COMMUNITY LEGAL MENTAL HEALTH PARTNERSHIP PROJECT

FINAL PROJECT REPORT

INNER MELBOURNE COMMUNITY LEGAL

OUR VISION

Inner Melbourne Community Legal Centre (IMCL) believes in a society where the law is fair and everyone has access to legal help when they need it. A place where there is a shared sense of fairness and wellbeing. We believe that fair and thriving local communities are the foundation of a just society, and that this starts at the local level. To contribute to creating a just society, we build fairness and wellbeing in our local community through the law.

WHO WE ARE

We are an independent community legal centre working for a social purpose, based in the inner Melbourne area. We are part of a large network of community legal centres working in local communities across Australia. Our lawyers are experts in community law, and part of a small, dedicated team of lawyers, administrative and project staff supported by volunteer law students and pro bono corporate partners.

WHY WE EXIST

We work with people experiencing the greatest disadvantage in our area to achieve —

Fairer laws: We help to ensure the legal system is as fair as possible.
Fairer outcomes: We help our community be heard, and have their legal rights upheld.

Improved wellbeing: We improve our community's capability to focus on their health and quality of life.

WHAT WE DO

Legal help: We provide free accessible legal help in the form of information, advice, casework and representation.

Legal education: We provide community legal education to targeted community members and professionals that aims to prevent legal problems from occurring or escalating.

Law reform and advocacy: We challenge and work to change unfair laws that disproportionately affect disadvantaged people in our community.

You can read more about us on our website: www.imcl.org.au.

Acknowledgements

We wish to acknowledge the many individuals, organisations, health care professionals and experts we consulted in the course of this project.

IMCL's Community Legal Advisory Group, for your commitment, wisdom and generosity in seeking to improve the legal system and services for all consumers. You've changed the way IMCL operates indelibly. Simon Katterl, for the expert way in which you guided us to deeply engage and understand the vital role of true lived experience work. Thanks for your patience, passion and good humour.

The Victorian Legal Services Board Grants Program for generously funding our project, supporting us to pursue human centred and co-design approaches, and bearing with us through the tumultuous context of the pandemic. The IMCL clients we have assisted through the course of this project – it is a privilege to do this work and receive your trust, so often in contexts where experiences of services and systems have been damaging in the past. We thank you for sharing your stories with us so we can contribute to driving change for a better legal system.

This report was written on the unceded lands of the Wurundjeri people of the Kulin Nations. We pay our respects to all Aboriginal elders, past and present.

Victorian Legal Services
BOARD + COMMISSIONER
Funded through the Legal Services Board Grants Program

Terminology and language

There is no collective position with regard to which language people with lived experience prefer to describe their experience of mental ill health. Stigma and discrimination are a daily reality for too many people who suffer with mental ill health, and we acknowledge the power and importance of language.

Throughout this report, terminology such as "mental health consumer", "person with lived experience", and "client" are used at various points, generally to coincide with the setting where one or the other is common: For lawyers, "client" is the common terminology to describe a person who accesses our services; but in healthcare settings, "mental health consumer" is commonplace. IMCL's lived experience advisory group prefers the use of "lived and living experience".

Lived experience and living experience can encompass: someone with personal experience of mental ill-health and recovery.[1]

Lived experience leadership: We understand lived experience leadership as acts defined by three features. First, these acts were all grounded in people with lived experience's self-knowledge and their fidelity to that self-knowledge. Second, this self-knowledge was not only about themselves as individuals, but about themselves as people with lived experience in a more collective sense, and was informed not only by their experiences but by their knowledge of systems and structures. Finally, acts of lived experience were all directed towards increasing other people's access to their self-knowledge and ability to faithfully express that knowledge in action.[2]

Consumer: Someone who has an experience of mental illness, and who has received, is receiving, or is seeking treatment and support from publicly funded mental health services.[3]

Where possible, in this report, we seek to reflect and encompass the nuance of the Victorian Mental Illness Awareness Council's Declaration: "The language that most collectively describes our experience is this: **We are people with lived experience of emotional distress, trauma, mental health challenges and neurodiversity**".[4]

Local Adult and Older Person Mental Health & Wellbeing Services: As recommended by the Royal Commission into Victoria's Mental Health System, 60 local services that provide treatment, care and support for people who are experiencing mental health concerns.[5]

1 Noting it can also be used to encompass the experience of carers. In the context of this report, we are speaking specifically about the experience of the individual with experience of their own mental ill health: see, 'Lived Experience', *Mental Health and Wellbeing Reform* (Website, 18 March 2022) <https://www.health.vic.gov.au/mental-health-reform/lived-experience>.

2 Stephanie Stewart et al, 'A Leader, That's a Verb: A Discursive Analysis of Lived Experience Leadership Per its Construction by People with Lived Experience' (Research Paper, Research Square, February 2022) 2.

3 Department of Health and Human Services, *Mental Health Lived Experience engagement framework* (Report, 09 December 2019) 10.

4 Victorian Mental Illness Awareness Council, 'The VMIAC Declaration', *Victorian Mental Health Awareness Article* (Website, n.d.) https://www.vmiac.org.au/declaration.

5 More details about the service framework for the local services is available: see, 'Local adult and older adult mental health and wellbeing services', Mental Health and Wellbeing Reform (Website, 18 March 2022) <https://www.health.vic.gov.au/mental-health-reform/local-adult-and-older-adult-mental-health-and-wellbeing-services>.

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Executive summary

People diagnosed, labelled and/or living with mental ill health or experiencing an acute mental health crisis are more likely to experience legal issues — including criminalisation.[6] They also encounter barriers to finding accessible and safe support to address those legal issues.

Legal assistance services are not designed with the needs and preferences of mental health consumers in mind. Mental health consumers routinely experience the law in contexts of involuntary treatment, punitive justice responses and rights violations.[7] Legal assistance services must grapple with multiple challenges, including when and where mental health consumers can access or receive legal support, who to partner/integrate with to ensure the services are accessible, and how to deliver those services to ensure they are safe and meet consumer need.

In 2019, with the support of a grant from the Victorian Legal Services Board Grants Program, Inner Melbourne Community Legal (IMCL) started to explore whether integration with the Police and Clinician Emergency Response (PACER) unit was a viable pathway to improve accessibility of legal support for people experiencing mental health crisis. The premise of the project was to take IMCL's established and impactful Health Justice Partnerships (HJP) and expand into new partnership touchpoints. This would improve ways of working, including locating access to legal support within first and secondary response teams of police and mental health clinicians.

It was anticipated that by establishing a direct and early referral pathway to IMCL, individuals having contact with first responders could address life issues that were precipitating or exacerbating their mental health crisis. Further, by generating legal referral pathways with the PACER unit, it was envisaged that we could reduce the incidence and escalation of further justice system contact for consumers, particularly criminalisation.

This report documents the lessons learned from January 2019 to December 2022. We tested and adapted our partnerships in the face of a severely stressed mental health system, the Royal Commission into Victoria's Mental Health System (**Royal Commission**), which reframed the role of Victoria Police as first responders, and a pandemic that irrevocably impacted upon health service partners, particularly at the front line in hospitals. The report shows the nexus between mental ill-health and legal problems, and the importance of rights and health-based crisis response models that include timely and safe legal assistance.

The report establishes a best practice model for how and where to deliver legal assistance to the target client cohort and proposes systemic changes to improve the experience of accessing legal support and interactions with the justice system for mental health consumers.

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6 We acknowledge that some people do not identify with the labels or diagnoses applied to them. Whenever we use the term mental ill health, we intend to encompass all three of these descriptors.

7 For evidence of these issues in Victoria: see, Chris Maylea et al, 'Consumers' Experiences of Rights-Based Mental Health Laws: Lessons from Victoria, Australia' (2021) 78 *International Journal of Law and Psychiatry* <101737, 101737; Penelope Weller et al, 'The Need for Independent Advocacy for People Subject to Mental Health Community Treatment Orders' (2019) 66 International journal of law and psychiatry 101452, 101452; Victoria Legal Aid, *Your Story, Your Say: Consumers' Priority Issues and Solutions for the Royal Commission into Victoria's Mental Health System* (Report, 2020) <https://www.legalaid.vic.gov.au/sites/default/files/vla/vla-your-story-your-say-report.pdf>.

KEY FINDINGS AND RECOMMENDATIONS

Legal assistance services are not designed with the needs and preferences of mental health consumers in mind

Legal assistance models and interventions in the context of clients experiencing mental health crisis and situational distress are different from HJPs and require different operational principles. There is no "one size fits all" approach to when and where the appropriate intervention points are located. Legal services need to establish accessible pathways in a variety of locations within the mental health system, including Emergency Departments (**ED**), inpatient units, outpatient community mental health services, and within homelessness crisis services.

Access to legal support for mental health consumers in these settings must be designed to enable self-referral, referrals by consumer advocates and peer workers. This will overcome the barriers encountered when accepting a referral through a clinician, who are often involved in the administration of compulsory treatment and restrictive practices. Legal needs must be encompassed as part of consumer wellbeing needs in the coming Local Adult and Older Adult Mental Health and Wellbeing Services, and other parts of the mental health reform process.

Legal services should establish an internal lived experience advisory group to review external partnerships

Engagement with lived experience and consumer perspectives need to occur from the beginning of any project that seeks to deliver services to mental health consumers. Establishing an internal lived experience advisory group is an invaluable way to review external partnerships to make sure they are fit for purpose provide the consumers' expertise to review internal operations to ensure the services provided are safe and accessible for consumers. The peer workforce should play an essential role in improving referral pathways for consumers into legal support, and legal assistance providers should explore employing peer workers in-house to strengthen services.

Victoria Police should not act as first responders to individuals experiencing a mental health crisis

A key finding from the Royal Commission was that whilst Victoria Police should no longer be acting as first responders to individuals experiencing a mental health crisis, there will continue to be significant interactions between police and individuals experiencing mental health crisis. Accordingly, it is appropriate that training to police members is strengthened so that people with lived experience design and co-deliver content that incorporates human rights principles, underscoring the need for rights-based response over a justice response.

People with lived experience, alongside the legal assistance sector should be consulted as the system re-design to first responding occurs. To reduce adverse impacts and criminalisation of consumers when they do have contact with police, the Victoria Police Manual should be amended to reduce the instance of individual's experiencing mental health crisis from being charged for conduct that occurs during a crisis. Funding for peer support and legal assistance for consumers subject to police misconduct or criminalisation during a health crisis is essential.

The mental health sector needs additional training to help identify legal needs and seek appropriate assistance

The mental health sector would benefit from additional training and closer engagement with the legal assistance sector, so that legal needs can be more readily identified by health care professionals as causes of and contributors to, presentations of crisis and distress. To ensure the rights of consumers are upheld when they are in inpatient settings, hospitals should adopt protocols to offer consumers access to free and independent legal help, before police attendance in those settings is facilitated.

An integrated model needs adequate, long-term and sustainable funding

The multi-pronged models that are recommended in this report require adequate, long-term and sustainable funding to succeed. The assertive engagement, training and responsive service delivery required to meet the needs of mental health consumers is resource and time intensive. Funding to respond to legal needs through the coming Local Adult and Older Person Mental Health and Wellbeing Services is imperative so consumers can access seamless and integrated legal support where they will be receiving mental health care.

Background

In 2019, IMCL received funding from the Victorian Legal Services Board Grants Program to deliver a project to enable better access to legal services for people with lived experience of mental health issues.

This was pursued through a partnership with the Inner West's Police and Clinician Emergency Response (PACER) initiative – a joint crisis response where mental health professionals accompany first responders (police and in some iterations, Ambulance Victoria) to people experiencing a behavioural disturbance in the community. The aim was to examine whether referrals from first responders or mental health professionals enabled better and more timely access to IMCL's legal services, thereby reducing interactions with punitive justice systems and/or an exacerbation of mental ill-health.

IMCL strives to provide safe, accessible and quality services to all our clients. In embarking on this project, we recognised that clients experiencing mental ill health had distinct experiences and needs. The meaning of safe and accessible will depend on the context and warrant a different model of assistance. Around 30 per cent of clients across IMCL services, practices and programs report that they live with a mental health issue.[8]

The specific focus of this project was people who experience mental health or situational crisis, who are having contact with mental health services and/or police first responders, having regard to the experience of this specific group of the law in contexts of involuntary treatment, punitive justice responses and rights violations. Through IMCL's practice experience and the stories of people with lived experience,[9] we know that what so often precipitates and accelerates mental health issues and crises are factors such as poverty and financial disadvantage, insecure housing and homelessness, family violence, substance use issues, and discrimination.[10] These issues in many situations are legal problems which services such as IMCL exist to respond to.

