

Submission to the Royal Commission into Mental Health

About Inner Melbourne Community Legal

Inner Melbourne Community Legal (**IMCL**) is an independent community legal centre working for social purpose. Since 1978 we have served the inner Melbourne area.¹

We are a small but dedicated team of lawyers, administrative and project staff supported by volunteer law students and pro bono corporate partners. Our lawyers are experts in community law.

We are funded by government, grants and donations.

Who we help

People experiencing chronic disadvantage (such as homelessness, mental illness or low literacy) are more likely to experience a cluster of legal and non-legal issues. This can result in more frequent interaction with the justice system, which has an effect on their wellbeing and ability to achieve stability. We aim to minimise this impact.

Adverse circumstances in a person's life, (such as ill health, relationship breakdown or unemployment) can put them in an acutely vulnerable position and trigger legal issues, putting them at further risk of longer-term, entrenched disadvantage. We aim to break this cycle.

For our clients, legal issues often do not occur in isolation, but are inter-related with other non-legal issues. We work holistically and tailor solutions to achieve sustained outcomes for our clients.

How we work

We provide free legal help in the form of information, advice, casework and representation. We provide help in our office and through integrated outreach services to reach people who face barriers in accessing help. By reaching people earlier with their legal issues, we prevent problems escalating.

We work in partnership with other community organisations that are committed to improving community health and wellbeing. Together we strengthen the impact of our work. Our partnerships include homelessness services, hospitals, community health services and maternal and child health services.

We are informed by our work with clients and community partners. Through our casework we identify systemic issues and work with others to come up with solutions and influence decision makers.

To make sure we are effective in what we do, we continually monitor and evaluate our work.

Our legal outreach partners

- Ozanam Community Centre – VincentCare Victoria
- The Royal Melbourne Hospital
- The Royal Women's Hospital
- Inner-West Police and Clinician Emergency Response (PACER)
- City of Melbourne - Family Services
- Carlton Housing Estate - Carlton Neighbourhood Learning Centre

¹ Until 2014, Inner Melbourne Community Legal was known as the North Melbourne Legal Service Inc.

- North Melbourne Language & Learning

Our lawyers also provide duty lawyer services twice per week in Family Violence Intervention Order matters at Melbourne Magistrates' Court.

Our work with people experiencing mental illness

IMCL's data shows that since 2016, more than one third of our clients reported having a disability, the vast majority of whom have a mental illness and/or an Acquired Brain Injury. As this data is largely based on clients self-reporting, it is highly likely that the actual rate of mental illness amongst our client groups is significantly higher. This figure has also risen consistently over the previous three years.

IMCL client data

2016/2017

30%² of our clients indicated they had a disability (including mental illness)

2017/2018

34% of our clients indicated that they had a disability (including mental illness)

2018/2019 data

39% of our clients indicated that they had a disability

23% of those clients with a disability reported that it was a psychological, psychiatric or other mental illness³

62% of clients disclosing a psychological disability were also experiencing or at risk of homelessness

1. Legal need, mental health and delivering accessible, integrated services

Relevant Terms of Reference – 1, 2, 4 – Relevant questions – 2, 8, 9

The need for integrated legal assistance services for people experiencing mental illness

Clients of community legal centres often experience a range of intersecting legal issues arising from life events such as a mental health episodes, trauma and family breakdown. Frequently, our clients experience a clustering of legal problems including family violence and family law, incurring of debts and fines, insecure housing/tenancy problems and criminal charges.

This clustering of legal issues has been shown to contribute to mental illness and impact the health and wellbeing of individuals if left unaddressed.⁴

² Data only available as at 31/3/17 due to CLC database migration in 2017.

³ Prior to the 2018/2019 financial year, IMCL have not had capacity to separate out mental health issues from the overall disability indicator.

⁴ LAW Survey found half (54%) of people who experienced legal problem said it had a 'severe' or 'moderate' impact on their daily life; 19% reported stress related illness, 18% physical ill health: Christine Coumarelos, *Legal Australia-Wide Survey: Legal Need in Victoria* (Law and Justice Foundation of NSW: Access to Justice and Legal Needs Series Vol 14, August 2012) xvi.

There is overwhelming evidence that people with mental illness are over represented in the justice system,⁵ making it especially important that legal help is accessible to people with mental health issues at the earliest opportunity.

Legal problems often have adverse impacts on many aspects of life including health, financial and social circumstance.⁶ Disadvantaged individuals, and individuals with disabilities and mental illnesses are particularly vulnerable to legal problems, including multiple and substantial legal challenges⁷ and they often do not know where to go to address these problems. The Legal-Australia Wide (**LAW**) Survey conducted in 2012 found that in three-quarters of instances where individuals sought legal assistance, non-legal advisers were consulted.⁸ People often seek assistance from services with which they are already in contact.⁹

Relevantly, 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.”¹⁰

Through IMCL’s partnerships, we know that mental health workers, social workers and other health/support workers are overburdened and are often unsure of where to refer individuals when they raise legal problems. Having access to legal assistance in a manner which is integrated into the health or community service enables non-legal workers to be confident in identifying legal issues and accessing help for their clients and therefore able to focus on doing their own work.¹¹ 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.¹²

The premise of this model is that individuals will often not identify a problem as a legal one. When services such as IMCL can build the skills and capacity of health and non-legal professionals to identify legal need and refer appropriately, these professionals can provide a gateway to resolution of legal problems for the most disadvantaged people.¹³

The Victorian 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.”¹⁴

⁵ Australian Institute of Health and Wellbeing, *The Health of Australia’s Prisoners 2018* (Report, 30 May 2019).

⁶ Coumarelos (n 4).

⁷ *Access to Justice Review: Report and Recommendations* (Department of Justice and Regulation Victoria Report Vol I, August 2016) (‘Access to Justice’) 78.

