

# **ROYAL COMMISSION INTO VICTORIA'S MENTAL HEALTH SYSTEM**

FORMAL SUBMISSION

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## **NORTHERN COMMUNITY LEGAL CENTRE**

### ***Our Submission***

Northern Community Legal Centre (NCLC) welcomes the opportunity to make a Formal Submission to the Royal Commission into Victoria's Mental Health System and supports the government's efforts to improve and expand the current framework.

NCLC is funded to provide legal services under the National Partnership Agreement, (NPA) Attorney Generals Department. NCLC is not funded to provide mental health or psychosocial support, however, we focus our limited resources on legal support for the most vulnerable in our community, which includes people with mental health problems.

Many of the clients we assist across a range of legal areas have a mental health problem as a backdrop to their legal issues.

### ***Our Centre***

NCLC operates in one of the fastest growing and disadvantaged areas of Melbourne and has a significant catchment including the Moreland City Council, Hume City Council, and Mitchell Shire Council. NCLC operates from a central office located in Broadmeadows, with outreach services to other service areas, including Broadmeadows, Brunswick, Coburg, Craigieburn, Dallas, Fawkner, Glenroy, Sunbury and Wallan.

The Australian Bureau of Statistics indicates that the total population of our Local Government was 400, 850 in 2016, with 162,558 residents in Moreland City Council, 197, 376 residents in Hume City Council, and 40,916 in Mitchell Shire Council.<sup>1</sup>

NCLC assisted approximately 1,957 community members during the 2018 - 2019 financial year and approximately 5,427 in total since inception in 2016.

### ***Our Purpose***

NCLC's purpose is to ensure equal access to justice for all in the Melbourne North West region through provision of legal services, community legal education, and law reform initiatives.

### ***Our Priority Clients***

NCLC is committed to assisting the most vulnerable and disadvantaged members of our community. These are people who have much more limited access to legal assistance and include: victims/survivors of family violence, refugees and the newly arrived, young people, older people who are suffering abuse, and people who have a diagnosed mental illness.

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<sup>1</sup> Population totals taken from the result of the 2016 Australian Bureau of Statistics Census. Census, Australia Bureau of Statistics  
<<https://www.abs.gov.au/websitedbs/D3310114.nsf/Home/Census?OpenDocument&ref=topBar>>.

### ***Our Priority to Clients with Mental Health Problems***

Mental health problems are widespread within NCLC's community. In Hume City Council, 15.9% of resident identify as having high or very high levels of psychological distress.<sup>2</sup> A 2010 Victorian Health report revealed that mental health problems, along with neurological and sense disorders, are the 'leading cause of burden in the Hume region.'<sup>3</sup> High proportions of people also experienced high or very high levels of psychological stress, coupled with high or very high levels of social isolation, in Moreland City Council.<sup>4</sup>

We have prioritised responding to the legal needs of people with mental health problems and have aligned our services to ensure greater accessibility. In turn, we have successfully expanded our targeting of people with mental health problems.<sup>5</sup>

We have worked with Mind Australia to extend our reach into both Moreland and Hume City Council with increasing referrals from their residential services. These clients frequently have multiple legal issues that have impeded their mental health progress. The untangling of all the legal issues takes time and trust but has significant impact.

We have also partnered with other organisations who provide support and services for people with mental health issues including; Northern Mental Health, Headspace Craigieburn, Merri Health in Coburg, and Sunbury Community Health Centre. We collocate with our partners to provide wrap-around services.

In addition, we have assisted many people suffering mental illness to have their fines revoked through our weekly in-office Infringements Clinic. We assisted clients with revocations totalling approximately \$276,469 based on their mental health special circumstances in the 2018 - 2019 financial year.<sup>6</sup> At present, we are assisting almost 40 clients request cancellation of infringements totally approximately \$439,379.

As stated, NCLC also prioritises services to newly arrived and refugee peoples, young people, and victims/survivors of family violence. These cohorts also present with high levels of mental health problems.

Many asylum seekers and refugees are 'traumatised due to their significant exposure to potentially traumatic incidents, including gross human rights violations, persecution, conflict, forced displacement and family separation, and consequently suffer from mental health conditions.'<sup>7</sup>

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<sup>2</sup> North Western Primary Health Network, 'Mental Health Area Profile' (November 2017) 20.

<sup>3</sup> Victorian Government Department of Health, 'Hume Region health Status' (Summary profile, 2010) 18.

<sup>4</sup> North Western Primary Health Network, 'Mental Health Area Profile' (November 2017) 20.

<sup>5</sup> In the 2017-2018 financial year 291 of Northern Community Legal Centre (NCLC) clients had a disability/and or mental illness, which is approximately 44% more than the 2016-2017 financial year. The increase between the 2017-2018 and 2018-2019 financial year was approximately 51%.

<sup>6</sup> *Infringement Act 2006* (Vic) s3 includes a mental or intellectual disability, disorder, disease or illness where the disability, disorder, disease, or illness results in the person being unable to either understand that conduct constitutes an offence or to control conduct that constitutes an offence.

<sup>7</sup> Law Council of Australia, 'The Justice Project' (Final Report, Law Council of Australia, August 2018) 34.