People experiencing mental ill health need for integrated legal assistance services.

8 Average based on client self-report generated from service data over the period of the project – 2019–2023.

9 Victoria Legal Aid, *Your Story, Your Say: Consumers' Priority Issues and Solutions for the Royal Commission into Victoria's Mental Health System* (Report, 2020).

10 Ibid 6.

LEGAL PROBLEMS AND PSYCHOLOGICAL DISTRESS

There is overwhelming evidence that people experiencing mental ill-health are overrepresented in the justice system.[11] Legal problems can often exacerbate a person's condition.[12] Many people are either unable to access the legal services needed to resolve these problems or, if they do find legal help, it may be accessed too late in the process, which can cause issues to escalate and/or compound. For example, our clients frequently experience a cluster of legal problems including family violence and family law, incurring of debts and fines, insecure housing/ tenancy problems and criminal charges.

Community Legal Centres (**CLCs**) can often provide solutions to these problems or point people in the right direction.[13] However, the Legal-Australia Wide (**LAW**) Survey found that in three-quarters of instances individuals that needed legal assistance consulted non-legal advisers, which will delay access to appropriate help, i.e. non-legal advisers.[14]

It is especially important that appropriate legal help is accessible to people with mental ill-health at the earliest opportunity to avoid becoming entrenched in the justice system. Research has also found that people often seek assistance from services with which they are already in contact.[15] For example, 2013 research found that:

Compared to people with no illness/disability, those with combined mental and physical illness/ disability of high severity were more than 10 times as likely to report legal problems and reporting levels were consistently higher across illness/ disability types .... Not only do people with an illness/disability have high legal and health needs, but it is well documented that they can face a range of obstacles in accessing services.[16]

THE ROLE OF INTEGRATED LEGAL HELP

Through IMCL's partnerships, we know that mental health workers, social workers and other health workers are overworked and are often unsure where to refer individuals when they raise legal problems. A study conducted by community mental health service, Neami, and Health Justice Australia found in their survey of 1,165 staff that 94 per cent agreed or strongly agreed that legal issues impacted on consumer wellbeing.[17] Only 47 per cent agreed or strongly agreed that they felt confident to communicate with lawyers or legal services about the issues impacting upon their service users.[18]

Access to legal assistance in a timely manner, which is integrated into the health or community service can enable non-legal workers to be confident in identifying legal issues and accessing help for their clients. This will allow non-legal workers to focus on the work they are paid to do.[19] Identifying and responding to legal problems at the earliest opportunity and at points of crisis for individuals also helps to prevent other social welfare issues at a later stage.[20]

The Victorian Government's Access to Justice Review found evidence that:

"Integrated and collaborative forms of service delivery foster service co-ordination, better target services for disadvantaged and vulnerable groups, build the capacity of non-legal workers to identify legal problems, and can have a positive impact on clients' health."[21]

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11 Australian Institute of Health and Wellbeing, *The Health of Australia's Prisoners 2018* (Report, 30 May 2019).

12 Federation of Community Legal Centres, *Mental Health: Integrated Legal Practice Model*, 2022, unpublished p 3.

13 MT Nagy and S Forell, *Legal Help as Mental Healthcare* (Health Justice Insights, Health Justice Australia, September 2020) 2.

14 Christine Coumarelos, Zhigang Wei and Albert Z Zhou, 'Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas' (Access to Justice and Legal Needs Series, March 2006) vol 3, xxi.

15 Mary Anne Noone, 'Towards an Integrated Service Response to the Link Between Legal and Health Issues' (2009) 15(3) *Australian Journal of Primary Health* 203, 203–211.

16 Pascoe Pleasence, Zhigang Wei and Christine Coumarelos, 'Law and Disorders: Illness/Disability and the Response to Everyday Problems Involving the Law' (Updating Justice Series No 30, Law and Justice Foundation of New South Wales, September 2013) 1.

17 Health Justice Australia and Neami National, *Legal need in mental health services: a data snapshot*, (Report, 2022) 1.

18 Ibid.

19 Inner Melbourne Community Legal, *Partners in Care: The Benefits of Community Lawyers Working in a Hospital Setting* (Report, 2018) 43 ('Partners in Care').

20 *Access to Justice* (n 16) 188.

21 Ibid 188.

At their best, integrated service models provide a prevention approach which can reduce the impact of complex and interrelated social, legal and health problems.[22] CLCs are uniquely placed to deliver legal services in an integrated way as many have a long history of working in close partnership with other non-legal community-based services. CLCs have a deep knowledge and understanding of the suburbs in which they are based. CLCs are also adept at working in a flexible and accessible way to meet the needs of vulnerable members of our communities.

There are many proven models of successful integrated services that require more long-term resourcing so they can be bedded down and extended where appropriate. A lack of funding certainty is a barrier to CLCs being able to pursue the effective partnerships with non-legal services as by their nature, such partnerships take significant time and resources to pilot, evaluate and grow.[23]

IMCL'S INTEGRATED LEGAL SERVICES

As noted, IMCL has a number of established integrated services with local health, homelessness and community services. We know that the marginalised people in our community are less likely to seek out assistance of a CLC, due to a range of reasons including uncertainty, financial concerns or lack of understanding that they are dealing with a legal issue. Through the development and consolidation of our partnerships, IMCL is acutely aware of the time and resources involved in building relationships with non-legal services. IMCL's HJP presence in hospital settings is the product of over 10 years of work in developing partnerships, which began with a regular outreach clinic at the Royal Women's Hospital social work department. Since then this model of integrating legal services into a hospital setting has become an intrinsic part of how IMCL operates.

A cross-site evaluation of three HJPs with the Royal Women's, Royal Melbourne and Royal Children's Hospitals published by IMCL in 2019 showed that our HJPs were being accessed by clients with vulnerabilities including those experiencing family violence, homelessness, financial disadvantage and disability.[24] Eighty two and a half per cent of those surveyed had never seen a lawyer about their legal issues before,[25] and that if it were not for the free on-site legal clinic at the hospitals, 40 per cent of patients surveyed said they would not have seen a lawyer. Cost and accessibility were the main reasons provided.[26] Crucially, three quarters of patients felt that the legal issue had an impact on their health or wellbeing.[27]

IMCL's integration in health , homelessness crisis services, and other professional organisations working with marginalised communities means we can ensure the people that need our services the most have access. They can find legal help in locations where they are engaging with known services, feel comfortable, and often through the pathway of support and referral from a case worker or health professional.

In embarking on a new iteration of this work in the context of individuals experiencing mental health crisis, we sought to explore whether the same model of integration was replicable in these settings, or whether a best practice model that services mental health consumers warranted a model distinctly different model to IMCL's other HJPs.

MENTAL HEALTH ISSUES AND THE CRIMINAL JUSTICE SYSTEM

The Royal Commission into Victoria's Mental Health System (**Royal Commission**) found that people living with mental illness are over-represented in the criminal legal system. [28] It also found that the interface between the mental health and criminal legal systems is 'fragmented,

22 Ibid 189.
23 *Access to Justice* (n 16) 189.
24 *Partners in Care* (n 21) 6.
25 Ibid.
26 Ibid.
27 Ibid 7.
28 *Royal Commission into Victoria's Mental Health System* (Final Report, February 2021) vol 3, 350 ('Royal Commission').

poorly coordinated, and impeded by capacity constraints'.[29] People living with mental illness may come into contact with the criminal legal system in multiple ways. As identified by the Royal Commission, these include:

- use of police as first responders when a health response is required
- minor offences that disproportionately affect people living with mental illness
- use of remand as a 'method of safe management and containment' for people living with mental illness.[30]

IMCL identified the use of police as first responders as a potential intervention point to reach people in contact with the mental health system early and to reduce any subsequent interaction they might have with the criminal legal system.

POLICE AS MENTAL HEALTH FIRST RESPONDERS

As identified by the Royal Commission, a lack of mental health services has led to an increased reliance on police as first responders for people experiencing mental illness.[31] Police contact increases the probability of criminal charges. When mental health behaviours are criminalised; consumers are at risk of excessive force in the course of arrest[32] and/or may be taken into custody where they do not have access to services to address their health and wellbeing needs.[33] The impact is significant on consumers regardless of whether they are taken into custody, with police interventions leading to criminal charges and/or other and court processes that contribute to increased stress, anxiety and detrimentally impact a person's recovery.

PACER is a mobile emergency mental health response team that aims to prevent the escalation of mental health crises and admissions to the ED. The PACER program was developed as an alternative response pathway, to improve outcomes for people experiencing a mental health crisis. It brings together mental health practitioners and police members to assess and treat people experiencing a mental health crisis. PACER units generally operate one shift per day, between 2pm–10pm, with a mental health clinician and a Victoria Police member that respond together as a secondary response, where attending police identify that the person might be experience a mental health crisis.

The majority of individuals seen by PACER are released at the scene based on the assessment of a PACER clinician that involuntary hospitalisation is not necessary to prevent serious and imminent harm to that person or another person. However, these individuals are often also experiencing a multitude of legal problems, which may stem from their mental ill-health, as well as exacerbate it.[34] Other individuals may be apprehended under s351 of the Mental Health Act 2014 (Vic) and be taken to be assessed by a medical practitioner, often through a hospital emergency department.

Prior to the project's commencement, members of the PACER team had reported to us anecdotally that a high proportion of the individuals they assisted had a range of contemporaneous legal problems.

29 Ibid.

30 Ibid 360.

31 Ibid 362.

32 For background on the PACER program model: see generally, the Allen Consulting Group, *Police Ambulance and Clinical Early Response (PACER) Evaluation* (Final Report to Department of Health Victoria, April 2012).

33 Ibid 360.

34 Ibid.

Project activities

PACER AS AN INTERVENTION POINT FOR LEGAL HELP

The Inner West PACER is staffed by clinical staff from Melbourne Health (based out of Royal Melbourne Hospital and Inner West Area Mental Health (**IWAMH**). As outlined, IMCL has had HJP with Melbourne Health since 2015, encompassing an initial outreach service to IWAMH and a weekly hospital-based outreach clinic.

The underlying aim of the PACER Partnership was to reach people in contact with the mental health system early and to mitigate any subsequent interaction they might have with the criminal legal system. To achieve this aim, the initial objectives of the PACER Partnership were to:

1. Develop a new innovative model of partnership between police, clinicians and community legal assistance providers.
2. Address unmet legal need via the provision of early intervention legal services to vulnerable people, particularly those with mental illness and/or an acquired brain injury.
3. Develop skills and understanding across disciplines between the PACER team and community lawyers to support and enhance the collaborative partnership and to document this for future replication in other jurisdictions.

ACTIVITIES AND OUTPUTS IN THE FIRST YEAR

During the first year of the partnership in 2019, IMCL set the foundations for a collaborative service delivery model with PACER partners. This included:

- Activities to strengthen relationships between IMCL, Victoria Police and Melbourne Health, including providing targeted legal education workforce training and developing referral tools.
- Engaging a human-centered design consultancy Paper Giant to assist IMCL to undertake a human centred design (HCD) approach to developing the PACER Partnership model of service delivery. This included developing service and client journey maps setting out common pathways through the

criminal justice and mental health systems and testing these with key PACER partners and stakeholders to identify the most effective legal intervention points (Appendix A).
- Undertaking desktop research into the PACER model and emergency mental health street triage co-response models across domestic and international jurisdictions; and field research including structured interviews with emergency mental health street triage teams / co-responders and with consumers, consumer advocates and carers, carer advocacy groups, and peak bodies (Appendix B).

During the first year of operation, IMCL worked closely with key partners and stakeholders to design, test and iterate the proposed service delivery model. This collaborative approach allowed IMCL to identify early in the project that the initial service model focussed on interactions between individuals and the PACER team during a crisis intervention may not be best suited to meet the needs of consumers. Three key reasons why this conclusion was reached were:

1. Despite high level support, the obstacles to integrating with police were significant (from a cultural and operational perspective).
2. PACER was often understaffed with clinicians and was not operating as it is intended – a product of a profoundly stressed mental health system.
3. Legal help is often seen by clinical staff as an issue to be dealt with only after the crisis has passed – whereas those with lived experience can identify the urgent nature of legal issues and their relationship to resolving a crisis.