⁸ Christine Coumarelos, Zhigang Wei and Albert Z Zhou, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas* (Law and Justice Foundation of NSW: Access to Justice and Legal Needs Series Vol 3, March 2006) xxi.

⁹ Mary Anne Noone, ‘Towards an Integrated Service Response to the Link Between Legal and Health Issues’ (2009) 15 *Australian Journal of Primary Health* 203-211.

¹⁰ Pascoe Pleasence, Zhigang Wei and Christine Coumarelos, *Law and Disorders: Illness/Disability and the Response to Everyday Problems Involving the Law* (Law and Justice Foundation: Updating Justice Series No 30, September 2013) 1.

¹¹ Inner Melbourne Community Legal, *Partners in Care: The Benefits of Community Lawyers Working in a Hospital Setting* (Report) (‘Partners in Care’) 43.

¹² *Access to Justice* (n 7) 188.

¹³ Coumarelos (n 4).

¹⁴ *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.¹⁵ Community legal services 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 and have a deep knowledge and understanding of the communities in which they are based. Community legal centres 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.¹⁶ A lack of funding certainty is a barrier to community legal centres 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.¹⁷

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 those in our community experiencing the most vulnerability are less likely to seek out assistance of a community legal centre, due to a range of reasons such as uncertainty, concerns about costs or lack of recognition that they are experiencing 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 health justice partnership (**HJP**) work in hospital settings is the product of 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. However, a lack of sustainable and secure funding means that considerable time is being spent pursuing year-to-year funding to be able to continue to deliver these services.

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.¹⁸ 82.5% of those surveyed had never seen a lawyer about their legal issues before,¹⁹ and that if it were not for the free on-site legal clinic at the hospitals, 40% of patients surveyed said they would not have seen a lawyer. Cost and accessibility were the main reasons provided.²⁰ Crucially, three quarters of patients felt that the legal issue had an impact on their health or wellbeing.²¹

By integrating with homelessness crisis services, maternal health services and other professionals working with marginalised communities, IMCL seeks to ensure that those that need our services most are able to access us in locations where they already engaging with services and feel most comfortable, often through the pathway of support and referral from a case worker or health professional.

¹⁵ Ibid 189.

¹⁶ Note upcoming research commissioned by the Federation of Community Legal Centres on the work of CLC's in delivering integrated service models, due for release in July 2019.

¹⁷ Access to Justice (n 7) 189.

¹⁸ Partners in Care (n 11) 6.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid 7.

Inner Melbourne Community Legal's Health Justice Partnership with the Royal Melbourne Hospital

In late 2015, IMCL established a HJP with the Royal Melbourne Hospital (RMH) to provide free, accessible legal assistance at clinics situated within the two hospital campuses: City and Royal Park. Patients of Inner-West Area Mental Health are also able to access the legal service.²² Lawyers consider the patient's individual needs in a private consultation and provide legal advice, case work and representation or a referral as appropriate. Pro bono partnerships with commercial and other law firms ensure patients receive legal assistance in areas where IMCL does not have expertise such as wills, superannuation and family law property matters. Dealing with the legal issues of a patient provides coordination of care and management of risk in discharge planning, particularly for those with complex psychosocial needs. It can therefore help to reduce the length of stay and the likelihood of re-admission, by addressing risk of family violence, providing tenancy security or reducing legal issues which might exacerbate a patient's mental ill health.

The close proximity of the legal clinic allows the individual legal issues of the patient, which may be creating a barrier to discharge, to be addressed concurrently with medical and other non-medical issues. Co-locating the legal clinic improves access for patients with mobility or transport problems. Situating the legal clinic within the hospital is an innovative model. The legal team become an integral part of the care coordination processes, providing both the patient and the multi-disciplinary team direct access to legal expertise. Lawyers give training for health professionals to increase their understanding and identification of legal matters, and to promote referrals. Additional secondary consultations by telephone allow health professionals to call the lawyer directly for advice or clarification about a legal question. The HJP between RMH and IMCL is supported by robust, ongoing executive support and strong communication between lawyers and health professionals.

An evaluation of the partnership in 2017/2018 found that amongst clients surveyed:

- 43% were homeless or at risk of homelessness,
- 74% had some form of disability (including Mental Health issues) and
- 35% were experiencing family violence or at risk of family violence.
- 60% of survey participants felt their legal issue had an impact on their health and wellbeing.
- After the legal consult, 76% of patients surveyed felt they were able to cope better with their legal issues, compared to 44% before the legal consultation.
- 48% would not have seen a lawyer if they had not had access via the HJP.

The evaluation also found hospital staff identified significant benefit from the legal service:

"If someone has significant financial or legal issues that they need legal consultation, we can't engage them as well in therapy. So if that need's not met, because their mind is on something else, or they've got multiple stressors. I would recommend [the legal clinic] because it means that that's one less stressor and your patient's likely to be more engaged, and have a safer discharge when they go home and a highly successful discharge. Because that need is being met."²³ (RMH Royal Park Focus Group, Participant 2)

²² IMCL previously provided an on-site outreach service at Inner-West Area Mental Health

²³ Inner Melbourne Community Legal, *Evaluation Report on the Health Justice Partnership: The Royal Melbourne Hospital and Inner Melbourne Community Legal* (Evaluation Report, 2018) 30.

IMCL's partnership with Ozanam Community Centre

Since 2003, IMCL has been delivering an outreach legal service at the Ozanam Community Centre (run by VincentCare Victoria), a drop-in centre which offers a wide range of support services to men and women who are experiencing or at risk of homelessness and other forms of social exclusion. These services include financial counselling, drug and alcohol clinicians, housing support, healthcare and meals programs.

