



**Health
Justice
Australia**

Legal help as mental healthcare

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Health justice insights

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The COVID pandemic has laid bare the extent to which socio-economic adversity and mental health intersect, particularly for those most vulnerable to unemployment, financial hardship and family stress. It has also substantially impacted upon access to help for each of these issues.

The current redesign of access to mental health support and treatment provides an opportunity to offer more holistic responses to compounding issues that may otherwise continue to escalate.

Health justice partnership offers one avenue for this, by using legal help to improve client outcomes. Broadening the range of expertise in a healthcare team to include legal help supports clients to gain control of underlying stressors, such as housing, money issues and family safety. Who would have thought seeing a lawyer could be good for your mental health!

Complementing clinical care

The role of non-clinical services

Difficulties with mental health can attract complexity in multiple areas of a person's life, in ways that can vary over time. While effective clinical care is essential to supporting people through diverse challenges, there has been increasing recognition that other services can contribute by addressing specific areas of need that interact with mental health. In the National Mental Health Commission's (NMHC's) 2019 consumer and carer survey, for instance, '[r]espondents raised the need for consideration of broader consumer needs in conjunction with their mental health needs', pointing to areas such as income support, employment and housing (NMHC 2019, p.6).

The Productivity Commission has noted that in comparison to physical illness:

the importance of non-health services and organisations in both preventing mental illness from developing and in facilitating a person's recovery are magnified, with key roles evident for – and a need for coordination between – psychosocial supports, housing services, the justice system, workplaces and social security.

(Productivity Commission 2019, p.2)

These sentiments are in line with policy movements that emphasise the need for integrated, accessible and person-centred mental health care (e.g. The Fifth National Mental Health and Suicide Prevention Plan, Department of Health 2017, see also Vision 2030: Blueprint for Mental Health and Suicide Prevention (March 2020 consultation version) NMHC 2020).

The need for legal assistance

Interactions between criminal justice and mental health have been closely examined (e.g. Ogloff, Davis et al. 2007, Australian Institute of Health and Welfare 2019) and it is perhaps in this context that legal support is most frequently considered. However, for many, criminal matters are part of a broader matrix of difficulties that can include civil and family law issues (Dowse, Baldry et al. 2009, Pleasence and McDonald 2013). Indeed, many everyday problems that people experience in areas such as housing, finance (including debt and fines), social security, consumer interactions and family arrangements can have legal elements and solutions.

Legal problems are common in Australia. It is estimated that one in five people encounter three or more legal problems in a given year (see the LAW Survey, Coumarelos, Macourt et al. 2012). Factors such as having a physical or mental disability or chronic illness, being a single parent, being unemployed or living in disadvantaged housing increase vulnerability to legal problems, and these factors are found to have an additive effect (McDonald and Wei 2013). The LAW survey also reveals that legal issues cluster (for instance, family law, family violence, debt) and interact with other life issues.

Recent research from the UK has found that those experiencing mental ill-health are: more likely than others to have legal problems; more susceptible to having large numbers of problems; and more likely to report a broad range of adverse consequences from their problems (Balmer and Pleasence 2018). People experiencing mental health issues are also more likely to report that their legal problems have caused stress-related illness (Pleasence and Balmer 2009), consistent with the idea that legal issues and mental health issues can be mutually reinforcing (see, generally, Karras, McCarron et al. 2006, Coumarelos, Macourt et al. 2012). This further resonates with research on the associations between mental health problems and specific stressors such as insecure or poor quality housing (see, e.g. Pevalin, Reeves et al. 2017 in the UK context, Brackertz, Borrowman et al. 2020 in the Australian context) and financial hardship (see, generally, Fitch, Hamilton et al. 2011, Evans 2018, see also analyses of the Household Income and Labour Dynamics survey in the Australian context, e.g. Brackertz, Borrowman et al. 2020, Kiely, Leach et al. 2015). Practical problems such as these can also directly interfere with people's ability

to engage with their treatment, for example by causing them to miss appointments or by reducing the amount of clinical time that can be spent on health issues (see e.g. Fairak 2018).

A NSW qualitative study from 2006 identified specific types of legal problems encountered by those experiencing a mental illness. Excluding criminal matters, these included:

- **legal issues relating to mental illness specifically, such as those falling under the Mental Health Act 1990 (NSW) and adult guardianship**
- **discrimination in relation to employment, education and insurance**
- **housing, including problems relating to Department of Housing, private rental and boarding house accommodation**
- **social security issues, including eligibility, breaching, social security debt and prosecution for fraud**
- **consumer issues, such as credit card debt and banking issues, mobile phone and other contractual debt**
- **domestic violence and victim of crime issues and**
- **family law, and care and protection issues**

(Karras, McCarron et al. 2006).