Together with key partners and other stakeholders, as the project progressed IMCL continued to develop the service delivery model to reflect findings that inpatient and outpatient admission settings further downstream may be a more appropriate intervention point to provide legal assistance. Accordingly, IMCL shifted the focus of collaboration from the PACER unit to mental health clinicians within RMH inpatient and outpatient units further downstream from the initial crisis intervention.

Incorporating an HCD approach meant that the PACER Partnership was able to pivot early in the project to reflect the advice of consumers, the environmental constraints imposed by the pandemic, and later lessons identified by the Royal Commission. This ultimately ensured that the service delivery model was able to adapt to best reflect and meet the needs of consumers.

RESPONDING TO THE RECOMMENDATIONS OF THE ROYAL COMMISSION INTO MENTAL HEALTH

In March 2021, the Royal Commission handed down its final report, recommending significant and fundamental change to the operation of the mental health system. Notably, in the context of IMCL's work, the Royal Commission recommended:

- That wherever possible, emergency services' response to people experiencing time-critical mental health crises are led by health professionals rather than police.[35]
- That wherever possible and safe, Ambulance Victoria would respond to Triple Zero (000) calls concerning mental health crises rather than Victoria Police, and where both ambulance and police responded together, the response is led by paramedics with support from mental health clinicians as required.[36]
- Mental health clinical assistance is available to ambulance and police via... in-person co-responders in high-volume areas and time periods.[37]
- The creation of Adult and Older Adult local Mental Health and Wellbeing Services, inclusive of wellbeing supports, delivering multidisciplinary, holistic and integrated treatment, care and support.[38]

In anticipation of these changes to the mental health system over the following years, IMCL sought to adjust the scope and focus of our work in this space, to ensure the model we were developing was adaptable to the future landscape of the mental health system.

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35 *Royal Commission into Victoria's Mental Health System* (Final Report, Summary and Recommendations, February 2021) Recommendation 10, 46.

36 Ibid Recommendation 10, 46.

37 Ibid Recommendation 10, 46.

38 Ibid Recommendation 5, 41.

IMPACT OF COVID-19

Collaboration with Melbourne Health was impacted by the COVID-19 pandemic, including as a consequence of the chronic mental health clinician staff shortage within the PACER team. Limited review meetings[39] were conducted by the PACER unit and after discussions with clinical staff, IMCL ceased attending review meetings due to the low yield in terms of regularity and referrals being generated. Focus shifted to working in a more direct way, with clinicians working on post discharge referrals.

Due to the pandemic, the project was paused during 2020.

Consistent with our first-year project findings and recommendations of the Royal Commission, IMCL opted to pause engagement with police through the PACER team upon recommencement of the project in 2021. Given the lived experiences of the police by many people experiencing mental health crises, we also identified that it would be more appropriate to conduct further training and engagement with police only after exploring the perspectives of consumers on how we might best work with police.

With the exception of a short period in the first half of 2021, during the pandemic IMCL lawyers were unable to attend on-site to trial proactive services to patients in the ED or inpatient units. Phone based services were provided as an alternative, with a revised responsive triage protocol providing lawyers to be regularly available on call. Whilst this led to an increase in accessibility and flexibility for some clients, it did present barriers for others.

Opportunities to deliver planned targeted legal education training to clinical and allied health staff were also impacted by the extreme pressure on services who were at the frontline of the COVID-19 clinical response. IMCL focused instead on one-on-one relationship building opportunities with clinicians borne out of individual client referrals to promote and build awareness of our services and encourage clinical champions of the partnership. This included secondary consultations, ensuring client consent to communicate with other professionals was obtained so that lawyers could work closely with referrers in the holistic resolution of the legal matters, and undertaking follow up with referrers at the conclusion of casework so they were aware of client outcomes and the tangible benefits of the partnership.

Although legal referrals did continue to grow through existing partnerships, there was limited scope to seek additional feedback from clinical staff in order to revise existing or develop new service pathways and other service innovations within the hospital setting. Settings such as the ED were at the absolute frontline of demand pressures due to COVID-19 meaning, planned development of responsive triage services in conjunction with mental health ED staff, particularly peer workers, was not viable.

EMBEDDING LIVED EXPERIENCE INPUT

Co-design methodology was employed for the duration of the project, in the first instance with clinicians and police. It was identified during the first year of the project that engagement with consumer lived experience perspectives needed to occur simultaneously to ensure the models IMCL were exploring were appropriate. With the benefit of hindsight, we can categorically state that this work would have been stronger and advanced further, had we incorporated co-design of proposed service models with people with consumer lived experience from the outset.

At the outset of the project IMCL was conscious of the lived experience of consumers in the mental health system and the reality that many would have experienced the system as a traumatising and coercive one. In the first year of the project, IMCL consulted with consumer peak bodies and considered how to navigate this in a project that was conceived as a partnership with mental health services and police.

The participation of lived experience and consumer leadership has gradually become an established component of the mental health system in recent decades, although work continues to ensure that this input into service delivery and policy is meaningful and truly embedded in all levels of the system.[40] As Roper, Grey and Cadogan highlighted, 'in no other area of health care is there separate legislation that removes the rights of consumers to refuse medical treatment. This legislation means hospitalisation can be mandated, even if it is

39 Weekly PACER review meetings were conducted between police and clinicians to review all consumer interactions and the actions taken with respect to each individual.

40 *Royal Commission* (n 31) 21–23.

against a consumer's wishes, and interventions such as seclusion and restraint are able to be authorised'.[41]

The imperative for lived experience and rigorous consumer input in the design and operation of the mental health system is clear.

The Royal Commission's final report committed to 'a reformed mental health and wellbeing system in which people with lived experience of mental illness or psychological distress are valued as leaders and change-makers, in the community and as part of reforms to the system'.[42]

Although there has not generally been a practice of co-design with mental health consumers in the context of design and delivery of CLC services, there is considerable scope and responsibility on services to make this standard practice. Notably, Victoria Legal Aid and Independent Mental Health Advocacy's Consumer Advisory Group "Speaking from Experience" have provided an excellent model since its inception in 2016.

Legal assistance sector providers service mental health consumers who have routinely experienced involuntary treatment and police misconduct. We are part of an eco-system wherein mental health consumers have unsatisfactory experiences of systems when it comes to their rights. It is incumbent on us to ensure we are not speaking for or doing things for mental health consumers, but with them, in a manner that is conscious of the variables of power at play. Community lawyers work closely and holistically with our clients and we feel we have a deep understanding of the experiences that the communities we work with have of systems. However, this is no substitute for directly partnering and striving to co-design with these communities.

ESTABLISHING AN ADVISORY GROUP

After research and consultation about how to best engage with consumers as part of the project, it was ultimately decided that the most meaningful and impactful way to consult with consumers was by establishing a consumer advisory group for IMCL.

In early 2021, IMCL set about establishing a consumer advisory group with the aim to better identify the best access and referral points for delivering legal services, and to promote consumer and lived experience leadership within IMCL in the medium to long-term. IMCL considered it imperative that the design of a legal service pathway for mental health consumers be informed by the views, lived experiences and preferences of the people who might ultimately use the service.

Recognising the lack of experience IMCL had in working with consumers in this fashion, we engaged a lived experience consultant to assist with the design and establishment of the advisory group. The consultant provided crucial advice on how to conceive a group in a way that was safe for consumers, provided essential training on the principles of co-design and their application in the mental health system, and guided IMCL in the recruitment of members and establishment of terms of reference and frameworks for the group's operation.

Ultimately, five consumers were engaged to form the Community Legal Advisory Group (**CLAG**), and met for the first time in July 2021. In addition to lived experience of mental ill health and the legal system, group members had numerous intersecting lived experiences consistent with IMCL core client groups.

The primary objectives for establishing the CLAG were to:[43]

- Assist with referrals c identifying the most effective, safe and accessible pathway to IMCL's legal services
- Assist with quality assurance – ensuring that IMCL delivers quality, safe, and respectful legal services for mental health consumers, as they relate to family law, family violence, tenancy, debts, fines, criminal law and victims of crime.
- Prototype new service responses – assessing whether new service responses, such as an accessible phone access point to assist consumers.

Crucially, in progressing these objectives, consistent with the principles of co-design, the CLAG iterated its own agenda by exploring from the outset what the problem was that the group was trying to solve.

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41 Cath Roper, Flick Grey and Emma Cadogan, 'Co-production: putting principles into practice in mental health contexts' (Report, University of Melbourne, 2018) 7.

42 *Royal Commission* (n 31) 13.

43 Community Legal Advisory Group, *Terms of Reference*, August 2021.

THE PROBLEM

How might we improve the experiences of being charged/ subject of a police response whilst in a mental health crisis?

- How do the police treat people and make decisions when they respond to people in a mental health crisis? What if there was another way to respond? Can we reach a point where the response is not punitive?
- Would having access to a lawyer or having a lawyer present improve the police response?
- Too many consumers only have access to a lawyer once they get to court and not early enough in the process.
- Many people that need legal support do not get it and this is evidence that the system is failing.
- Many consumers (particularly young people) are on the receiving end of police response that includes use of force against someone in distress or experiencing crisis.

How do we address the barriers for accessing legal help?

- People do not know they can access free legal help – information is often through word of mouth.
- Previous experience of lawyers as a young person in the family law and family violence systems has been intimidating.
- Fear of the law and lawyers can be a common manifestation when someone is unwell.
- Police not providing clear communication and not highlighting the option of seeking independent legal help. Police interactions also present an opportunity for this intervention to contain information about how to access independent legal help.
- Lawyers need to have a stronger understanding of how certain sorts of offending is a manifestation of unwellness. Lawyers must understand the whole person, and recognise how different presentations of unwellness cause different legal problems.
- Consumers in inpatient units have a difficult time accessing independent help to raise issues.

How to we design our services so they are accessible for being experiencing mental health crisis?

- Recognising that mental health crisis presents many intersecting issues – housing instability and homelessness, unemployment and poverty.
- Designing access points has to be a broad exercise which explores points where we need to intervene that we currently are not.
- Reflection that consumers are routinely handballed between different services. Often social workers are the last port of call before someone will simply give up on seeking help.

In 2021 the advisory group met six times to discuss topics including policing, housing and eviction, and legal access points in the mental health system. CLAG explored the appropriateness and utility of IMCL working with police further on integrating access to legal help. Ultimately, it was agreed that whilst there was merit in pursuing a role for lived experience perspective into training for frontline police on responding to individuals in mental health crisis, that it would be more impactful to focus on improving accountability of police responses, and exploring the opportunities presented by the Royal Commission on the changed role of police as first responders.

With the benefit of an additional 12 months of project funding, CLAG was able to continue its work into 2022. It focused on how to design the best service models for consumers, how to bring CLAG input into IMCL's law reform, a review into the operation of IMCL's intake process and client communications, and whether they were safe for clients experiencing mental ill health.

DESIGNING SAFE SERVICES

A key priority that drove the establishment of CLAG was the desire to examine IMCL's operations from the perspective of mental health consumers. In order to put forward a model of how to best provide accessible services for clients experiencing mental ill health, it was essential to first ensure that once clients had overcome the barriers of access, that the experience that they had of IMCL was a safe and respectful one. Sessions were held with CLAG to turn the spotlight back on IMCL to review how processes and procedures were experienced by group members, what was working well and what changes needed to be implemented to improve client experience of engaging with the service.

As a result of this work, IMCL have subsequently reviewed and updated the standard letter of engagement and client information sheet that is sent to all clients when a casework file is opened. Further work is in progress to review and revise intake procedures to operationalise the feedback given. This will be an iterative process wherein CLAG will be further consulted as changes are rolled out and road-tested. An additional recommendation of the service safety review was to develop other forms of additional content for websites based on some of the key information in the client information sheet, including visual and video forms. IMCL and CLAG are keen to pursue these down the track with the appropriate funding.

SUMMARY OF SAFE SERVICE ANALYSIS

What did we learn about – designing safe services

Sessions were conducted with CLAG members to review aspects of IMCL's intake procedures and written correspondence.

INTAKE CALL

CLAG members listened to a recording of a simulated intake telephone call. The client called with a tenancy issue which had arisen in the context of a family violence incident. The caller was seeking assistance with a repair issue due to property damage. The intake paralegal identified there was also an upcoming intervention order (IVO) hearing and the caller was ultimately booked into an appointment to discuss both issues.