Alongside these community service providers, we offer free onsite legal help. We equip the Centre's workers to identify legal problems and refer clients to us, and we work in close conjunction with caseworkers and the other wrap-around services to achieve positive outcomes for clients with their legal matters. Being onsite on a weekly basis makes it as easy as possible for the clients to reach us, and our physical proximity to the Centre allows clients to see us in a flexible way where urgent issues arise.

In 2018/2019, IMCL assisted 84 clients through our Ozanam partnership. 71% of our Ozanam clients reported having a disability, 60% of which was an identified mental health issue.

Bruce's story

Bruce ran a business as a concreter. He earned a good income and was able to successfully maintain this work for many years, despite having suffered from depression for most of his life. Following the death of his mother around 2010, things got worse for him. He started drinking heavily and using drugs. He wasn't able to properly manage his business affairs and stopped lodging tax returns.

By the time Bruce came to see us at Ozanam Community Centre he was at crisis point. He'd become homeless, his finances were in disarray, he had significant debt, he was battling substance addiction and he'd been charged with breaching a Community Corrections Order (CCO). In tandem with several outreach workers – including drug and alcohol, housing support and mental health workers - we worked with Bruce to resolve his legal problems.

We all knew his problems were interlinked. We represented him in court twice to have almost \$5,000 worth of transport fines wiped and, on another occasion, to successfully argue that because of his engagement with treatment services, his CCO was no longer necessary. We also connected him with a pro bono law firm so they could assist him to have a \$15,000 tax debt waived on the basis of his hardship. During this time he also secured stable accommodation.

IMCL engaged with Bruce at the right time, at the right place and with the right supports. We helped him when and where he was ready and able to receive help, and with other support service providers, enabled him to achieve meaningful and sustainable change in his life

IMCL's partnership with the Inner-West Police and Clinician Emergency Response (PACER)

In late 2018, IMCL received funding from the Legal Services Board (LSB) to develop a partnership with the Inner-West Police and Clinician Emergency Response (PACER) team. PACER provides a mobile mental health response comprising of a Mental Health clinician and a Victoria Police member. The PACER team provide an on-the-spot clinical assessment of people experiencing a mental health episode, with the objective of reducing the number of people in mental health crisis ending up in emergency departments and/or police custody.

The aim of the partnership is to develop a model of legal referral and response with the Inner-West PACER and IMCL. The partnership seeks to enable Victoria Police members and mental health clinicians who are responding to individuals in mental health crisis to identify legal needs and facilitate a referral for rapid legal response from IMCL lawyers.

The genesis of the partnership was identification from the PACER team that individuals they encounter often reported issues such as family violence, threatened evictions from their homes, or employment issues as precipitating factors to them presenting in mental health crisis. The PACER team identified the importance of legal needs in providing a holistic response to individuals they assist in mental health crisis.

Whilst the partnership is in its infancy, IMCL hopes that it can develop, test and evaluate a best practice model for legal response for people in mental health crisis which can be shared among other PACER regions.

Recommendations

- 1.1. Increased recognition of the importance of legal services as a necessary intervention in a holistic model of care for people with mental health issues
- 1.2. Commitment of funding for community legal centres integrated services, specifically:
 - 1.2.1. Funding to explore, develop and evaluate new integrated services that respond to the needs of vulnerable communities, particularly those with mental illness
 - 1.2.2. Sustainable and ongoing funding for those existing proven models of legal service delivery which are integrated in health and other settings.

2. Housing and homelessness and the intersection with mental illness

Relevant Terms of Reference – 1, 2, 4 – Relevant questions – 4, 5, 6, 8

Housing is the key

With the public housing waitlist ballooning to more than 82,000 people,²⁴ the increasing unaffordability of rental housing for people on low incomes,²⁵ and consistently high numbers of rough sleepers growing in inner-city Melbourne,²⁶ it is apparent that the issue of housing and homelessness has reached a crisis point in Victoria.

Public housing is the option of last resort for many Victorians experiencing financial disadvantage, marginalisation and chronic mental and physical health issues. For many of IMCL's clients, public housing has provided security and safety following backgrounds of homelessness, family violence and trauma. For those experiencing mental ill health, having a stable home is a crucial step in the path to recovery and in enabling them to manage their illnesses on an ongoing basis.

²⁴ As at March 2018, the public housing waiting list stood at 82,499 people, representing 36,742 applications; Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into the Public Housing Renewal Program* (2018) xi.

²⁵ Victorian Government Department of Health and Human Services, *Affordable Lettings by Local Government* (Rental Report, March Quarter 2019).

²⁶ *StreetCount 2018*, City of Melbourne < <https://www.melbourne.vic.gov.au/community/health-support-services/social-support/Pages/streetcount.aspx> >.

The link between homelessness and mental illness is stark. The number of Victorians who have exited mental health facilities into homelessness has grown by 55 per cent since 2012-2013.²⁷ The number of people accessing Victorian homelessness services who report having a mental health issue has increased by 84 per cent in this same period.²⁸

Stable housing is imperative in enabling individuals with mental illnesses to engage with treatment and focus on their health. Research into Housing First models has shown that individuals with psychosis and those discharged from psychiatric hospitals required fewer days each year admitted to mental health units compared to the period before they obtained housing.^{29,30}

A study of individuals in Western Australia who obtained public housing found that in the first year of the tenancy, there was a 19.5% decrease in the proportion of people accessing emergency department, a 57.8% decrease in the proportion of people accessing psychiatric care, and for those who did require hospital admission there was a reduction in the length of stay by an average 8.4 days.³¹

Research has also demonstrated that housing insecurity both causes and prolongs mental ill health, with a major Victorian study finding that just 15% of people accessing specialist homelessness services had mental health issues prior to experiencing homelessness, while another 16% only developed mental ill health after they began experiencing homelessness.³²

Our work with clients experiencing or at risk of homelessness

Given IMCL's location in inner-city Melbourne, a significant proportion of our clients are experiencing homelessness. In 2018/2019, approximately 26% of our clients were identified as experiencing or at risk of homelessness.³³ Furthermore, 62% of IMCL clients who reported a psychological illness were also experiencing or at risk of homelessness.³⁴

Through IMCL's partnerships with housing and homelessness services and relationship with the local public housing offices, many clients in precarious housing situations are referred to us for legal assistance, a large proportion of whom live in public housing. Owing to their robust set of policies and procedures, we are generally able to hold the public housing landlord to these legal obligations and policy objectives, and negotiate good outcomes for our clients to maintain their tenancies where there are issues related to their mental illness which might otherwise place tenancies at risk.