Accessible, appropriate and timely legal assistance has been identified as a tool to help manage or resolve these types of issues, or prevent them from escalating (Pleasence, Coumarelos et al. 2014). Legal assistance can take various forms, ranging from simply providing information or advice about options, to supporting a client to act for themselves (e.g. helping with correspondence or communication), to acting on a client's behalf as their representative.

Barriers to managing legal problems and accessing legal assistance

Although legal problems are widespread, often people do not take action to address them in a timely way or at all. If they do seek help, most do not go to lawyers (Coumarelos, Macourt et al. 2012). The LAW Survey identifies reasons for people not taking action and these include: not identifying the issue as legal; beliefs (correct or incorrect) that action is not needed (e.g. it would make no difference, it was trivial or unimportant); and perceptions that legal action is inaccessible for personal or systemic reasons (Coumarelos, Macourt et al. 2012).

Interestingly, a recent study found that while those experiencing a severe mental illness are more likely than others to identify the relevance of law in a range of scenarios (such as family violence), they also perceive courts and lawyers to be significantly less accessible (Balmer, Pleasence et al. 2019). This suggests that, for this group, easing the barriers to legal engagement is not just a matter of increasing legal literacy. Earlier qualitative research explored these barriers in more detail, identifying a range of personal and systemic factors that hamper access to legal help and the legal system for those living with mental illnesses. Some of these – such as not being aware of legal rights – reflect aspects of the broader community’s experience.

Among the barriers identified were some that were more specific, such as:

- difficulty with organising and keeping appointments
- being overwhelmed
- being mistrustful of legal service providers
- communication problems and behaviours that may make it hard to receive assistance
- the physical environment and office procedures of legal services
- difficulties having their mental illness identified by legal service providers and other actors in the legal system

(Karras, McCarron et al. 2006, see also Gray, Forell et al. 2009).

Turning to pathways to assistance, research indicates the critical place of non-legal advisers in connecting people with the legal information or advice they need (Coumarelos, Macourt et al. 2012). The LAW survey revealed that where people sought advice for their legal problems, legal advisers were approached for only around 30% of the problems reported on. Health and welfare advisers were consulted in about 27% of cases, with this group of advisers including doctors, healthcare services/facilities/hospitals, psychologists or counsellors and social or welfare workers.

These figures relate only to instances in which people did, in fact, seek advice about their problem. There may be others who, due to the clustering of legal and other issues, may be in contact with mental health services and experiencing health harming legal problems, but not aware that legal remedies may be available to them.

How can legal help and mental healthcare be integrated?

For some, mental health will interact in an ongoing way with everyday problems that lawyers can assist with. And yet working separately, legal assistance services and mental health services can each struggle to address the intersecting reality of these issues. Legal services can struggle to reach, stay connected with and assist clients with unmet legal need in a way that is timely and appropriate to their health journey. Mental health services do not necessarily have the levers to address social factors affecting clients' mental health or treatment. Accepting that accessible and appropriate legal assistance can play a role in mental health management and recovery, and that responding to legal problems can be challenging in many ways, the question becomes one of how health and legal services can join up to support clients in need most effectively.

Health justice service models

Health and legal practitioners may work together around clients in several ways. Perhaps the most common system at the moment is that of simple referral: a health practitioner refers a client to a legal service. In these cases, there is no formal relationship between the health and legal services or the practitioners. Generally, it is the client's responsibility to contact the new service. If help is provided to do this, it may be considered a warm referral.

While this model is the quickest to adopt, systems of simple referral do not address the barriers noted above in any substantial way. To begin with, without training and trusted relationships, we cannot assume that health professionals are well placed to identify the range of legal issues lawyers can help with and to refer clients to legal help which is appropriate to that client's legal need and capability (i.e. their knowledge, skills, mindset (including trust) and resources). Furthermore, even outside the context of mental illnesses, the phenomenon of referral fatigue tells us that the greater the number of onward referrals, the less likely someone is to act on those referrals (Pleasence, Balmer et al. 2006). Such effects may well be exacerbated by the already complex journeys patients must take through the healthcare system.

Beyond referral, there are models in which legal help is available in the place where healthcare is also being provided. Health justice partnership is one such approach. This collaborative service model between health and legal services responds to the evidence about the multiple, intersecting legal and social problems that can shape complexity and drive disadvantage in the lives of people experiencing poor mental health. In health justice

partnership, lawyers are embedded in a range of health settings including hospitals, community health services and therapeutic communities. This enables them to work more closely with the health team to address legal issues that are interacting with a client's health and health treatment.

