

Elder abuse in CALD communities needs a targeted response

Justice Connect Submission to the Parliamentary Inquiry on Support for Older Victorians from Culturally Diverse Backgrounds, December 2021

Executive Summary

Justice Connect's Seniors Law program (Justice Connect) runs specialist elder abuse legal services in partnership with health providers across Victoria and New South Wales that deliver high impact, intensive support to our clients. Through our health justice partnership with cohealth (HJP) we clearly see how a lack of access to tailored legal services disproportionately impacts those from culturally diverse backgrounds. In 2020-2021, 60% of all clients accessing our cohealth HJP were born in a country where English is not a primary language and 43% of all clients required an interpreter.

The Parliamentary Inquiry into support for older Victorians from culturally diverse backgrounds (Inquiry) presents a unique opportunity to understand the issues and identify the targeted supports that people from culturally diverse backgrounds need to prevent and respond to elder abuse. In this submission, Justice Connect draws on 12 years of frontline service delivery at health services and direct client insights that emphasise the benefits of early intervention and service-based approaches to reduce the impacts of elder abuse, particularly for those clients from culturally diverse backgrounds.

About Justice Connect

In the face of rising unmet legal need, Justice Connect designs and delivers high-impact interventions that increase access to legal support and progress social justice. We believe in a fair and just world where people and communities are supported to engage with and fully participate in our legal and social system and avoid the negative impacts on their wellbeing or organisational health that flow from unresolved legal problems.

For over 12 years, Justice Connect's Seniors Law program has provided specialist legal help to older Australians. In the past seven years, we have intensified and targeted our services, through health justice partnerships with health organisations across Victoria and New South Wales. Our longstanding partnerships with health organisations have provided the supported environment in which health professionals feel confident to identify the subtle signs of elder abuse, and work with our lawyers to provide a coordinated and sensitive multi-disciplinary response. Justice Connect also have access to a large network of pro bono lawyers that can provide ongoing specialised assistance for our clients. We're preventing the escalation of legal problems and family conflict; and, ultimately, promoting the economic security and independence of older people.

Health Justice Partnerships as a tool to combat elder abuse

Trust

Older people from CALD backgrounds can be at increased risk of elder abuse due to the difficulties they face gaining information about support services available and the challenges of navigating complex service

systems and communicating their needs.¹ It has been our experience that older people from culturally diverse backgrounds are more likely to discuss elder abuse with a health care worker than seek the assistance of a lawyer. Culturally diverse communities may not be aware of available legal supports, and can often have a level of mistrust of lawyers.² Lack of awareness, misconception and mistrust act as a barrier for culturally diverse people directly accessing legal assistance when experiencing elder abuse.

However, through the health justice partnership model, culturally diverse clients are able to build a relationship of trust with a health worker, who in turn can explain and provide a supported referral to legal services. Working holistically helps to ensure that the most supportive and culturally sensitive approach is taken in addressing the elder abuse that the older person is experiencing. Without this partnership approach it is likely that many cases of elder abuse would go unnoticed and unaddressed.

Provision of culturally appropriate services

Community and HJP lawyers are highly experienced in working with interpreters and providing culturally appropriate services.³ It is vital that an interpreter is available to older people from CALD backgrounds experiencing elder abuse in order to build a trusting relationship and to ensure their wishes are heard and followed.⁴ In our HJP, 43% of our clients required an interpreter when accessing our service. Our HJP lawyers can communicate effectively with clients when using an interpreter.

Ability to meet clients onsite at a trusted health service

Many of our culturally diverse clients live with the perpetrator of the abuse. Often this perpetrator is an adult child or family member who exerts considerable control over the older person's life and services that they access. We frequently see culturally diverse older people who have services to the home completely cut off or limited by the perpetrator of the abuse. Given this common occurrence, a key strength of HJPs is that they allow older clients to connect with a lawyer within a healthcare context in a confidential manner that prevents the perpetrator being alerted to the fact that the older person is seeking legal assistance.