Case study - *Keeping Megan in her home*

Megan was referred to IMCL by her clinician at a local mental health service. She had been receiving treatment for a number of years for schizophrenia.

²⁷ Australian Institute of Health and Welfare, Specialist Homelessness Services Collection (Database) < <https://www.aihw.gov.au/about-our-data/our-data-collections/specialist-homelessness-services-collection> >.

²⁸ Council to Homeless Persons, *Messaging guide to the Royal Commission into Mental Health; Housing, Homelessness and Mental Health* (Guide, 2019).

²⁹ Alex Holmes et al, 'Housing First: Permanent Supported Accommodation for People with Psychosis Who Have Experienced Chronic Homelessness' (2017) 25(1) *Australian Psychiatry* 56.

³⁰ Cameron Parsell et al, *Brisbane Common Ground Evaluation* (Final Evaluation, December 2015).

³¹ Lisa Wood et al, *What Are the Health, Social and Economic Benefits of Providing Housing and Support to Formerly Homeless People?* (AHURI Final Report No 265, July 2016).

³² Guy Johnson and Chris Chamberlain, 'Are the Homeless Mentally Ill?' (2011) 46(1) *Australian Journal of Social Issues* 29, 36.

³³ IMCL service data 1 July 2018 – 30 June 2019.

³⁴ IMCL service data 1 July 2018 – 30 June 2019.

Megan was a public housing resident and had been in her property for several years. She reported that while unwell, she attended her local Housing Office and requested the immediate termination of her tenancy. The Housing Office contacted Victoria Police, who attended and assessed that Megan did not require hospitalisation. The attending police officer subsequently assisted Megan in completing a notice to terminate the tenancy with immediate effect and it was processed later that day.

Megan's clinician subsequently made a number of representations on her behalf to the Housing Office seeking to reinstate her tenancy but was unsuccessful. As a result, Megan was left homeless and spent several nights couch surfing and in crisis accommodation.

Megan instructed that she had not wanted to terminate her tenancy and only did so as a direct consequence of her illness. IMCL contacted the Housing Office who maintained that the tenancy had been terminated by competent consent. IMCL escalated the matter to a team manager, highlighting concerns that the termination was accepted and processed immediately, without the usual 28 day notice period being afforded. IMCL stressed that it was inappropriate for a police officer to make an assessment of Megan's capacity to give consent, and that a termination should not have been readily accepted in circumstances which rendered Megan homeless. IMCL advised that an urgent application to the Victorian Civil and Administrative Tribunal may be made on Megan's behalf if the matter could not be resolved.

Within two days of Megan's first meeting with IMCL, the tenancy was reinstated and she could collect her keys and return home. In addition, the Housing Office implemented a system for regular meetings with Megan and her clinician to better manage her tenancy. IMCL's close relationship with community agencies was a key factor in the prompt and holistic resolution of Megan's case.

Clients living in community housing

In Victoria there are 10 registered housing associations, and 29 registered housing providers, collectively known as Community Housing Organisations (**CHOs**),³⁵ who manage approximately 20,000 properties. Many of these providers house people from the public housing waitlist (the Victorian Housing Register), and a number are providing specialist services to people exiting homelessness or with complex needs including mental illness. Unlike a public housing landlord, which has a strong and consistent set of policies that govern how tenancies are managed, CHOs all have different policies, with varying levels of protection for tenant rights, and a lack of consistency in terms of how they are applied. Regulation of CHOs is unfortunately weaker than that of the public housing landlord, and in our experience it is more difficult to hold CHOs accountable for their decisions.³⁶

IMCL regularly encounters CHOs obtaining open-ended compliance orders at the Victorian Civil and Administrative Tribunal (**VCAT**), as a mechanism for trying to manage tenant behavior, which is very often occurring as a direct consequence of a mental health episode or ongoing mental health issues. Often such orders are obtained in the absence of the tenant, or in circumstances where the tenant has not had access to legal assistance, and by the time the tenant accesses legal assistance, there are orders in place against them which lead to CHOs instigating eviction proceedings at VCAT.

³⁵ Registered Housing Sector, Chimes Housing Registrar <<https://chimes.force.com/RegisteredHousing?aType=hp>>.

³⁶ Community Housing Organisations are regulated by the Victorian Housing Registrar, pursuant to the *Housing Act 1983* (VIC) and Performance Standards for Registered Housing Agencies.

Since 1 January 2018, more than one third of eviction matters IMCL has assisted with for community housing tenants have been as a result of alleged compliance (behaviour) issues arising from mental ill health.

IMCL holds significant concerns that CHOs are failing to sufficiently take into account the link between sometimes challenging tenant behaviour and mental health episodes, and as a result are pushing vulnerable people into homelessness. In our experience, the policies of CHOs are not designed to sustain tenancies. Rather, they are using eviction to manage difficult behaviours and not as a measure of last resort. People with complex needs who need secure housing and support are being evicted into homelessness. Unlike the public landlord, which generally acknowledges it must adhere to a higher standard, as the housing provider of last resort, CHOs too readily use eviction as the only resolution to challenging behaviour, rather than taking a health and case management approach to resolving these situations.

