

Susan Brent
Senior Project Officer
Victorian Ombudsman
Via email only: Susan.Brent@ombudsman.vic.gov.au

17 August 2018

Dear Ms Brent,

Investigation into State Trustees Limited

We refer to your letter dated 31 July 2018 to Philippa Dixon confirming the Victorian Ombudsman's investigation into State Trustees Limited and thank you for your invitation to provide a submission from Inner Melbourne Community Legal.

Inner Melbourne Community Legal

Inner Melbourne Community Legal (**IMCL**) is a not-for-profit community legal centre that provides legal assistance to people experiencing disadvantage in the City of Melbourne area, including the CBD, Docklands, West Melbourne, North Melbourne, Carlton, and Parkville. IMCL has been assisting the community in Melbourne's inner northern suburbs for nearly 40 years. It is a priority for IMCL to actively engage with the most socially and economically disadvantaged members of our community. This engagement includes maintaining strong relationships with local organisations who also provide services to our priority clients. Critically, our work involves co-locating lawyers in partner organisations to ensure that we are accessible to those clients most in need of our legal assistance. As a generalist service, IMCL provides legal support, advice, and representation in a range of areas, including in relation to administration and guardianship orders and the application of Victoria's *Guardianship and Administration Act* 1986.

Partnership with Elizabeth Street Common Ground

One of IMCL's key partnerships is with Elizabeth Street Common Ground (**ESCG**). ESCG is a unique supportive housing model located at 660 Elizabeth Street Melbourne, which provides high quality housing and co-ordinated support. It is specifically designed for people who have experienced long term homelessness. ESCG is supported 24 hours per day by social workers from Launch Housing who are based on site. The team of social workers provide ongoing case management support to 65 residents. Many residents of ESCG experience complex issues relating to disability, mental health, unresolved trauma and substance dependency. As such, the residents at ESCG are a priority for IMCL and our service regularly assists residents with a variety of presenting legal issues.

In 2017, a social worker at ESCG raised with IMCL issues they and their clients had been having communicating with State Trustees. ESCG lodged a number of complaints directly to State Trustees in 2017 but clients were dissatisfied with their response. With ESCG and client consent, IMCL lodged a formal complaint to your office on 8 January 2018.

We thank your office for investigating those individual complaints and for recognising the importance of an investigation of State Trustees more broadly.

We rely on the issues raised in our original complaint to your office and submit that State Trustees have not been acting in the best interests of their clients who are affected by complex mental health and disability issues.

Past audits and reviews of State Trustees conduct relating to represented persons

In 2012, a summary report by the Victorian Auditor-General concerning State Trustees' management of Represented Persons highlighted numerous shortcomings of the State Trustees, including an insufficient level of direct engagement with Represented Persons to ensure needs and wishes were properly understood, and inadequate quality assurance and review of services provided to represented persons.¹ A key finding of this report was that State Trustees concerned itself too much with service delivery, and not enough with service quality or effectiveness in relation to managing represented persons' affairs.² In a report released by the Victorian Ombudsman in 2003, concerns were raised in relation to delays in distributing personal allowances and inadequate balancing of the competing needs for regular saving and provision of present quality of life.³ As noted by the Ombudsman in this report "*the payment of personal allowance to a Represented Person should be one of the first actions of the Administrator*",⁴ as this small degree of control over their personal funds constitutes a fundamental aspect of a person's sense of personal autonomy.⁵ Another issue of concern related to communication between State Trustees and Represented Persons, which it found to be insufficient in both the regularity and quality of communications.⁶

The above reports have been noted as a means to illustrate the ongoing issues surrounding State Trustees' management of Represented Persons' affairs, which has been recognised by a number of different government and non-government bodies.

Other issues recognised by IMCL and other Community Legal Centre's

1. Payment of infringements

IMCL participate in a number of working groups to collectively address systemic legal issues affecting vulnerable people in our community, including the Infringements Working Group (IWG). The IWG is a joint working group of the Federation of Community Legal Centres and the Financial and Consumer Rights Council, made up of 37 member agencies. A full list of member agencies can be found in Appendix 1.

The IWG has identified a number of issues with State Trustees not administering their duty properly when their clients have outstanding infringements. Under the *Infringements Act 2006* (Vic), people who are affected by special circumstances have the right to apply for review of their fines. This is in recognition that individuals affected by mental illness, drug and alcohol issues or disability should be treated differently for the accrual of fines. It has been the IWG's experience, that instead of applying for special circumstances or waivers on behalf of their clients they are paying infringements. Furthermore, it is also the experience of the IWG that the State Trustees are paying utility bills without regard to hardship or waiver provisions. If

¹ Report https://www.parliament.vic.gov.au/file_uploads/20120208-State-Trustees_hyV3CD9V.pdf.

² https://www.parliament.vic.gov.au/file_uploads/20120208-State-Trustees_hyV3CD9V.pdf

³ Report p 34. <https://www.parliament.vic.gov.au/papers/govpub/VPARL2003-06No5.pdf>

⁴ Report 2003, 34.

⁵ Report 2003, 34.

⁶ Report 2003, 35.

you need more information about these issues, we can put you in touch with the convenors of the IWG.

2. Re-assessment of Administration Orders at VCAT

Under the *Guardianship and Administration Act 1986*, the Administrator is required to act in the best interests of the represented person.^[1] To “*act in the best interests of the represented person*” includes to act, as far as possible, in a way which encourages and assists that person to become capable of administering their own estate,^[2] and to act in consultation with the person, taking their wishes into account as far as possible.^[3] We believe the State Trustees falls short of this. From our experience, the State Trustees do not always contact the represented person or obtain updated medical reports prior to a person’s re-assessment hearing. It therefore falls to a prudent judicial officer at the Victorian Civil and Administrative Tribunal to direct the State Trustees to fulfil its legislative obligations.

We look forward to receiving the Victorian Ombudsman report.

Yours sincerely



Philippa Dixon
Senior Lawyer



Melanie Dye
Principal Lawyer

^[1] *Guardianship and Administration Act 1986* (Vic), s 49(1).

^[2] *Guardianship and Administration Act 1986* (Vic), s 49(2)(a).

^[3] *Guardianship and Administration Act 1986* (Vic), s 49(2)(b).

Annexure 1 – List of IWG member organisations

- Bendigo Community Health Services
- Brimbank Melton Community Legal Centre
- Carlton Fitzroy Financial Counselling Service
- Casey Cardinia Legal Service
- Diversitat
- Eastern Community Legal Centre
- Federation of Community Legal Centres
- Financial & Consumer Rights Council
- Fitzroy Legal Service
- Flemington and Kensington Community Legal Centre
- FMC Mediation & Counselling Vic. (Financial Counselling & Capability Program)
- Good Shepherd Youth & Family Service
- Hume Riverina Community Legal Service
- Inner Melbourne Community Legal
- Justice Connect Homeless Law
- Lentara UnitingCare
- Loddon Campaspe Community Legal Centre
- Mental Health Legal Centre
- Monash University
- Moonee Valley Legal Service
- Nankivell Taylor Lawyers
- Northern Community Legal Centre
- Odyssey House
- Peninsula Community Legal Centre
- Port Phillip Community Group
- ReGen UnitingCare
- SouthPort Community Legal Service
- Springvale Monash Legal Service
- St Kilda Legal Service
- Upper Murray Family Care
- Victoria Legal Aid
- Victorian Aboriginal Legal Service
- West Heidelberg Community Legal Service at Banyule Community Health
- Whittlesea Community Legal Service
- Women's Legal Service Victoria
- WEstjustice (Western Community Legal Centre)
- Youth Law