FEEDBACK FROM CLAG MEMBERS

First impressions and eligibility questions

- Eligibility requirements – understand why they are asked but doesn't describe what it means and what you do as a service.
- The worker speaking to the client was straight forward in the questioning. The worker was quickly getting the information and there wasn't time to build rapport with the client.
- For the first few minutes, IMCL fulfilled its obligations talking about conflicts of interest, eligibility and other matters. It took a few minutes to ask what had happened. The process felt like box ticking at the start. They need to build rapport to engage the person.
- Talking about eligibility should be postponed until later in the call. Let the client get things off their chests.

Confidentiality and what we do with the info

- Confidentiality needs to be more explicit in the beginning of the conversation and what this means.
- It would be helpful to be upfront about why you are asking for the names of the parties. It might scare clients away. Do that before asking for an ex's name.
- More information about getting the Other Party to the legal issues name first up – "if you're comfortable" – this is what we're doing with it. Putting more information up front about what we do with info such as address/contact information.
- Great that we explained what a conflict is when asked. Transparency should always come first. Potential clients need to know everything the lawyer does and, what's going on and how it's going to affect them. Make sure you treat the client as the expert in their situation.

Accessibility

- Language of "tenancy clinic" – "matter" – "duty lawyer" and "parties" is accessible to most people.
- Legalese at the start of the call can be a turn off. Need to write the script that makes the language a bit more accessible.
- Booking an appointment in the first call is a positive. The intake worker was polite and understanding.
- Questions are clear but intake worker could have paused more.
- Transparent about what service could be provided and what cannot. A lot of services over promise or are quick to get you in – but then tell you they can't help.
- If you can't assist – can you make referrals.

Other comments/suggestions

- Willing to support even though we can't be at court but offer of time to prepare for court is a big positive.
- Great that intake worker shared steps the client needs to support themselves and be prepared for the appointment. It helps someone that might be stressed and safety

concerns heightened. Knowing how a service will provide help can ease the stress and anxiety associated with the legal issue.
- Could've asked "Are you safe right now? Do you have access to the info you need for support if the other party comes back? Do you need referral to support service?"
- Could've checked (depending on restrictions/ practices) – "Are you ok if it's a phone appointment or would you like to come to our office?"

ADVICE APPOINTMENT INTAKE

CLAG members listened to a simulated call of a lawyer client appointment, covering the introductory conversation and completion of the intake sheet.

Feedback on initial questions

- Clarifying details of name – is there doubling up or repetitive in asking the information. To help make it more accessible could not duplicate the information
- Eligibility questions again – this has been resolved previously?
- Set rapport – could check in with the person more about how they're going. Went straight into it. Questions were good though.
- Checked in with safety to call or text which is a big positive, and asking about pronouns. Could've started by introducing self with pronouns.

Asking about mental health

- Check in/acknowledge noting of anxiety – offer to take a break or pause if needed.
- Language of "support" instead of "help" is preferable.
- Disability and mental health should be separated. Most people approach them separately. Rather than "do you need help – are you receiving support with that? Does that person have the support they need? If not, do you need help with that.
- Separate question – "do you identify with having mental illness?" – some people might not identify with disability as they have mental health issues.
- Enquiring about mental health status – stigma and support considerations. It's a sensitive area. You don't' want to belittle someone or have them not want to engage with us if we ask – people being concerned about disclosing severe mental health issue or mental health issue not severe enough.
- Asking about mental health – should it be the lawyer's role to talk about that unless it's an issue? Have to tread carefully. People may not want to disclose it. It might be a matter of building rapport first before actively asking.
- Always better to ask then assume – frame that we're asking to see if we can support you as best as we can. Maybe initial assessment isn't the right time. People won't know what's important if you don't ask. Getting the timing right but making space for people to talk about if they do want to.
- Training for lawyers on picking up on the issues so they have empathetic approach to clients and can recognise when they need to ask targeted questions re: safety/trauma/mental health support
- Could check in whether the appointment brought up anything and remind them of available supports.

Other comments/suggestions

- Seeking permission for privacy was good.
- Check in on information sharing really good.
- Cultural background – awareness and safety issues. Some young people being concerned with information being shared in the community. Could ask/frame: Are there any other cultural considerations the lawyer needs to consider to provide a safe service?
- Important to talk about confidentiality – they may well be worrying about that and serves them to have it clarified at the lawyer's initiative.
- They don't know necessarily what the legal issue is. Tell us about why you want to speak to a lawyer.

LETTER OF ENGAGEMENT AND CLIENT ENGAGEMENT INFORMATION

CLAG members reviewed the IMCL standard letter of engagement and Client Engagement Information sheet.

"It's what you expect from lawyers but it's horrible".

The language was seen as overly harsh and unwelcoming. Lots of framing of key points was negative but group members felt that a few adjustments can carry the same meaning but change the impression the client would get.

Several commonly used terms were inaccessible or not easy to understanding the meaning of, demonstrating that the documents as they stand are not sufficiently plain English.

Quotes from group members

- It's a language thing. Acknowledging that it has to do certain things. How we are going to assist you? What we will do?/ To help us help you, we ask you to do XYZ:
- We will not – could be - we are unable to.
- Nuances of language can make a difference in how welcoming it is.
- "Engagement" isn't clear what it means. Not a term that people would use.
- "Matter" also isn't commonly used language and meaning isn't clear.
- "If this letter isn't accessible to you – feel free to contact your lawyer to discuss this".
- Language around "we will not assist you" – could be "we won't be able to support you with these issues".
- Framing of when we might not continue to assist – how to make less harsh. Clear that decision to engage is up to them.
- Saying "assist" or "support" rather than "help" feels less disempowering.
- Language is negative – we will only discuss your legal issues with people at IMCL – otherwise we will not disclose anything about you unless you want us to, we have to or your information is no longer confidential.
- Information Sheet generally ok – relatively clear. Suggestions around developing other sorts of resources in different mediums (eg. QR code with link to mini videos) that tell clients what we really need to tell them in a more human/engaging way.
- Disbursements and Costs need defining better.

An audit of the physical spaces where clients are seen at IMCL was within the scope of these sessions but is still in progress, recognising that there are a number of constraints in effecting change to spaces given resourcing and the realities of the physical spaces available to IMCL at present.

IMPLEMENTING CHANGES

- New letter of engagement and client information sheet developed by the Director of Legal Practice and Managing Lawyer, implementing all the feedback provided by CLAG.
- Review underway with legal practice management and intake teams into intake processes and procedures. Outcome will be shared and road tested with CLAG to confirm that it sufficiently implements the feedback provided.

ADDITIONAL FINDINGS OF THE COMMUNITY LEGAL ADVISORY GROUP

The CLAG found that strengthening local relationships with Victoria Police is not without merit, however, on balance, an organisation like IMCL should focus on having a strong voice to speak about weaknesses of oversight systems of Victoria Police. IMCL's role is to advance the stories of people with lived experience to create change in the system.

Intervening at a point of immediate crisis such as via a PACER unit or in an ED can be effective in some instances, but may not be the ideal time for engagement with a lawyer. Utilising the peer workforce in these settings as a bridge into legal help is key. Peer workers, owing to their lived experience of mental ill health and distress are well placed to provide support and information to clients in these acute settings.

Legal services need to be accessible and readily available by regular physical presence in inpatient mental health units. Legal support needs to be provided at the earliest opportunity through more information and resources within health settings, and through improved ability of clinicians to identify when someone should be accessing legal support for their life issues.

Legal services need to be more accessible particularly for people experiencing homelessness or threat of eviction, children and young people, and people with other forms of marginalisation that co-exist with mental health diagnosis. Locations such as police stations and Centrelink offices are important access points where information and referrals should be available.

Services like IMCL should explore model for engaging peer workers or people with lived experience on staff to support clients and upskill staff on responding in a manner that is safe and non-stigmatising.

Impact and future of the Community Legal Advisory Group

CLAG has played a pivotal role in developing a model of legal service delivery that best meets and supports people who are accessing mental health services.

The impact of being able to conceive of a service model based on the real-life experiences of consumers and to understand the nuances of the system from the perspective of the clients IMCL exists to help are immeasurable. It has changed the way IMCL will approach piloting and developing new services into the future.

Establishing CLAG has built capacity within IMCL staff to explore embedding lived experience and co-design principles more broadly across other aspects of IMCL's work. Furthermore, the generosity and commitment of CLAG members to sharing their experience of the mental health and legal systems brings with it an educative benefit for an organisation like IMCL. In doing this work, rights-based organisations like legal assistance services can learn a lot about stigma, how to talk about mental ill health, how to navigate and understand dynamics of power in the systems we work in to make our services safer for our current and future clients.

The work of CLAG within IMCL is in its infancy. Work of this nature takes time, to build relationships of trust within the group, and it requires sufficient resources to be able to advance the priorities of the group beyond and between meetings. The ambitions of the group and the resources IMCL had to realise it were not always aligned. Designated resources to continue this work are needed to harness all of the positive progress made in the past two years.

Some of the further projects that CLAG aims to undertake:

- Workshops with IMCL lawyers and intake staff on engaging with mental health consumers
- Peer worker pilot project
- Co-design accessible resources for people experiencing mental ill health and seeking support from lawyers – how to know when a community lawyer can help, what to expect, addressing confidentiality/privacy
- Co-design poster and resources for individuals in hospital settings about accessing legal support
- CLAG members participate in consultations regarding the implementation of new system responses regarding ambulance Victoria as first responders.

WHAT CLAG SAID ABOUT LEGAL HELP IN KEY ACCESS POINTS

On Emergency Departments

The atmosphere in EDs is not always positive due to how busy the environment and the staff are – it doesn't leave you feeling comfortable to raise these sorts of issues with ED staff.

You're conscious of others waiting with physical health issues so you don't feel like you can raise things like legal issues.

Sometimes the physical space in particular hospitals mean there is no designated mental health triage space and there's nowhere quite and confidential that you could speak to a lawyer.

Fear of the law and lawyers can be common when someone is unwell.

When you're distressed or having a mental health crisis, you often can't take in the information, you're not in a good headspace at that time.

If you're going to be discharged or there isn't a bed, it's a useful opportunity to have a seed planted about what legal help might be available. Peer workers or social workers would be a good bridge to this information about connecting with legal support. People would be less afraid of a peer worker or a social worker and more likely to take on the information than if they were able to talk to a lawyer right there and then.

Services like Safe Haven Cafes would be ideal locations to connect with legal help.

The ED was seen as a useful point where someone could be connected to with legal support when the time was right. It was seen as a good opportunity to talk to an advocate, peer worker or social worker who could then link individuals in with legal support. Identified that an assessment of legal needs by hospital staff at triage would be a useful way to flag referral to the right supports.

On Inpatient Units, Community Care Units, Prevention and Recovery Centres

Patients are not always made aware of the presence/attendance of the lawyer and the process for seeing them.

Having posters/visual materials is important so people can self-refer.

Rapport between the visiting service and the health service is essential – you need a safe and quiet place to make it happen – this requires the health service to be on board to help facilitate.

Presence needs to be somewhat flexible as being rigid can exclude people who might for instance be on day leave or in clinical appointments – lawyer would need to come regularly to be accessible.

Having a regular presence is important so you can build rapport and trust. Might take people a few times of seeing the face to find the idea less intimidating.

You need to have open guidelines – some have experienced not being able to get help from visiting duty services whilst an inpatient due to being a voluntary patient.

Identified that the information pack/folder received when admitted to the ward should have information about legal help information in it.

What we learned about our service delivery through the project

Although frontline service delivery was ultimately a specific output to be delivered through the funded project, we were fortunate to have the real time opportunity to trial, test and learn from each and every client matter when we were assisting people experiencing mental health crisis.

Despite the challenging context of the pandemic and its impacts on delivering services and training and partnership activities to grow referrals within the hospital, a clear outcome of the project was marked growth in referrals from Melbourne Health mental health services.

TYPES OF ISSUES REFERRED

Criminal law matters made up a significant proportion of matters that IMCL assisted with, followed by family violence intervention orders (**FVIOs**), civil law matters including tenancy, debts and infringements, family law and powers of attorney. Although occasional enquiries regarding Mental Health Tribunal matters were received, it is important to note that these are intentionally outside the scope of IMCL's work.[44]

44 In consideration of the formal relationship between IMCL and Melbourne Health, we do not act where Melbourne Health might be the other party to an application. As IMCL has not previously had a practice in Mental Health law, it was a logical caveat to place on the otherwise expansive service offering that we provide through the partnership.

IMCL recognised the essential work of Independent Mental Health Advocacy (**IMHA**)[45] in providing non-legal advocacy for consumers in inpatient and community settings regarding their rights, in conjunction with legal advocacy by Victoria Legal Aid (**VLA**) and the Mental Health Legal Centre.