Further, IMCL has found that attempts to negotiate outcomes with CHOs are often futile, forcing matters to VCAT which is both resource intensive and increases the stress on our clients who are already struggling with mental health issues.

Case study – Ron's story³⁷

Ron was referred to IMCL by a case worker after he learnt that his landlord, a Community Housing Organisation (**CHO**) was seeking to evict him. Ron had been diagnosed with multiple mental health conditions, and after a change to his medication, experienced a significant deterioration in his previously stable mental health. During this time, Ron experienced conflict with some other residents and staff, and was verbally abusive and threatening on two separate occasions over the course of a few days. The following day, Ron was admitted as a mental health inpatient for one week, during which time his health stabilised.

Upon his return home, Ron was served with paperwork from his CHO and a notice of hearing at VCAT. Ron's landlord had applied to have him evicted, alleging that he had disrupted the peace in his building.

IMCL tried to negotiate with Ron's landlord to find an outcome that would not leave the fate of Ron's housing in the hands of VCAT, however they were not willing to explore other options. IMCL obtained a letter from Ron's mental health clinician, which provided evidence that Ron's behaviour was directly caused by his mental health condition, which was now stable. The mental health clinician also set out the importance of being housed to Ron's ongoing management of his mental health.

IMCL arranged representation for Ron at VCAT and successfully had the CHO's application dismissed, on the basis that they had not presented sufficient evidence.

Whilst in Ron's case it was fortunate that the outcome meant he was able to keep his housing and focus on his health, this case highlights the very problematic practices of some CHO's, who make decisions with little regard for the special vulnerability of residents experiencing mental illnesses and the grave consequences that eviction into homelessness will have on their lives.

³⁷ Note Ron's story is based on the combination of two case examples.

Temporary absences from community housing

For tenants in public housing who need to be absent from their housing for periods of time due to circumstances such as hospitalisation, or attendance at residential rehabilitation or treatment facilities, DHHS policy provides that tenants can receive a subsidy which reduces weekly rent to \$15. This policy enables public tenants to receive essential medical treatment whilst their tenancies are sustained, and importantly, tenants are not in financial hardship at a time when they may be required to pay for their attendance at residential treatment or will not be earning any income.³⁸ The policy provides for absences of six months, which may be extended for a further six months in certain circumstances.³⁹

In IMCL's experience, CHO's generally lack equivalent policies which enable temporary absences for tenants who are hospitalised for mental ill health or needing to attend residential treatment or rehabilitation. As a consequence, in the case of periods of hospitalisation, tenants may fall into rental arrears and be at risk of the CHO's seeking their evictions, or in the case of residential treatment or rehabilitation, tenants are left with no option but to forgo rare opportunities of a spot at a treatment facility.

Recommendations

- 2.1. Significant investment in the construction of more public housing, owned and managed by the Director of Housing to ensure more people experiencing mental illness have safe and secure housing.
- 2.2. Government funding of community housing organisations should be contingent on demonstrating transparent and accountable policies and procedures, equivalent to those provided to public housing tenants, including:
 - 2.2.1. Consistent policies ensuring that eviction is only utilized as a mechanism of last resort, particularly for compliance and behavioural issues where the tenant/resident is experiencing mental illness.
 - 2.2.2. Fair and reasonable policies regarding anti-social behaviour, with a focus on support and mediation through internal processes. Victorian Civil and Administrative Tribunal compliance orders should be used only after all other avenues have been exhausted.
 - 2.2.3. Adoption of consistent policies which enable tenants/residents to seek temporary absences to attend residential rehabilitation or during periods of hospitalisation for mental illness or incarceration.
- 2.3. Funding of independent support services to assist tenants/residents with mental health issues who are displaying complex behaviours and requirement that Community Housing Organisations must refer to them before pursuing compliance and eviction proceedings in the first instance.
- 2.4. Social housing providers (both public and community housing) adopt policies not to seek compliance orders without time limits, and only seek orders which are reasonable and able to be complied with by the tenant/resident.

³⁸ Department of Health and Human Services, *Tenancy Management Manual: Temporary Absences Operational Guidelines* (Guidelines, September 2018) 9-10.

³⁹ *Ibid* 12.

3. Criminalisation of people with mental illness and their interactions with the justice system

Relevant Terms of Reference – 1, 4 – Relevant questions – 4, 5, 8 & 9

Police as first responders to individuals in mental health crisis

Severe resource pressures on public mental health services and crisis assessment treatment teams (**CATT**) to respond to people experiencing mental health crisis has seen the burden falling on Victoria Police and hospital emergency departments to assist individuals in crisis.⁴⁰ Australian Institute of Health and Welfare reports the number of Victoria mental health patients that accessed acute services through police, ambulance and self-presentations to hospital EDs increased from 28,757 in 2004-2005 – 54,114 in 2016-2017.⁴¹

It is an absolute failure of our mental health system if the only recourse for people in mental health crisis and their families is to contact Victoria Police when they require help due to their illness. It places an unfair burden on frontline police members when individuals require a health response and cannot get one. In situations where an individual might have had previous negative interactions with police, a police response has the potential to result in an escalation of behaviour, running the risk of them being charged with criminal offences such as resist arrest or assault.

PACERs and other models of rapid Mental Health and Police Response teams have proven success at improving the response for people in mental health crisis and reducing unnecessary hospitalisations.⁴² Further resourcing, evaluation and extension of these models to provide more than one shift per day would ensure more people in mental health crisis had access to a health-based crisis response.

Low level criminal offending

Criminal law matters consistently fall within the top three areas of law that IMCL assists clients with. The majority of clients that IMCL help with criminal law matters are those charged with low-level offences such as public drunkenness, minor assaults, drug possession, thefts and driving offences.