¹ Dr Barbara Black Blundell and Professor Mike Clare, Elder Abuse in Culturally and Linguistically Diverse Communities, Home and Community Care, 2012. Available at: Elder Abuse In Culturally And Linguistically Diverse Communities (advocare.org.au)

² Judicial Council on Cultural Diversity – Submission 120 - Access to Justice Arrangements 26 November 2013 p.10 - CALD Communities and mistrust of the legal system
<https://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub120-access-justice.pdf>

³ Schetzer, L. & Henderson, J., 2003, Public consultations: a project to identify legal needs, pathways and barriers for disadvantaged people in NSW, Access to justice and legal needs vol. 1, Law and Justice Foundation of NSW, Sydney People from CALD backgrounds paras 2.70 - 2.95
<http://www.lawfoundation.net.au/report/consultations/B89FEE399B4E1BB0CA257060007D4EAA.html>

⁴ Dr Barbara Black Blundell and Professor Mike Clare, Elder Abuse in Culturally and Linguistically Diverse Communities, Home and Community Care, 2012. Available at: Elder Abuse In Culturally And Linguistically Diverse Communities (advocare.org.au)

Aryan's story

Aryan is a 95-year-old man who migrated from India 15 years ago. He is physically fit for his age and has an active social life and many interests. Aryan lived with his family – his son and daughter-in-law and their adult children.

Aryan spoke to his cohealth social workers about his concerns that his son and daughter-in-law were trying to have him moved to a nursing home against his wishes, and that they had control of his finances. The social workers arranged an appointment for him with a Justice Connect lawyer and an interpreter so he could receive advice about his rights. He was initially reluctant to act against his family, hoping he could trust them. Eventually, Aryan contacted his cohealth social worker saying that he had been placed in a nursing home and wasn't allowed to leave. He had been cut off from his support services and friends, and his money and ID had been confiscated. His family had told him it was a temporary stay while they were on holiday, but they hadn't come back.

The cohealth social worker linked Aryan with the HJP lawyer again for urgent assistance to regain his independence. The Justice Connect lawyer found that Aryan's family had him sign documents in English he didn't understand: an Enduring Power of Attorney (EPOA) and Medical Treatment Decision Making (MTDM) document, nominating his children. His family argued that he had lost capacity to make his own decisions, based on a provisional diagnosis of dementia, even though Aryan had never been properly assessed for dementia, and based on an assessment without an independent interpreter present.

The Justice Connect lawyer found Aryan still had legal capacity, so she assisted him to revoke these documents that his family were using to control his life. Aryan was then able to move to safe housing of his choice. The lawyer assisted Aryan to advise relevant people and services of this revocation, and secured a 'safe contact' family violence intervention order to protect him. Aryan's family then applied for Guardianship and Administration orders over him at VCAT through their lawyer. Justice Connect then referred Aryan to one of their specialised pro bono member firms for ongoing representation.

Aryan often exclaims that Justice Connect's lawyers 'saved his life'. He is now in safe housing that he chose himself. He has regained access to his Centrelink aged pension and can make his own financial decisions. He has 'wrap around' services in place to support his current and future needs and he has been reunited with his strong circle of friends. He now feels well supported as he makes decisions about his future.

The legal assistance he received means he now understands his legal rights, the legal systems in place to protect them and he has autonomy to make his own decisions. He has peace of mind knowing he can access expert pro bono legal representation for his ongoing issues with his family.

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Ability to engage and form strong referral pathways with health professionals that engage with culturally diverse communities

Our CALD clients may never have connected with our Seniors Law program if it weren't for cohealth staff making the original referral. Strong relationships with health workers are integral to the success of our HJP. Our legal service is fully integrated into the health setting so that staff view the lawyer as part of their team. Our lawyers work onsite at cohealth (covid-19 restrictions permitting) and conduct regular training for health staff on elder law legal issues and how to spot and refer clients experiencing elder abuse. Health professionals are our link to culturally diverse communities and mean that vulnerable older people experiencing elder abuse can access the assistance they need.

⁵ Names and identifying information have been changed to protect our clients' privacy.

Kim's story

Kim attended an activity group for older members of the Vietnamese community. She mentioned to cohealth's outreach worker that she had given some money to her son so he could start his business – she mortgaged her property to do this. Having attended one of the PD sessions delivered by the lawyer, the worker recognised the client would benefit from some independent legal advice and encouraged Kim to speak to the lawyer about it. Justice Connect's lawyer met with Kim and arranged for one of their pro bono member firms to advise her on the legal risks and drafted documents to reduce them.