Prior to the commencement of the project, referrals from the John Cade Unit were uncommon. This has now grown into an important referral pathway within Melbourne Health. Criminal matters are more likely to be referred by social workers and clinicians in the John Cade Unit than other areas of law, and as compared to IWAMH and community based inpatient units, where civil law matters such as fines, debts and tenancy issues are more common referrals. Given crisis presentations and police interactions are so often the precursor to someone being hospitalised in an inpatient unit, it is unsurprising that criminal law and FVIOs were the most common sorts of legal matters referred to IMCL by social workers and clinicians in those settings. Criminal law and FVIOs also present the most obvious and urgent legal issues due to the impetus for legal help that a Court date will present.

Other less obvious legal issues can also be escalated by delays in accessing legal help: tenancy matters relating to evictions for arrears or alleged behavioural issues, debts escalating, and employment law issues concerning potential dismissal. It is of great importance then that legal health checks occur to screen for other issues. Often, it was observed that social workers and key clinicians would seek to resolve outstanding civil legal issues themselves to support a consumer, and only escalate when situations had not resolved. Workers would report often resorting to this due to a lack of knowledge about legal assistance services, confusion about eligibility criteria, catchments and service guidelines, or frustrations trying to access phone-based advice services on behalf of consumers.

POLICE ATTENDANCE FOR INPATIENT CLIENTS

In the course of assisting consumers through the partnership with criminal charges, lawyers will routinely obtain their mental health records through Freedom of Information (**FOI**). It is not uncommon to observe in the notes that Victoria Police access to consumers during inpatient is facilitated by clinical staff. Often police want to speak to a consumer about potential charges, serve them with a charge and summons, or an application for an intervention order. Consumers need the opportunity to speak with a lawyer in advance of any police contact because they have limited power when subject to involuntary treatment orders, they need to understand their rights with respect to interview and for consumers to feel equipped to respond to charges or other legal processes.

Models like HJPs make it feasible and straightforward for mental health services to establish protocols to ensure inpatient consumers are afforded the opportunity to seek legal support before access for police is facilitated. This would ensure mental health services comply with obligations under the Charter of Human Rights and Responsibilities Act 2006, such as the right to equality. It should be noted that other hospital patients would not be detained and have police invited to attend upon them; nor should consumers.[46]

REFERRALS

Through IMCL's casework, it is apparent that in many instances, there were opportunities where the intervention of legal support could have come earlier in the process than it did, and that intervention could have had a material difference on either the consumer experience of the legal system and the associated stress and anxiety of that system, or where the ultimate outcome of the legal issue was better for the consumer. These examples and observations allow us to envisage a model where legal support can be accessible at multiple touch points throughout a consumer's experience of the system, so that people do not fall through the gaps.

It is common that referrals are not made until just before discharge. This underscores the need for responsive triage and a flexible service model that responds to urgent referrals and work collaboratively with social workers and clinicians.

45 More details about IMHA and its work is available at https://www.imha.vic.gov.au/

46 *Charter of Human Rights and Responsibilities Act 2006*, also see Simon Katterl & Chris Maylea, 'Keeping human rights in mind: embedding the Victorian Charter of human rights into the public mental health system' (2021) 27(1) *Australian Journal of Human Rights* 58.

The lack of identification of a legal problem can sometimes hinder a safe discharge such as placing housing at risk or safety issues due to family violence at home.

We observed that there is a significant benefit in being physically present to see a client and build rapport. Many of the case studies in this report occurred during pandemic restrictions where services were delivered exclusively by phone. It was very successful in these contexts, but it is hard to build relationships of trust with someone who is a mental health inpatient if they don't necessarily have access to independent means of communication and are recovering from a mental health crisis.

It is clear to IMCL that we are only seeing the tip of the iceberg at the moment of the unmet legal need. Lawyers regularly identify once they commence assisting a consumer with court matters that they are also experiencing a clustering of other legal issues, including debts, fines, Centrelink problems, family law parenting or child protection issues or migration issues. Clients need time to work through these issues with a lawyer and form a plan to manage each one.

Insights from CLAG coupled with observations from service delivery indicated that IMCL is likely missing out on assisting many consumers due to lack of regular physical access. Certainly, clinical staff can and do make appropriate referrals to ensure many consumers get the legal help they need, but there is scope for this to be improved. Physical presence and increased access to information for consumers would bridge this gap and ensure those that are reluctant to engage with a referral from clinical staff to a legal assistance service are still afforded the option of engaging independently.

IMCL has consistently observed that legal needs were not treated as a wellbeing need or not understood within the context of the social detriments of health. Feedback received through consultations with clinicians is that legal issues are viewed as problems to be addressed down the track and are not a priority early in a consumer's recovery. Conversely, peer workers, consumer advocates and CLAG members reported the issue that precipitated a situational or mental health crisis is often related to an unmet legal need. They said the resolution of that issue is central to their health and wellbeing.

INTERVENING DOWNSTREAM

Embedding in homelessness crisis accommodation services is an essential aspect of servicing this client cohort effectively. Through our Housing Justice Project, IMCL have lawyers embedded in crisis facilities at Vincent Care's Ozanam House and the Salvation Army's Flagstaff and Open Door facilities, which provide people experiencing homelessness with short-medium term accommodation, in conjunction with case management, housing and other social supports.

Through the course of the project, IMCL observed that many of the clients who IMCL assists through these homelessness partnerships were also receiving treatment from IWAMH or have been discharged from inpatient mental health units into their accommodation. Many of these clients had also had PACER interactions, sometimes discharged at the scene. However, they are not referred to a lawyer until after they have engaged with homelessness case management and other support mechanisms within their crisis accommodation services and until after the crisis has passed.

Through our casework, IMCL was able to examine some of the reasons why these clients were being referred downstream rather than at an earlier point of interaction with mental health inpatient services. It also provides an opportunity to examine what the impact might have been on the progress of the legal matter had they been referred for legal help earlier. In some instances, the delayed intervention of legal assistance can mean:

- the client has not attended court dates and had warrants issued that need resolving;
- the client has left or been evicted their rental housing without advice or the benefit of legal representation;
- Infringements and debts have escalated to a later stage and additional fees and costs have been added;
- Intervention orders are made against the client without them having attending court, which might mean they are unable to return home.

In many instances though, it is apparent that clients are only ready and able to engage with legal support once the crisis has passed, they have the benefit of social supports and stability of accommodation. This underpins how crucial it is to be present in multiple locations, so services are able to meet the client where they are and when they are ready to engage with legal support.

CLIENT DATA

Referrals came from various sources within Melbourne Health including – John Cade Unit, IWAMH, PACER, ENGAGE[47] or HOPE[48] programs, and CoHealth's Homelessness Outreach Mental Health Service. It is likely that this client data is an underrepresentation of the actual numbers of clients referred through these partnerships due to data entry inconsistencies. The below data also does not encompass referrals that did not result in a client receiving legal assistance, generally because the client did not engage with the referral or ultimately did not attend the appointment.

Year	Clients assisted
2019[49]	2
2020	11
2021	22
2022	38
(1 Jan–24 Apr) 2023	11
Total	**84**

Services provided 1 Jan 2019–24 Apr 2023	Clients assisted
Advices	90
Tasks	60
Cases (without court representation)	74 (45)
Total	**224**

Closed case outcome survey data – assessment of client by the lawyer

69% experienced reduced stress/anxiety

53% had an improved capability to focus on health and quality of life

31% had improved employment prospects/ conditions

15% had improved personal safety

15% had improved housing security

23% were in a better financial situation

CLIENT STORIES

The following client stories represent a snapshot of some of the assistance IMCL provided to clients through the referral pathways during the project. It is important to read these stories in their structural context, reflecting both the situational and long-term stressors that people experience, including poverty, homelessness, lack of access to mental health care, family breakdown, over-policing and social isolation.

Whilst some of the stories encompass instances of alleged criminal offences such as assaults, it is understood that people experiencing mental ill health are more likely to be victims of crime than the general population.[50] As already noted, referrals in inpatient settings were primarily for individuals that had court matters pending. We have chosen not to include the diagnosis to reflect the fact that many consumers find their use stigmatising.

47 The ENGAGE (Post EMH/PACER) Support Program delivers interventions to allow both a preventive and early intervention approach (recommended in the National Institute for Health and Clinical Excellence (NICE) Emergency Department guidelines) for individuals who present to the RMH Emergency Department in mental health crisis. The model ensures that people who attend the ED in a vulnerable mental state have effective mental health follow up after the attendance, regardless of the presenting problem or their residential location.

48 Hospital Outreach Post-Suicidal Engagement Program.

49 Recording of specific referral source for Melbourne Health referred matters was not as advanced in 2019 so likely the actual number attributable to these pathways was higher.

50 Pettit, Greenhead, Khalifeh, Drennan and et al, 'At risk, yet dismissed', *Mind and Victims Support UK*.

CLIENT 1

Steven* first had contact with mental health services in 2007 after an intentional overdose but it wasn't until 2021 that he was diagnosed with a mental health condition. Following an incident with his partner in 2022, Steven was charged with intentionally causing injury, recklessly causing injury and common assault. Police also initiated an application for an Intervention Order (IVO) against Steven for the protection of his partner.

He did not have a clear memory of what happened on the evening of the incident. Steven reports not feeling himself on the day of the assault but does not recall what occurred beyond to sitting on a couch with police officers in attendance. He learned that an alleged assault on his partner had occurred and he was taken into custody. He has little memory of what happened next.

The police assessed that Steven was experiencing a mental health episode and transferred him to hospital for assessment under the Mental Health Act. He was admitted to the John Cade Unit at Royal Melbourne Hospital (RMH) and placed on an Involuntary Treatment Order.

Steven's social worker at John Cade Unit referred him to IMCL after police attended on him in hospital to serve an application and warrant for the IVO, also foreshadowing that he should attend the police station after his discharge to be interviewed in relation to criminal charges. IMCL spoke with Steven to give him legal advice and arranged to represent him the following week at the Magistrates Court for the hearing of the IVO.

After further contact from police, IMCL gave Steven pre-interview advice to prepare him for attending the police station, where he was subsequently charged with criminal offences arising from the incident. IMCL immediately started to gather medical evidence. Steven's treating team, with his consent, liaised with IMCL lawyers to provide information regarding his mental state at the time of admission to hospital.

After reviewing medical evidence about Steven's hospitalisation which showed that he had been experiencing a deterioration in his mental health in the weeks before the incident, and based on the clinical opinion that he was experiencing a significant episode of mental ill health at the time of the incident which led to his behaviour, his lawyer sought to negotiate with Victoria Police prosecutors to consider withdrawing the charges on the basis of mental impairment.

Police were unwilling to withdraw the charges over a number of months, despite being provided a significant volume of medical material to prosecutions confirming Steven's mental state, requiring the matter to be adjourned to a contested mention. As a result, IMCL obtained a further psychological report which confirmed the view that he was experiencing a mental impairment at the time of the incident which led to police attendance.

Ultimately, police accepted the report and withdrew the charges against Steven, and costs were awarded to IMCL. This has allowed Steven to focus on his medical treatment and rebuilding his relationships, and ensured that he was not criminalised for conduct that occurred whilst he was profoundly unwell.

*Name has been changed

CLIENT 2

Patricia* is a student who has lived with fluctuating mental ill health for a number of years. She has experienced housing instability due to her condition.

Patricia had experienced deteriorating mental health in 2020 and following a discharge from an inpatient hospital stay, was involved in two incidents where she was alleged to have assaulted members of the public. Ultimately after a further deterioration, she was brought to hospital by police and admitted to the John Cade Unit where she had a lengthy stay.

Whilst an inpatient, police attended on Patricia to serve her with charges for the two assault incidents. Patricia self-referred to IMCL after being told about the service by a social worker just prior to her discharge from hospital.

IMCL gathered medical evidence from RMH regarding Patricia's hospitalisation, as well as support material from Inner West Area Mental Health Service to examine whether a mental impairment defence was available.

Our lawyers encountered another issue. Patricia was on a diversion at the time of the alleged offending. A finding of guilt would impact the diversion and potentially result in a criminal record, which would affect Patricia's employment prospects. As a result of the prior charge that she had received a diversion for, Patricia's Working with Children Check (WWCC) was revoked as a result of the charge. She had been offered a job that required a WWCC but was forced to turn it down.