With many of our criminal law clients having mental health diagnoses, in addition to drug and alcohol issues and/or acquired brain injuries and experiencing homelessness, we regularly see the intersection between contact with police and the impacts of mental illness and addiction.

IMCL would welcome an increased impetus for Victoria Police to exercise discretion not to charge people who are experiencing mental illness at the time of their offending. IMCL has assisted many clients charged with low-level offences which are a direct consequence of a mental health episode. The fact that the offending is attributable to the mental health episode is often clearly apparent on the face of the written police summary of the offending. Whilst in some cases, lawyers obtain supporting evidence from mental health clinicians and negotiate with police prosecutors for charges to be withdrawn at Court, such an outcome usually takes multiple attendances at Court. This causes increased stress and anxiety for clients with mental illness, in addition to the resource burden on legal services, Courts and Victoria Police of such matters progressing through the Courts. Often however, in IMCL's experience, despite the evidence of a

⁴⁰ Victorian Auditor General's Office, *Access to Mental Health Services* (Independent Assurance Report to Parliament No 16, March 2019) 11; Aisha Dow, 'The Patient Had Planned His Suicide. But the Crisis Team Was Busy', *The Age* (online), 15 November 2018

<https://www.theage.com.au/politics/victoria/the-patient-had-planned-his-suicide-but-the-crisis-team-was-busy-20181106-p50edk.html>.

⁴¹ Victorian Auditor General's Office (n 40) 11.

⁴² See Allen Consulting Group, *Police, Ambulance and Clinical Early Response (PACER) Evaluation* (Final Report to Victorian Department of Health, April 2012); Eloisa Evangelista et al, 'Crisis Averted: How Consumers Experienced a Police and Clinical Early Response (PACER) Unit Responding to a Mental Health Crisis' (2016) 25 *International Journal of Mental Health Nursing* 367.

mental health issue being provided to police prosecutions, police are unwilling to withdraw charges, resulting in our clients pleading guilty to offending which occurred whilst they are mentally unwell.

Although the crimes mental impairment defence exists as an alternative to a guilty plea for accused persons, this is rarely a suitable course of action for individuals charged with low level offences. If accused persons experiencing mental illness are willing to invest the time and resources required to undertake the crimes mental impairment process, the outcome of a successful process is the likely uplift of the matter to the County Court. For low level offences that attract lower maximum sentences in the Magistrates' Court, such an outcome is generally not worth the risk. Further, as offences without a likelihood of imprisonment will not be eligible for grants of assistance from Victoria Legal Aid (VLA), most individuals will not have access to the resources to fund neuro-psychiatric reports required to make a crimes mental impairment defence. Funding is only available if they can meet the VLA State Special Circumstances guideline, that is they have a registered disability or can demonstrate they are being treated by an approved mental health service. Most clients that we see do not even meet these criteria because they are not registered with the Department of Health and Human Services and do not engage with mental health services.

Case study - *Dean's story*

When we first saw Dean he was 38, unemployed and on disability pension. He had been charged with minor assaults against two strangers, both on the same day. Dean told us that he'd had a happy childhood, lots of friends and finished high school. He dreamt of becoming an accountant. But he started experiencing signs of psychiatric illness and was unable to function well without medication. In December 2015 he experienced a rapid decline in his health and on the night of the offences he was psychotic. The police found him unfit to be interviewed and he was made an inpatient of a psychiatric ward for almost a month. We knew that Dean likely had a defence: he was mentally impaired at the time. His behaviour was completely out of character.

IMCL obtained a psychiatric report to explain his condition and engaged a barrister to appear at court to negotiate with police. The material was accepted, and the charges were dropped, without the need for a hearing. The police were satisfied that Dean was receiving the medical help he needed to manage his symptoms. IMCL's help meant that his matters were resolved fairly and efficiently.

Ten months after being charged with criminal offences, Dean's life has completely changed. "After you helped me, I got a job. With a criminal record, I wouldn't have got it. It's nothing great, but I enjoy it..."

Victoria Police have mechanisms within their operating procedures⁴³ to issue a caution where it would not be in the public interest to proceed with criminal charges. However, the use of cautions in place of charging alleged offenders in circumstances where an accused person is experiencing mental illness appears inconsistent at best.

Diversion

Similarly, Victoria Police are inconsistent in using discretion to recommend that offenders be placed on the diversion program. The diversion program offers those with no criminal history or those charged with

⁴³ Victoria Police operating procedures are published in the Victoria Police Manual, which is issued at the end of every quarter.

low-level offences to avoid a finding of guilt and have their matter discharged following the successful completion of the diversion program.

For individuals with mental illnesses, the conditions of a diversion program can provide much needed links to support services that can prevent further interactions with the criminal justice system. Given the system fails to intervene until offending is more serious, the expansion of a mental illness specific diversion program could provide individuals with greater access to mental health case management or support to assist in addressing the causes of offending at an earlier stage.

The requirement that the prosecuting agency consent to a diversion remains a barrier to it being widely and appropriately used as an alternative. IMCL supports Magistrates being empowered to utilise diversion as a sentencing disposition, irrespective of whether police or prosecuting agencies recommend it or consent.

Case study – Dwayne’s story

Dwayne is in his 30s and has been diagnosed with bipolar disorder and manic depression. As a juvenile, Dwayne was found guilty in the Children’s Court for minor offences involving drug possession and criminal damage. Convictions were not recorded. As an adult, Dwayne was found guilty of a singular charge of possess cannabis. Again, no conviction was recorded. Dwayne’s last finding of guilt occurred when he was 18 years old - over 15 years ago.

