully matched with complex elder abuse matters. In doing so:

- more clients are seen, *sooner*
- complex legal issues are addressed, in a timely manner
- specialist knowledge is developed to address systemic issues, such as "assets for care" arrangements, creating an opportunity for more preventative legal solutions

references

Journal articles

- Almogue, A et al, ‘Attitudes and knowledge of medical and nursing staff toward elder abuse’ (2010) 51 *Archives of Gerontology and Geriatrics*
- Cooper, Claudia, Amber Selwood and Gill Livingston, ‘Knowledge, Detection, and Reporting of Abuse by Health and Social Care Professionals: A Systematic Review’ (2009) 17(10) *The American Journal of Geriatric Psychiatry*
- Hempton, C et al, ‘Contrasting perceptions of health professionals and older people in Australia: what constitutes elder abuse?’ (2011) 26 *International Journal of Geriatric Psychiatry*
- Joubert, Lynette and Sonia Posenelli, ‘Responding to a “Window of Opportunity”: The Detection and Management of Aged Abuse in an Acute and Subacute Health Care Setting’ (2009) 48 *Social Work in Health Care*
- Lachs, Mark S and Karl A Pillemer, ‘Elder Abuse’ (2015) 373 *The New England Journal of Medicine*

Working papers, guidelines and reports

- ‘cohealth strategic plan 2015-2018’ (Strategic Plan, cohealth)
- Chesterman, John, ‘Responding to violence, abuse, exploitation and neglect: Improving our protection of at-risk adults’ (Report for the Winston Churchill Memorial Trust of Australia, 30 July 2013)
- Darzins, Peteris, Georgia Lowndes and Jo Wainer, ‘Financial abuse of elders: a review of the evidence’ (Protecting Elders’ Assets Study, Monash University Medicine, Nursing and Health Sciences, June 2009)
- World Health Organisation, *The Toronto Declaration on the Global Prevention of Elder Abuse*’ (17 November 2002)

Websites

- *Health Justice Partnerships – Grants Program Video* (25 July 2016) Victorian Legal Services Board + Commissioner <http://lsbc.vic.gov.au/?p=4990>.
- Health Justice Partnership Network, Health Justice Partnerships (21 May 2015) <https://www.justiceconnect.org.au/our-programs/seniors-law/get-help/health-justice-partnerships/starting-hjp> citing Elizabeth Tobin Tyler et al (eds) *Poverty, Health and Law, Readings and Cases for Medical-Legal Partnership* (Carolina Academic Press, 2011), 74.

endorsements

This submission is endorsed by the following people and organisations:

- Health Justice Australia
- Holding Redlich
- Hume Riverina Community Legal Service
- Inner Melbourne Community Legal
- Joanna Renkin
  Partner, Pro Bono Community Support
  Lander & Rogers
- Seniors Rights Victoria
- Victorian Legal Services Board + Commissioner
- Women's Legal Service (Qld)