IMCL entered negotiations with Victoria Police and presented the evidence gathered, which in our view established Patricia was mentally impaired at the time of the alleged offences. After a number of months of negotiations and delays, police agreed and the charges were withdrawn and formally struck out.

The diversion order was confirmed and discharged, meaning Patricia had no criminal record. The result allowed Patricia to lodge a fresh application for a WWCC, which would be reviewed by an assessment officer like anyone else that applied.

Patricia can now focus on her recovery, her studies and applying for future employment and continuing to contribute to the community.

*Name has been changed

CLIENT 3

Jack* was diagnosed with a mental health condition in 2019 and his mental health had continued to deteriorate since his diagnosis.

In late 2020, Jack was standing at the train station when he noticed a hole in the crotch of his pants and had a closer look. He proceeded to take his Myki card out from his pocket when Protective Service Officers (PSOs) approached and began to question him. Jack was hesitant and confused.

The PSOs believed Jack had been masturbating in public. Jack insisted the allegations were untrue. He had never been in trouble with police before and felt misunderstood and embarrassed.

Two months after the alleged offending, Jack's mental health deteriorated and he was admitted into the John Cade Unit at Royal Melbourne Hospital (RMH). When he was discharged from hospital, police attended at his home and he was subsequently charged with public indecency and engaging in sexual activity directed at another person.

He engaged with a caseworker at Inner West Area Mental Health as part of a Community Treatment Order (CTO), who referred him to Inner Melbourne Community Legal (IMCL) for legal support. IMCL agreed to act on Jack's behalf and requested medical reports and supporting evidence from RMH. Our lawyers also requested copies of the Closed-Circuit Television (CCTV) and Body Worn Camera (BWC) footage from Victoria Police.

It was identified that the police officers in attendance should have assessed Jack's alleged conduct in the context of his mental health presentation but failed to do so.

The matter was defended on the basis of mental impairment and IMCL argued any further prosecution of Jack would be counterproductive and unduly oppressive. Our lawyers attended court on numerous occasions to conduct negotiations with the prosecution over a few months. The legal team pointed to the lack of supporting evidence and the low public interest in continuing with the prosecution.

Victoria Police stood their ground and refused to drop the charges, which unnecessarily prolonged the process. The legal proceedings took their toll on Jack. He started to put on more weight and his mental health suffered under the stress. Jack's lawyer checked in regularly with Jack and his family to ensure he was appropriately supported as his case dragged on.

IMCL prepared the case in anticipation of a contested hearing and briefed a barrister, which Jack was going to have to fund himself. Two days out from the hearing date, police prosecutors finally confirmed to IMCL that they were withdrawing the charges in full. Jack and his family were elated with the outcome.

IMCL's work prevented Jack from being unfairly criminalised due to mental illness.

His father said, "we can't express enough how grateful we are to IMCL for your help." The outcome has enabled Jack to focus on his recovery and to focus on building a better future.

*Name has been changed

CLIENT 4

Ali* had experienced poor mental health on and off through his adult life. He was working a stable job and had a mortgage, and lots of support from his family.

Whilst Ali was experiencing an acute period of mental ill health, he had spent $8,000 on a deposit for some collectibles and he had withdrawn significant amounts of money against his mortgage, spending up to $250k on various goods, as well as becoming embroiled in a scam – he was at points making dozens of transactions and large transfers every day. As his mental health deteriorated, Ali was taken to Royal Melbourne Hospital (RMH) for a mental health assessment and hospitalised for treatment. He spent several weeks as an inpatient, before being referred to Inner Melbourne Community Legal (IMCL) by a clinician from Inner West Area Mental Health Service (IWAMHS) upon his discharge.

When Ali met with IMCL, he was distressed about the financial pressure he was under due to the events that had occurred when he was severely unwell. Despite his family and his key clinician working to try and recover the money by explaining the circumstances, the collectibles retailer was refusing to reimburse the amount, and they were having difficulty negotiating with the bank. Ali and his family were under significant financial pressure trying to make ends meet and rectify the spending that had occurred whilst he was in an unwell state.

IMCL referred Ali to a specialist CLC for assistance in relation to his excessive spending and exploring whether he had a remedy against his bank. IMCL arranged pro bono representation for Ali with a large law firm in relation to his collectibles deposit issue. They were ultimately able to successfully negotiate the full reimbursement of the funds.

In discussing these matters, Ali mentioned he had also received a visit from Victoria Police who had served him with charges. In the period prior to Ali's hospitalisation, whilst severely unwell, he was detected driving at speeds of over 160km an hour. He was charged with dangerous driving and speeding offences.

Our lawyers worked closely with Ali, his supportive family, key clinician and treating team who made clear that his conduct was directly caused by his acute mental health episode. Ali explained that he did not have a criminal record and would not have made those decisions if he had been well.

Following negotiations, Victoria Police accepted that Ali was mentally impaired but argued that a defence of mental impairment did not apply to this sort of strict liability offence. The case was listed for a contested mention hearing. Meanwhile, the outstanding charges, the threat of losing his licence and the significant financial pressure due to his spending continued hindered his recovery.

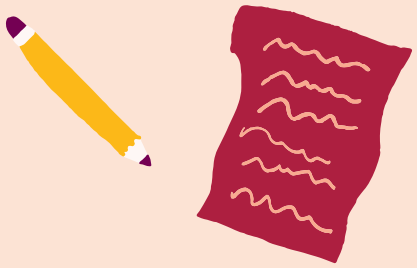
IMCL obtained an opinion from a barrister pro bono and made written submissions arguing for the charges to be considered to have occurred whilst Ali was mentally impaired. The day before the matter was due for hearing, Victoria Police agreed to withdraw all charges against Ali.

Ali's illness has had a devastating impact on his life but the legal outcome obtained has prevented any further criminalisation and given him an opportunity to focus on his recovery.

*Name has been changed

Essential features of a best practice model for legal help intervention

IMCL has learned a considerable amount through the course of the project about what an ideal model, or models look like, for providing accessible and safe legal services to individuals experiencing mental ill health and distress. This was made possible through engagement and consultation with mental health and police stakeholders, delivery of front-line services to mental health consumers, and in close engagement with mental health consumers.



Essential features of a best practice model which are applicable in a range of settings:

1. **Flexible delivery model** (in-person as regular visiting service in inpatient and outpatient settings, phone triage for urgent matters, capacity to attend as required for time sensitive matters).
2. **Strong referral partnerships with peer workers** embedded in health services, supported by legal health check screening by peer workers.
3. **Regular training** and attendance at team meetings to **promote service**, supported by secondary consultations.
4. **Secondary consultations**.
5. **Broad service guidelines** which encompass areas of law which might be warm referred to other services or pro bono partners. (**No wrong door approach**).
6. Make self-referral a priority through **accessible resources** and **physical presence**.
7. Continuous consumer participation and leadership in the **design, delivery and monitoring and evaluation** of our services.

LEGAL INTERVENTION POINTS

PACER/mental health police response unit

- Not the best point of intervention for legal support.
- However, training & engagement so police and clinicians can incorporate legal needs in their screening for issues impacting consumers,and refer appropriately to legal services at this point is valuable.

Emergency department

- Barriers to engaging with legal support whilst in the ED for a mental health presentation.
- Screening for legal needs by triage nurse, and engagement with peer workers and social workers to facilitate access to legal support where need identified.
- Flexible and responsive service to be able to respond to consumers who have urgent issues or are ready to speak with a legal service at that intervention point.
- Legal services should be co-located at Safe Haven Cafes.

Inpatient Unit/CCU/PARC

- Appropriate intervention point to engage with legal support.
- Presence as a regular visiting service facilitated by health service, including safe & quiet meeting spaces, flexible approach of lawyer to build rapport with consumers when on-site.
- Strong referral relationships with social work and peer workers, complemented by training, secondary consults and strong referral protocols.
- Accessible resources and information so consumers can self-refer.

Community-based mental health services

- Area & Community based mental health services are a logical point of intervention.
- Information must be accessible for consumers and carers to self-refer.
- Key clinicians, social workers and peer workers should receive regular training from community lawyers on identification of legal needs.
- Services to be available on-site, by responsive phone triage and in separate locations dependent on consumer preferences.

Homelessness crisis accommodation

- Preferred intervention point for some consumers who are discharged into homelessness crisis services follow in-patient stays.
- Delays in accessing legal help until this point can result in more advanced legal issues.
- Model of regular visiting presence and strong integration with case workers results in high amount of referrals.

WHAT NEEDS TO CHANGE

Health sector

- Negative experiences of the mental health system including involuntary treatment can make it unrealistic to expect that all mental health consumers will accept a referral to a legal service made by a member of their treating team. Whereas in mainstream HJPs, the relationship between health provider and client is overwhelmingly positive and there is a high take up of referrals for legal help.
- Service design and delivery models in a large environment like a major hospital (with an affiliated area mental health service) should be multi-pronged and flexible to meet the distinct needs of both prospective clients and health care professionals – combining scheduled clinics, responsive phone triage, out of turn appointments and ability to attend inpatient units on a regular basis.
- Referral pathways need to be multi-dimensional and broader than just through social work departments – clients receiving mental health treatment are more likely to raise their legal issues with clinical staff compared to patients presenting for physical health issues.
- Clinical staff often see referral for help with legal issues as a "nice to have" but not a priority closely linked to someone's wellbeing, recovery or discharge from hospital. This is inconsistent with what consumers and peer workers tell us about the impact of legal issues. More opportunities to provide training to highlight the importance of intervening early is needed, in addition to triage questions encompassing legal needs when individuals are being assessed and admitted.
- To mitigate the impact of power dynamics between clinicians and clients, it is essential to make the service accessible for clients to self-refer, and build pathways through the peer workforce.
- Engaging with legal support at various intervention points does not necessarily mean that the consumer is receiving legal advice about their options at the point of first engagement – it is about creating the link into a service that can assist with a legal problem, building rapport and trust, and formulating a plan to address the legal issues with the consumer when they are ready.
- To grow referrals from both clinical and allied health staff, responsive triage and secondary consultations need to be provided by the service. Each instance serves as an opportunity to upskill the health care professional and increase capacity to identify legal needs and refer appropriately.

Legal sector

- Services must be broadly targeted and comprise strong referral pathways for areas of law where the Community Legal Centre (CLC) doesn't practice or have expertise. It is much easier to promote and grow referrals where there is a no wrong door approach to legal need, and of course meets client needs better. Overly prescriptive or complicated eligibility criteria will compromise the likelihood of a referral from a health care professional.
- Design of legal assistance intervention in the new mental health system should include:
  - Embedding legal service providers being included in Local Mental Health and Wellbeing Services[51]
  - Having legal needs assessed as needs assessments processes being developed by the Victorian Government[52]
  - Embedding a principle of addressing the person's whole needs, including legal needs, in the finalisation of commissioning standards to be utilised by Regional Mental Health and Wellbeing Boards[53]
  - Ensure that mental health consumer's legal needs are part of the future Mental Health and Wellbeing Outcomes Framework and any needs assessment processes.[54]
- The legal assistance sector needs secure and long-term funding, to ensure services can sustain integrated partnerships. Building partnerships with health services takes time and is intensive in terms of staffing needs. Piecemeal and short-term funding is the norm in the legal assistance sector and creates barriers to advancing this sort of work and the

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51 Recommendation 6.1, *Royal Commission* (n37), 42.

52 Recommendation 7, *Royal Commission* (n37), 43.

53 See pages 128–129 which highlight standards underpinning the commissioning of mental health services, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4, 128–129.

54 *Royal Commission* (n37), Recommendations 1, 7, 49, pp 37, 43, 85.

model it requires to be accessible and deliver on consumer need.

- The Victorian Government must ensure that there is funding specifically allocated for legal assistance services to be provided in the Local Adult and Older Person Mental Health & Wellbeing Services and to alongside other services foreshadowed in the mental health reform process. A failure to provide designated funding will leave consumers at the mercy of an under-resourced and overwhelmed legal assistance sector, where many will miss out on the legal support they need. Consumers experiencing issues with housing, safety, court matters or financial hardship need legal assistance services that are resourced to provided substantive help to resolve problems.

Police and justice system

The genesis of this work for IMCL was to explore whether engaging with police and clinicians in the context of PACER units responding to mental health presentations in the community was a viable way of improving interactions for mental health consumers and ensuring they received accessible legal support. The findings of this project are that this crisis intervention point was not the favoured approach, but through the course of the project, and particularly consultations with CLAG and the conduct of casework, IMCL has identified improvements that Victoria Police could implement to reduce harm to mental health consumers.