Health justice partnership is one of four approaches that Health Justice Australia has identified on the health justice landscape. These are approaches that vary in structure and embeddedness:

- **Partnerships** (where health services and legal services partner to achieve shared goals, and the lawyer is considered part of the healthcare team)
- **Integrated services** (in which a lawyer is employed by a health service, or a health professional is employed by a legal service)
- **Service hubs** (where health, legal and other services work out of an accessible community setting)
- **Outreach services** (where lawyers attend a healthcare setting to provide advice, but are not considered part of the healthcare team)

(Forell 2018).

Why embed legal help

Embedded legal help has several advantages that may directly mitigate the access barriers faced by clients.

- **It provides an opportunity to build health and legal practitioner capability through cross-disciplinary training and exchange of expertise. This benefits the client in at least two ways:**
 - the health professional's increased ability to identify legal problems means less of an onus on the client to recognise legal issues for themselves, together with more streamlined links to appropriate and accessible legal help
 - the legal professional's increased ability to recognise mental illnesses and deal with communication challenges can result in better advice and representation for the client.
- **Providing legal assistance in the same place as healthcare may reduce the risk of lost referrals in clients who have difficulty making and keeping appointments or navigating to new places.**
- **A pre-existing relationship of trust between a patient and a health practitioner (together with the relationship built between the health and legal practitioner) provides a bridge of trust between a legal practitioner and the client** (*regarding intermediaries to legal help, see generally: Cohl, Lassonde et al. 2018, Forell and Gray 2009*).
- **There is the opportunity to appropriately time the provision of legal help and to coordinate care that addresses mental health and social needs, optimising the impact of each** (*Pleasence, Coumarelos et al. 2014*).

For the health service capability, embedded legal help provides:

- **a greater range of tools to support patients to address their mental health issues, together with issues arising from and/or impacting upon their mental health**
- **the opportunity to directly consult with legal professionals, either formally or informally, about problems clients are experiencing (secondary consultation)**
- **more efficient referrals, potentially preserving more clinical time for health issues**
- **greater confidence that referrals made are appropriate**
- **a concrete way to address issues beyond the medical that impact upon patients' health and recovery.**

Mental health on the Australian health justice landscape

Health Justice Australia's 2018 national census of the health justice landscape gathered data from services that embed legal help in healthcare settings and teams (Forell and Nagy 2019). These were found to be based in primary health settings (including Aboriginal Community Controlled Health Organisations), hospitals and community support settings (e.g. hubs, residential communities), including those supporting people experiencing mental health conditions or addiction. Legal help was most commonly provided by community legal centres and legal aid commissions.

Twelve (16%) of the 73 services specifically targeted clients experiencing mental health conditions or addiction. However, a noticeable proportion of other health justice services also reported that at least some (15% or more) of the clients they saw in their service were experiencing mental health issues and/or addiction. In total, across

the landscape, almost four in five services reported they were serving clients experiencing mental health issues (in that they either targeted these clients or estimated that this applied to at least some of their clients).

Services with a focus on mental health or addiction assisted clients with a range of issues, in areas largely consistent with those identified in previous research and listed above. In this sample, fines or debts and housing issues were highlighted as particularly common.

This research indicates that services that have embedded legal assistance in healthcare settings across Australia are already supporting many people experiencing mental health issues. Help with legal problems such as those related to fines, debt, housing, crime, family and employment may make an important difference to people's lives and to their recovery journeys.

Integrated care for intersecting need: stepping up to COVID-19

The current COVID-19 pandemic adds an extra dimension to community need, as uncertainty and rapid change filter down to people's everyday experience. Legal need commonly attaches to crisis and changed circumstances: job loss, family breakdown, sudden illness or impairment to name a few (Pleasence, Coumarelos et al. 2014, p.109). Life changes are also associated with changes to mental health status and subjective wellbeing (e.g. Kendler, Karkowski et al. 1999, Luhmann, Hoffman et al. 2012, Yap, Anusic et al. 2012). As the immediate impact of COVID-19 gives way to widespread change and associated hardship, there is now both a need and an opportunity for mental health and legal service strategies to connect and address these intersecting realities. While this may be done in a variety of ways to meet differing need and utilising emerging infrastructure, health justice partnership is one such opportunity.

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About Health Justice Australia

Health Justice Australia is a national charity and centre of excellence for health justice partnership. Health Justice Australia supports the expansion and effectiveness of health justice partnerships and works to change service systems to improve health and justice outcomes through:

Knowledge: Developing and translating knowledge that is valued by practitioners, researchers, policy-makers and funders

Practice: Building the capability of health, legal and other practitioners to work collaboratively, including through brokering, mentoring and facilitating partnerships

Policy advocacy: Working to reform policy settings, service design and funding, informed by the experience of people coming through health justice partnerships, and their practitioners.



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