Justice Connect is working towards better services for CALD communities

Whilst we are still awaiting the release of the National Elder Abuse Prevalence Study,⁶ current research estimates between 2% and 14% of older Australians experience elder abuse each year. The prevalence of elder abuse in CALD communities is probably higher, evidenced by the fact that 43% of all the clients we assist are from CALD backgrounds. Despite this high prevalence of elder abuse, only 7 HJPs Australia wide specialise in elder abuse.⁷

With growing elder abuse prevalence in Australia, Justice Connect focuses a significant proportion of its work on prevention strategies, such as supporting people to start thinking about how they want to age, and executing the legal instruments (e.g. enduring power of attorney documents) to protect their choices. Thanh was a former client who managed to access legal services through our HJP model, but unfortunately this was after the abuse had occurred. This meant her options were more limited and this will impact her future.

Thanh's story

Thanh doesn't speak English and has limited literacy and education. She owns her home, which she purchased with her late husband. The bank wanted to sell Thanh's house; and she couldn't understand why. A guarantee had been signed using her home to secure her son's business loans that were now in significant arrears. Thanh's son had a gambling addiction; and was indebted to various creditors for the two business loans and nine credit cards, totalling about \$500,000.

When Thanh first met with us, she was still in shock at the prospect of losing her home. Her daughter was stressed because she was not sure she could financially assist Thanh to safely age at home. The bank was insisting on enforcing Thanh's guarantee, despite Thanh not remembering or understanding signing any such agreement—let alone having access to independent legal advice or an interpreter at the time.

Justice Connect was able to negotiate with the bank to waive \$100,000 from the amount it sought to recover. However, in order to keep her home, Thanh had to enter into a reverse mortgage with the bank. As Thanh now ages, she will largely be unable to pay for her care, as the equity is substantially depleted in her home. Thanh faced homelessness, declining health and the onus of proving the bank failed to do the right thing. She ultimately avoided the bank selling her home. Yet, as a result of the bank enforcing the guarantee, Thanh will struggle to access or afford future aged care of her choice.

At Justice Connect we are continuing to work towards reducing this high prevalence of elder abuse with a range of strategies targeting CALD communities. Our current project, *Safeguarding Now, Preventing Future Abuse*, focuses on encouraging people from CALD communities to safeguard their personal and financial affairs by future planning. We see this work as key to preventing elder abuse because it ensures older people from CALD backgrounds have a trusted decision maker in place to assist in the management of

⁶ Australian Institute of Family Studies (AIFS) has been commissioned by the Australian Government Attorney-General's Department to conduct a study of the nature of elder abuse and the extent to which it occurs among those in the Australian population aged 65 and over. It was due to be released mid-2021 however as of December 2021 it has not been made public.

⁷ *Health Justice Landscape: July 2021 snapshot*, Health Justice Australia. Available at [Health justice landscape snapshot](#)

their affairs as they age. We are also trialling new partnerships and outreach strategies to connect older people in CALD communities with help and inform them of their rights. This experience of engaging with CALD communities takes additional resources, time and specialist support, and therefore it is vital that increased funding is made available for existing HJPs to continue this important work.

Recommendations

Research indicates that effective health justice partnership requires the investment of time and resources to build relationships between the health and legal team, and the capacity to build trust and work collaboratively with the client.⁸ Working with older clients from CALD communities can take longer, and demand greater skill, due to language and cultural barriers. As a result, anecdotally, our HJP lawyers spend around double the amount of time supporting their older clients from CALD communities.

1. Invest in specialist, intensive services that can effectively support older people from CALD communities at risk of or experiencing abuse

Because they are so resource intensive, and particularly in this context, more investment is needed for specialist elder abuse services such as those run by Justice Connect. The HJP model is an effective method for engaging with older people in CALD communities experiencing elder abuse and Australia currently has too few HJPs that focus on the significant and growing problem of elder abuse. We believe that we are only scratching the surface in our work with cohealth of the number of older people from CALD communities experiencing elder abuse.

2. Resourcing should also focus on prevention, if we want to end elder abuse in Australia

We also recommend funding for more research into elder abuse prevalence and awareness in culturally diverse communities so that more targeted legal services and more effective prevention strategies can be trialled and rolled out nationally.

Justice Connect focuses on future planning as a key prevention strategy for elder abuse.

If you have any questions in relation to the above, please contact Megan King, Principal Lawyer on (03) 8636 4443 or megan.king@justiceconnect.org.au, or Pam Morton, Lawyer on (03) 8636 4467 or pam.morton@justiceconnect.org.au.

⁸ S FORELL & MT NAGY, *Health justice partnership as a response to domestic and family violence*, Health Justice Australia, May 2021. Available at <https://healthjustice.org.au/?wpdmdl=3935>