During an incident in 2018, Dwayne jumped on a car and caused damage to the bonnet. The police attended the scene and conveyed Dwayne to a hospital under the *Mental Health Act*. He was later charged with criminal damage and unlawful assault. At the time of the incident, Dwayne was experiencing hard times. Two days earlier, Dwayne had been released from a psychiatric ward and, due to a family breakdown, he was also sleeping rough for the first time in his life.

IMCL advocated on Dwayne’s behalf, submitting that a diversion was the most appropriate outcome, to ensure that Dwayne’s future was not derailed by an isolated incident that occurred as a consequence of his mental illness. Police were originally unwilling to recommend Dwayne for a diversion because he had failed to attend Court, despite the fact that this is not a barrier to a diversion being granted. Dwayne was very concerned about the impact a new finding of guilt would have on his future prospects. Dwayne is aspiring to become a teacher and has ambitions to work overseas as it would result in his prior criminal history being disclosed to potential employers. Ultimately, police agreed that the matter was appropriate for diversion, meaning Dwayne will be able to continue his positive progress in his career.

In addition to the burden of stress and anxiety that the prolonged process and uncertainty had on Dwayne, matters like Dwayne’s also place demands on the resources of the Courts, police and legal services to reach a resolution.

Therapeutic Court Lists

While therapeutic lists such as the Assessment and Referral Court (**ARC**) and the Court Integrated Services Program (**CISP**) provide welcome alternatives for people in mental health crisis to access necessary supports to assist address causes of their offending, prior to sentencing, access to these lists is limited by resourcing and location. IMCL regularly sees clients whose matters are to be heard at

Magistrates' Courts other than Melbourne that are unable to access ARC due to the proper venue of the Court in which their charges are to be heard not having an ARC list.⁴⁴

Community Correction Orders

In IMCL's experience, pre-sentence assessments and reports undertaken by Corrections Victoria are too often done in haste, on the spot in the busy court environment, and with little opportunity for a proper assessment of a client's mental health and related issues, or a proper understanding from the Corrections staff regarding what existing treatment and support an individual is receiving. As a result, conditions of Community Correction Orders (CCOs) are too often inappropriately targeted at the issues of the individual being sentenced. Further, often significant unpaid community work conditions are ordered which are unachievable for the individual owing to the serious nature of their mental health issues which can set them on a path where they may ultimately fail to comply with a Community Work condition and face subsequent charges for breaching their CCO. The Court has an opportunity at the point of sentencing to link individuals into services such as psychological support, drug and alcohol treatment or housing support.

When considering whether to impose a CCO with an unpaid community work condition, priority should be given by a sentencing court to treatment and rehabilitation purposes of sentencing.

Case study - Liam's story

Liam had a rough start. He grew up within a complex and underprivileged household and started drinking from a young age. Later on in life, his severe alcohol dependency got him in trouble with the law.

Liam came to us at Ozanam Community Centre seeking assistance to vary his Community Corrections Order. Liam was having trouble with the community work component of the order. His physical disability and mental health issues made it difficult for him to catch public transport to attend the program. His lack of compliance with this aspect of the order was causing Liam a great deal of stress.

"When I am in my room thinking about it I feel so upset and anxious I don't know what to do."

This was particularly the case as Liam had put a lot of effort into complying with the order. He had fulfilled all the reporting and treatment obligations, a crucial part of his rehabilitation. Liam had made no further attempts to break the law and had even gone further, voluntarily reaching out to support services.

Despite these efforts, Liam felt unsupported by his corrections worker. We represented Liam in the Magistrates' Court and made submissions on his behalf to reduce his community work hours. The Magistrate removed the community work component in full, citing Liam's "commendable compliance" with the order and his "admirable rehabilitation efforts."

Mandatory sentencing – Assault Emergency Workers

IMCL is concerned about the introduction of mandatory penalties attached to the charge of assaulting an emergency worker which were legislated in 2018. The practical impact of the changes creates significant

⁴⁴ ARC is available at only 5 Magistrates Courts – Frankston, Latrobe, Korumburra, Melbourne & Moorabbin: see *Assessment and Referral Court (ARC)* (20 November 2018) Magistrates' Court of Victoria < <https://mcv.vic.gov.au/about-us/assessment-and-referral-court-arc>>.

risk that a person experiencing mental illness, or their family, carers or health care professionals will be unprepared to call 000 for help, out of fear that an incident and charges with mandatory sentences of imprisonment could result.⁴⁵ The mental health exception at s 10A of the *Sentencing Act 1991*, whilst welcome, remains inadequate as it requires that the nexus between the mental health issue and the offending is such that it can be proven that the mental health issue ‘caused’ the offending. If these provisions are to remain, the threshold in s 10A should be amended to require that the mental health issue ‘contributed to’ the offending.

Ultimately, the existence of the mental health defence in s 10A is inadequate as it is likely that individuals with mental health issues would still be charged under s 10AA. As the charge is a category 1 offence, bail would be unlikely and the individual would then be held on remand, further compromising their mental health.

Recommendations

- 3.1. Introduction of a specific mental illness caution by Victoria Police where low-level offending can be attributed to the mental health diagnosis.
- 3.2. Expansion of diversion programs in all Victorian Magistrates’ Courts to include a specific mental health diversion program, with compliance conditions focusing on engagement with mental health treatment and support.
- 3.3. Increased resourcing for specialist therapeutic Courts (Assessment and Referral Court (**ARC**) and the Court Integrated Services Program (**CISP**)) to ensure that all suitable matters can be heard in the therapeutic system and that this is not determined by whether the court where a person’s matter is listed has ARC/CISP.
- 3.4. Corrections assessment process for suitability for Community Correction Orders (**CCOs**) should require Corrections staff to make proper enquiries with any mental health practitioners or support services that an individual might be engaging with before making a final assessment as to the suitability of CCO conditions.
- 3.5. Section 48C of the *Sentencing Act 1991* should be amended to require the Court to have regard, when making a CCO where an offender has a mental health diagnosis and will be made subject to a treatment and rehabilitation condition, to whether the attachment of an unpaid community work condition would be likely to interfere with the successful completion of the treatment and rehabilitation condition.
- 3.6. Consideration be given to repeal (or amend) various offences in the *Summary Offences Act 1966* that disproportionately target persons with poor mental health and/or who are experiencing homelessness including:
 - A. Drunk in public (s 13)
 - B. Begging (s 49A)
 - C. Obstruction of footpaths (s 5)
 - D. Move on directions (s 6)
 - E. Obscene language (s 17)
 - F. Drunk and disorderly offences (ss 13, 14, 16 and 17A)
- 3.7. IMCL endorses the submission of the Human Rights Law Centre to raise the age of criminal responsibility in Victoria.