The implementation of the Royal Commission's recommendation to shift from Victoria Police to Ambulance Victoria as the new first responder model must be done in consultation with key stakeholders. It is crucial that the legal assistance sector, consumer advocates and organisations such as the Victorian Mental Illness Awareness Council are involved in the design of new first responder model with Ambulance Victoria.

In spite of the coming changes to the role of Victoria Police, officers will continue to have interactions with people experiencing mental health crisis or distress. It is essential that Victoria Police members are trained appropriately to ensure that when their response is a rights-based response and not a justice approach. This should be embedded in the Victoria Police Manual after consultation with people with lived experience of police contact during mental health crisis. Consistent with the findings of CLAG, content designed and delivered by people with lived experience voice and incorporating human rights principles should be incorporated in training to Victoria Police.[55]

The experience of IMCL clients demonstrates that change is needed to prevent entrenching people that experience a mental health crisis or distress into the justice system because of the police and court responses. Throughout this project, the intervention of IMCL lawyers for many of our clients resulted in charges being withdrawn by police due to establishing that the accused person was suffering from a mental impairment in accordance with the Crimes (Mental Impairment and Unfitness to be Tried) Act.[56] For summary criminal offences and indictable offences triable summarily that IMCL assists with, Victoria Police will usually withdraw these matters rather than uplift them for determination in the County Court as provided for in the legislation.

As a consequence, IMCL assists with many matters that are plainly not in the public interest to prosecute. Such cases result in months of court proceedings in an already backlogged Magistrates' Court, before the charges are ultimately withdrawn. This is both resource intensive (for legal assistance services, the justice system and police), but more critically, causes immense stress for consumers, who are often in the aftermath of a period of poor mental health. Ongoing court proceedings can interrupt this progress towards recovery and is detrimental to their wellbeing.

The Victoria Police Manual should be reviewed and strengthened to place additional considerations on police to apply before determining to authorise charges for conduct that occurs during a mental health crisis. This could include that where police exercise powers under s 351 of the Mental Health Act, that there should be a presumption that mental impairment is established and the authorisation of charges for summary offences and indictable offences that can be tried summarily should only occur where the Sergeant is satisfied that it is in the public interest to do so.

To ensure that individuals experiencing mental health crisis or distress are supported in police interactions (for example; during welfare checks, following Triple Zero calls or when taken into custody), IMCL suggests a program that requires Victoria Police to provide individuals with access

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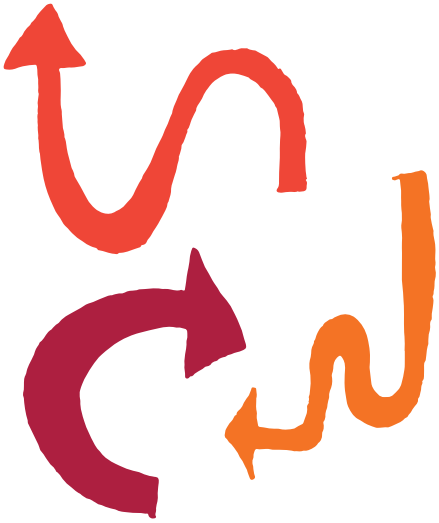
55 Royal Commission into Victoria's Mental Health System, Volume 1, 564, 568.

56 Section 20 Crimes (*Mental Impairment and Unfitness to be Tried*) Act, 1997.

to a mental health peer worker or other support person is necessary.[57] This program could be modelled on existing Independent Third Person program or VALS custody notification service.

Finally, legal assistance services must be sufficiently funded to ensure we can provide the legal support required to represent individuals criminalised during a mental health callout, and that legal and peer support is available for those who are subject to police misconduct in the context of these incidents.[58]



57 Victorian Mental Illness Awareness Council, *VMIAC Policy Position Paper #6: Police Misconduct and Accountability* (2021) <https://www.vmiac.org.au/wp-content/uploads/VMIAC-Policy-Paper-6-Police-Misconduct-and-Accountability.pdf, p. 2.>

58 Victorian Mental Illness Awareness Council, *VMIAC Policy Position Paper #6: Police Misconduct and Accountability* (2021) <https://www.vmiac.org.au/wp-content/uploads/VMIAC-Policy-Paper-6-Police-Misconduct-and-Accountability.pdf, p. 3.>

Recommendations

LEGAL ASSISTANCE MODELS/INTERVENTIONS

Recommendation 1:

Integrated legal practice models working with clients experiencing mental health crisis are distinct and they need to be conceived using different operational principles than non-mental health justice partnerships. The reason for this is significant power imbalances between people experiencing mental health crisis and mental health and policing institutions,[59] and widespread discrimination.[60]

Recommendation 2:

There needs to be multiple touch points through the system for mental health consumers to access legal support – EDs, inpatient units, outpatient/community mental health services and homelessness crisis services. In the context of mental health system reforms, this could be achieved by:

a. Embedding legal service providers being included in Local Mental Health and Wellbeing Services.[61]

b. Embedding a principle of addressing the person's whole needs, including legal needs, in the finalisation of commissioning standards to be utilised by Regional Mental Health and Wellbeing Boards.[62]

c. Ensure that mental health consumer's legal needs are part of the future Mental Health and Wellbeing Outcomes Framework and any needs assessment processes.[63]

Recommendation 3:

It is essential to have client led access points – through self-referral, peer workforce, consumer and carer organisations. This requires regular physical presence of legal services so that access can be consumer led and not solely clinician led.

Recommendation 4:

Lawyers and workers in the legal assistance sector should receive tailored training to ensure they have the appropriate skills for supporting mental health consumers and are providing trauma informed and safe services.

59 Victoria Legal Aid (n 5) 16–20; Victorian Mental Illness Awareness Council, *VMIAC Policy Position Paper #6: Police Misconduct and Accountability* (2021) <https://www.vmiac.org.au/wp-content/uploads/VMIAC-Policy-Paper-6-Police-Misconduct-and-Accountability.pdf>; Weller et al (n 5).

60 C Groot et al, *Report on Findings from the Our Turn to Speak Survey: Understanding the Impact of Stigma and Discrimination on People Living with Complex Mental Health Issues* (Anne Deveson Research Centre, SANE Australia, 2020).

61 *Royal Commission* (n37), 42.

62 *Royal Commission* (n53), 128–129.

63 *Royal Commission* (n37), 37, 85.

LIVED EXPERIENCE

Recommendation 5:

Lived experience/consumer voice needs to be a part of any project aiming to provide services to mental health consumers, from the outset.

Recommendation 6:

The role for consumer lived experience input when doing this work is both external in terms of the who and how of partnerships and service provision – but it must also be internally oriented and look at the fundamentals with respect to the safety and operation of the service. It must embed lived experience internally to achieve:

a. Development of a shared vision of the aim and principles of the service.

b. Audit of organisational processes such as intake and client communications.

c. Co-design of resources for community members on legal help pathways.

d. Integrating lived experience into law reform and strategic advocacy so that in future, the organisation's advocacy priorities come to match those of lived experience.

Recommendation 7:

Peer workforce –

a. Legal assistance providers should establish external relationships with the peer and consumer workforce as a key referral partner.

b. The legal assistance sector should explore models/pilots for embedding peer workers in our operations to best support clients and staff working with people experiencing mental ill health or distress.

POLICING RESPONSE TO PEOPLE EXPERIENCING MENTAL ILL HEALTH

Recommendation 8:

Victoria Police should not be first responders – however it is acknowledged that even once the system changes, police will continue to have interactions with people experiencing mental health crisis or distress. It is essential that Victoria Police members are trained appropriately to ensure that when they respond it needs to be a rights-based response not a justice response. This should be embedded in the Victoria Police Manual, following consultation with people with lived experience of police contact during mental health crisis.

Recommendation 9:

The legal assistance sector needs to be involved in the design of new first responder model with Ambulance Victoria, in consultation with people with lived experience.

Recommendation 10:

Content designed and delivered by people with lived experience and incorporating human rights principles should be included in training to Victoria Police.[64]

Recommendation 11:

Change is needed to prevent entrenching people experiencing mental health crisis and distress into justice system via policing and court responses:

64 *Royal Commission* (n55), p. 564, 568.

a. The Victoria Police Manual should be reviewed and strengthened to place additional considerations[65] on police to apply before determining to authorise charges for conduct that occurs during a mental health crisis.

b. Obligation on Victoria Police to provide individuals attended on during a mental health callout with access to a mental health peer worker or other support person – modelled on the Independent Third Person or VALS custody notification service.

HEALTH SECTOR

Recommendation 12:

Assertive engagement and training with mental health workforce to issue spot and provide secondary consultations is an important ingredient in a best practice model.

Recommendation 13:

Before facilitating police attendance on a consumer in an inpatient setting, there should be established protocol for hospitals to offer access to free independent legal help.

FUNDING NEEDS

Recommendation 14:

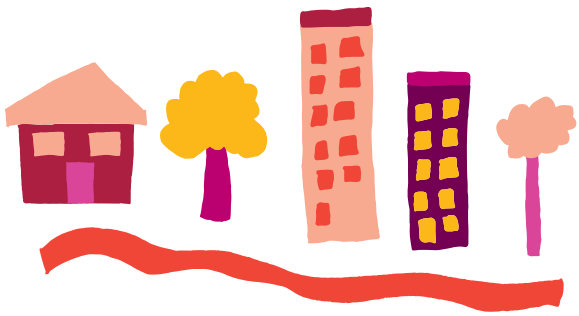
Long term sustainable funding for integrated models of legal help – assertive engagement takes time and the required model to deliver in accessible and responsive way is intensive in terms of the staffing needs.

Recommendation 15:

Need for certainty of funding for legal help models in the Local Adult and Older Person Mental Health & Wellbeing Services and to sit alongside other steps in the mental health reform process.

Recommendation 16:

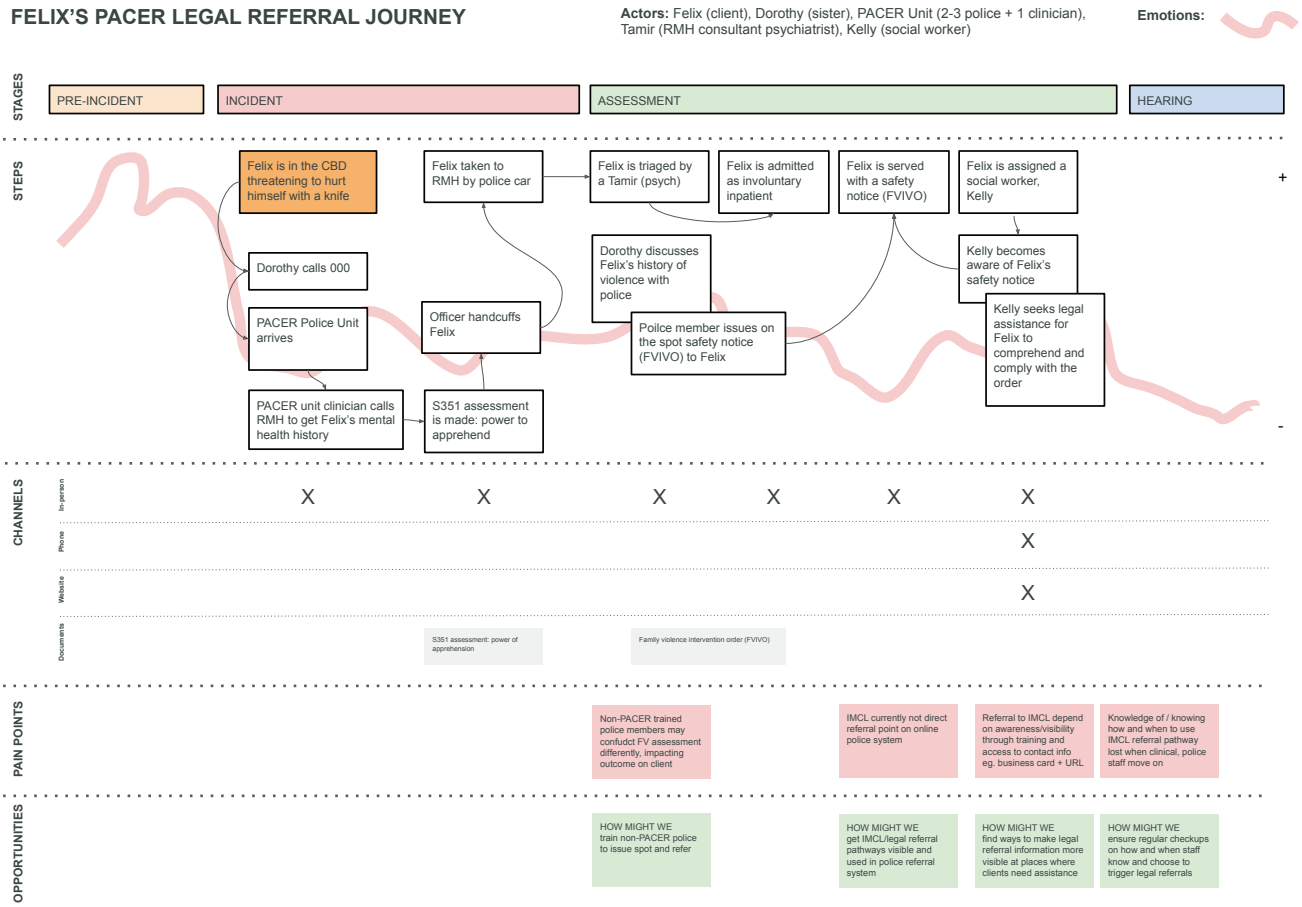
Funding for services to ensure legal and peer support is available for people criminalised during a mental health episode or subject to police misconduct in the context of a mental health episode.