⁴⁵ See *Sentencing Act 1991* (Vic) s 10AA.

4. Family violence and mental illness

Relevant Terms of Reference – 2, 3, 4 – Relevant questions – 4, 5, 6

Over the past three years, approximately 40% of clients that IMCL has assisted have experienced family violence. IMCL provides duty lawyering services twice weekly in the Family Violence Intervention Order (IVO) list at Melbourne Magistrates' Court (Court). Through this service, we assist both Affected Family Members (AFMs) and Respondents with advice, negotiate with Victoria Police and other lawyers, and advocate on peoples behalf before the Magistrate.

The overwhelming majority of matters that IMCL lawyers assist with at Court are family violence incidents that are appropriately being dealt with by way of the IVO process. However, there remains a small but significant amount of matters which come before the Court arising from incidents that are due to police attendances where one party is experiencing a mental health episode. IMCL lawyers regularly encounter situations where police have issued a safety notice in circumstances where an individual is suicidal and may be threatening self-harm with a weapon. Often, AFMs have called 000 out of concern for the welfare of their loved ones, not out of fear for their own safety, and are distressed and shocked when the matter is treated as a family violence incident. Some IMCL clients report that they have contacted the CAT Team or an Ambulance, not police, but the matter has ultimately be responded to by Victoria Police, leading to the response not being one focused on obtaining treatment or mental health support for the individual.

AFMs often want to obtain medical help for their loved ones and continue to provide them with support, but the policing response can lead to the Respondent being excluded from the home, unable to have contact with the AFM, and required to appear before the Court where police routinely seek full, no contact IVOs. Even where matters are to be adjourned on an interim basis so Victoria Police can conduct a further risk assessment, in IMCL's experience, police at Court often insist upon full no-contact orders with exclusion conditions, rendering Respondents homeless until the matter returns to Court, sometimes months later because of the severe delays in listing matters at Court. IMCL lawyers regularly make submissions to Magistrates seeking interim orders which allow safe contact between the parties so that people with mental illness can continue to live at home with their families whilst further risk assessments are made. However, presiding Magistrates are often unwilling to accept submissions that a Respondent who is threatening self-harm or who is suicidal is doing so because they need help, rather than them presenting a threat to an AFM or attempting to manipulate or control them.

These assessments made by police as the first responders to apparent family violence incidents, whilst understandable in the circumstances and underpinned by the definition of family violence in the *Family Violence Protection Act 2008*,⁴⁶ are very often not matters that should be resolved within the family violence system. Although in some situations, threats of self-harm are genuinely used as a means of psychological abuse of AFMs and these should certainly be taken seriously by police and Courts, more often, IMCL lawyers assist AFMs at court that are clear that they do not feel in fear of the Respondent, and that they called police/000 only because they wanted to get help for the Respondent or because they felt there were no other options when the Respondent was in crisis. AFMs in these situations rarely want orders made against the Respondent and want to be able to continue to provide them with support. IMCL is concerned that the broader impact of mental health presentations being policed as family violence incidents is that family members dealing with loved ones in mental health crisis will opt not to call police/000 when incidents occur, out of fear that it will lead to a safety notice and Court intervention.

⁴⁶ *Family Violence Protection Act 2008* (VIC) s 7.

It is acknowledged that the Victoria Police Code of Practice for the Investigation of Family Violence Incidents⁴⁷ requires police members to take compulsory action in response to family violence incidents, and first responders are required to make prompt assessments in the midst of complex and changing circumstances. Frontline police members should not be expected to make assessments of people experiencing mental health crisis, in the absence of assistance from a trained mental health clinician. Further, family members of people experiencing mental health episodes should feel confident that if they call 000 seeking help for their family member, that they will receive the required medical response.

The presence of mental health triage workers at Court would provide Magistrates and police with the clinical information they need to properly assess whether there is in fact a family violence risk at play in situations such as those outlined above. Further, and noting the impact of the stressful Court environment on AFMs and Respondents alike, the presence of a mental health triage worker at Court could provide assistance to parties that are experiencing mental health impacts whilst at Court, and an opportunity for referral. It would also be consistent with recommendations from the Royal Commission into Family Violence regarding great collaboration between mental health and other family violence services.⁴⁸

Recommendations:

- 4.1. Mental health triage workers to be employed at Magistrates Courts to assist Police and Magistrates to make interim risk and mental health assessments.
- 4.2. Explore a pilot program for mental health response teams that works in conjunction with police to provide assessments and mental health care as second responders to family violence callouts – based on the PACER model.

5. Fines

IMCL assists a large volume of clients with fines and infringements.⁴⁹ IMCL is a member of the Infringements Working Group through the Federation of Community Legal Centres and endorses their submission in its entirety.

⁴⁷ Victoria Police, *Code of Practice for the Investigation of Family Violence*, Edition 3, 2019, 15.

⁴⁸ See, eg, Recommendations 87 and 99: Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016).

⁴⁹ In 2018/2019, IMCL assisted 107 clients with fines matters.