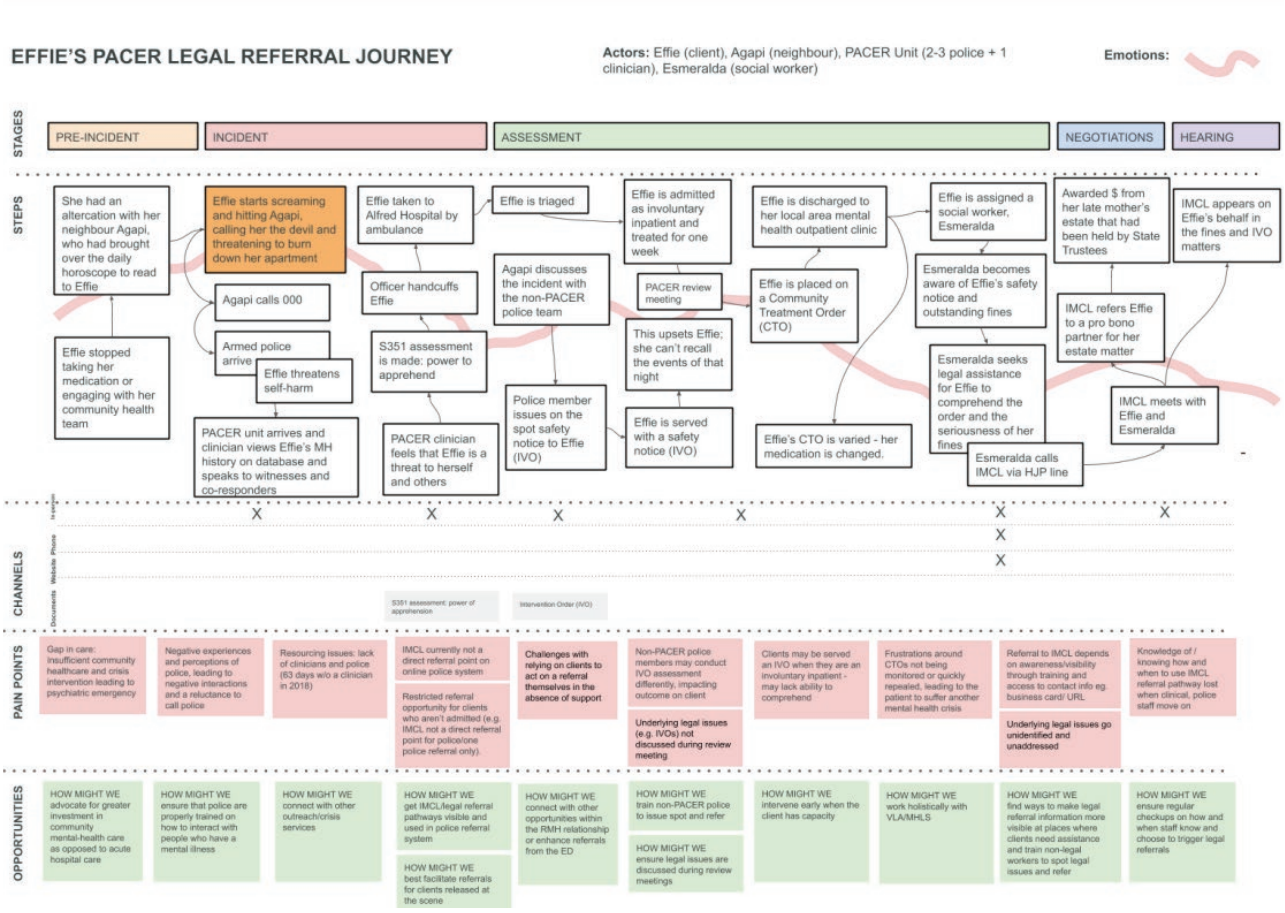


65 For example, where police exercise powers under s 351 of the Mental Health Act, there should be a presumption that mental impairment is established, and authorising Sergeant must consider why it is in the public interest as to why charges (for summary or indictable offences that can be heard summarily) should be proceeded with.

Appendix A

Journey Map 1 (this page) and Journey Map 2 (following page).




EFFIE'S PACER LEGAL REFERRAL JOURNEY
Actors: Effie (client), Agapi (neighbour), PACER Unit (2-3 police + 1 clinician), Esmeralda (social worker)
Emotions:
STAGES
PRE-INCIDENT
INCIDENT
ASSESSMENT
NEGOTIATIONS
HEARING
STEPS
She had an altercation with her neighbour Agapi, who had brought over the daily horoscope to read to Effie
Effie stopped taking her medication or engaging with her community health team
Effie starts screaming and hitting Agapi, calling her the devil and threatening to burn down her apartment
Agapi calls 000
Armed police arrive
Effie threatens self-harm
PACER unit arrives and clinician views Effie's MH history on database and speaks to witnesses and co-responders
Effie taken to Alfred Hospital by ambulance
Officer handcuffs Effie
S351 assessment is made: power to apprehend
PACER clinician feels that Effie is a threat to herself and others
Effie is triaged
Agapi discusses the incident with the non-PACER police team
Police member issues on the spot safety notice to Effie (IVO)
Effie is admitted as involuntary inpatient and treated for one week
PACER review meeting
This upsets Effie; she can't recall the events of that night
Effie is served with a safety notice (IVO)
Effie is discharged to her local area mental health outpatient clinic
Effie is placed on a Community Treatment Order (CTO)
Effie's CTO is varied - her medication is changed.
Effie is assigned a social worker, Esmeralda
Esmeralda becomes aware of Effie's safety notice and outstanding fines
Esmeralda seeks legal assistance for Effie to comprehend the order and the seriousness of her fines
Esmeralda calls IMCL via HJP line
Awarded $ from her late mother's estate that had been held by State Trustees
IMCL refers Effie to a pro bono partner for her estate matter
IMCL meets with Effie and Esmeralda
IMCL appears on Effie's behalf in the fines and IVO matters
CHANNELS
In person
Website
Phone
Documents
S351 assessment: power of apprehension
Intervention Order (IVO)
PAIN POINTS
Gap in care: insufficient community healthcare and crisis intervention leading to psychiatric emergency
Negative experiences and perceptions of police, leading to negative interactions and a reluctance to call police
Resourcing issues: lack of clinicians and police (63 days w/o a clinician in 2018)
IMCL currently not a direct referral point on online police system
Restricted referral opportunity for clients who aren't admitted (e.g. IMCL not a direct referral point for police/one police referral only)
Challenges with relying on clients to act on a referral themselves in the absence of support
Non-PACER police members may conduct IVO assessment differently, impacting outcome on client
Underlying legal issues (e.g. IVOs) not discussed during review meeting
Clients may be served an IVO when they are an involuntary inpatient - may lack ability to comprehend
Frustrations around CTOs not being monitored or quickly repealed, leading to the patient to suffer another mental health crisis
Referral to IMCL depends on awareness/visibility through training and access to contact info eg. business card/ URL
Underlying legal issues go unidentified and unaddressed
Knowledge of / knowing how and when to use IMCL referral pathway lost when clinical, police staff move on
OPPORTUNITIES
HOW MIGHT WE advocate for greater investment in community mental-health care as opposed to acute hospital care
HOW MIGHT WE ensure that police are properly trained on how to interact with people who have a mental illness
HOW MIGHT WE connect with other outreach/crisis services
HOW MIGHT WE get IMCL/legal referral pathways visible and used in police referral system
HOW MIGHT WE best facilitate referrals for clients released at the scene
HOW MIGHT WE connect with other opportunities within the RMH relationship or enhance referrals from the ED
HOW MIGHT WE train non-PACER police to issue spot and refer
HOW MIGHT WE ensure legal issues are discussed during review meetings
HOW MIGHT WE intervene early when the client has capacity
HOW MIGHT WE work holistically with VLA/MHLS
HOW MIGHT WE find ways to make legal referral information more visible at places where clients need assistance and train non-legal workers to spot legal issues and refer
HOW MIGHT WE ensure regular checkups on how and when staff know and choose to trigger legal referrals

Appendix B

Interviews conducted with various stakeholders.

Date	Interviewee/activity	Organisation
3 Oct 2019	Inspector, Priority Communities Division	Victoria Police
9 Oct 2019	St Kilda Crisis Accommodation Services	Anglicare
15 Oct 2019	Self-Advocacy Resource Unity	Voice at the Table (VATT)
15 Oct 2019	PACER Clinical Review Meeting	Melbourne Health and Victoria Police
16 Oct 2019	Victoria Police Training Day,North Melbourne Football Club	Victoria Police
22 Oct 2019	Independent Mental Health Advocacy (IMHA)	Victoria Legal Aid
8 Nov 2019	Self-Advocacy Resource Unity	Voice at the Table (VATT)
12 Nov 2019	PACER Clinical Review Meeting	Melbourne Health and Victoria Police
13 Nov 2019	Ozanam House	Vincent Care
14 Nov 2019	Mental Health Australia	Mental Health Australia
19 Nov 2019	Mental Health Victoria	Mental Health Victoria
21 Nov 2019	Inspector, Melbourne West LAC	Victoria Police
26 Nov 2019	PACER Clinical Review Meeting	Melbourne Health and Victoria Police
29 Nov 2019	PACER Stakeholder Workshop	Melbourne Health, Victoria Police, North Western Mental Health
3 Dec 2019	Emergency Mental Health Manager, Royal Melbourne Hospital	Melbourne Health
14 Jan 2020	Senior Managers, Complaints Resolution, Investigations and Lived Experience	Mental Health Complaints Commission
8 Jun 2019	Senior Constable, Melbourne North LAC	Victoria Police

Date	Interviewee/activity	Organisation
9 Sep 2019	Independent Mental Health Advocacy	Victoria Legal Aid
9 Sep 2019	Professor, Melbourne Social Equity Institute	University of Melbourne
11 Sep 2019	Senior Sergeant, Melbourne North LA	Victoria Police
13 Sep 2019	Presentation to Emergency Mental Health Social Work Team, Royal Melbourne Hospital	Melbourne Health
16 Sep 2019	Senior Constable, Court Liaison Officer, Melbourne Magistrates Court	Victoria Police
17 Sep 2019	Senior Sergeant, Moonee Ponds LAC	Victoria Police
17 Sep 2019	Inspector, Melbourne East LAC	Victoria Police
17 Sep 2019	EMH Psychiatrist, Royal Melbourne Hospital	Melbourne Health
17 Sep 2019	Occupational Therapist Manager PACER, Royal Melbourne Hospital	Melbourne Health
4 Sep 2019 & 17 Sep 2019	Senior Sergeant, Divisional Sergeant for Mental Health, Melbourne North LAC	Victoria Police
17 Sep 2019	Consultant Psychiatric Nurse Liaison and Senior Lecturer in Mental Health Nursing	University of Melbourne and Melbourne Health
22 Sep 2019	PACER Clinical Review Meeting	Melbourne Health and Victoria Police
xx 2019 (DATE UNKNOWN)	Mental Health Law and Disability Team	Victoria Legal Aid
1 Oct 2019	PACER Clinical Review Meeting	Melbourne Health and Victoria Police
2 Oct 2019	Superintendent, Priority Communities Division	Victoria Police

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