Approximately one third of our family violence clients present with mental health issues such as post-traumatic stress disorder, depression, and anxiety.<sup>8</sup> However, because of the limitations of the national data collection system<sup>9</sup> that we are required to use, there is limited capacity to accurately cross tabulate for these indicators. Nevertheless, there is an established understanding that victims of family violence will suffer from mental health problems as a consequence of family violence. A submission to the Royal Commission into Family Violence noted:

The most profound and long-lasting effects of FV<sup>10</sup> are those related to mental ill health. Chronic stress such as that seen in FV leads to neuro-biological impacts which in turn produce mental illness and physical illness.<sup>11</sup>

Our youth clients also present with significant mental health problems. Development of relationships with treating mental health practitioners in our catchment has been necessary to facilitate mutual referral pathways.

Ultimately, we see significant cross over between our priority client groups, namely that they have a diagnosed mental illness which has contributed to or has been exacerbated by their legal matter.

## **RESPONSE TO THE TERMS OF REFERENCE**

The following Terms of Reference have been developed to provide direction for the Royal Commission:

1. How to most effectively prevent mental illness and suicide, and support people to recover from mental illness, early in life, early in illness and early in episode, through Victoria's mental health system, and in close partnership with other services.
2. How to deliver the best mental health outcomes and improve access to and the navigation of Victoria's mental health system for people of all ages, including through:
  - 2.1. best practice treatment and care models that are safe and person-centred;
  - 2.2. strategies to attract, train, develop and retain a highly skilled mental health workforce, including peer support workers;
  - 2.3. strengthened pathways and interfaces between Victoria's mental health system and other services;

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<sup>8</sup> NCLC assisted approximately 800 victims/survivors of family violence in the 2017-2018 financial year and approximately 811 in the 2018-2019 financial year. In the last financial year, NCLC assisted 303 clients who presented with family violence and mental health indicators.

<sup>9</sup> NCLC uses the Community Legal Assistance Service System (CLASS) to triage clients and gather information.

<sup>10</sup> Family violence.

<sup>11</sup> *Victorian Branch of the Royal Australian and New Zealand College of Psychiatrists* (2015) 38.

- 2.4. better service and infrastructure planning, governance, accountability, funding, commissioning and information sharing arrangements; and
- 2.5. improved data collection and research strategies to advance continuity of care and monitor the impact of any reforms.
3. How to best support the needs of family members and carers of people living with mental illness.
4. How to improve mental health outcomes, taking into account best practice and person-centred treatment and care models, for those in the Victorian community, especially those at greater risk of experiencing poor mental health, including but not limited to people:
  - 4.1. from Aboriginal and Torres Strait Islander backgrounds;
  - 4.2. living with a mental illness and other co-occurring illnesses, disabilities, multiple diagnoses or dual disabilities;
  - 4.3. from rural and regional communities; and
  - 4.4. in contact, or at greater risk of contact, with the forensic mental health system and the justice system.
5. How to best support those in the Victorian community who are living with both mental illness and problematic alcohol and drug use, including through evidence-based harm minimisation approaches.
6. Any other matters necessary to satisfactorily resolve the matters set out in paragraphs 1-5.

NCLC's submission will address Terms of Reference 1, 2, 4, and 5.

## **RESPONSE TO THE FORMAL SUBMISSION QUESTIONS**

The following Formal Submission Questions have been developed for consideration when formulating formal responses to the Terms of Reference:

1. What are your suggestions to improve the Victorian community's understanding of mental illness and reduce stigma and discrimination?
2. What is already working well and what can be done better to prevent mental illness and to support people to get early treatment and support?
3. What is already working well and what can be done better to prevent suicide?

4. What makes it hard for people to experience good mental health and what can be done to improve this? This may include how people find, access and experience mental health treatment and support and how services link with each other.
5. What are the drivers behind some communities in Victoria experiencing poorer mental health outcomes and what needs to be done to address this?
6. What are the needs of family members and carers and what can be done better to support them?
7. What can be done to attract, retain and better support the mental health workforce, including peer support workers?
8. What are the opportunities in the Victorian community for people living with mental illness to improve their social and economic participation, and what needs to be done to realise these opportunities?
9. Thinking about what Victoria's mental health system should ideally look like, tell us what areas and reform ideas you would like the Royal Commission to prioritise for change?
10. What can be done now to prepare for changes to Victoria's mental health system and support improvements to last?
11. Is there anything else you would like to share with the Royal Commission?

NCLC's submission will address Formal Submission Questions 2, 4, 8, 9, 10, and 11.

## **RESPONSE FORMAT**

We will respond to the Terms of Reference and Formal Submission Questions by broadly addressing the overlapping themes in two parts as follows:

- Prevention and Recovery
- Delivery and Improvement of Mental Health Outcomes

Our submission will be restricted to exploring and commenting on the intersectionality between legal matters and mental health problems.

## **PREVENTION AND RECOVERY**

### ***Current Approach and Concentration***

We submit that the current focus and approach to addressing legal needs in the context of holistic mental health treatment remains limited.

We further submit that when relevance of legal needs is addressed, the concentration is often on the intersection between mental health problems and the criminal justice system. This is illustrated in the Productivity Commission Issues Paper, *The Social and Economic Benefits of Improving Mental Health*,<sup>12</sup> which when addressing connection between mental health problems and the law, solely focused on the potential for justice system and child protection improvements.

To best assist with prevention of and recovery from mental illness, difficulties with broader legal issues must be anticipated, addressed, and attended to.

### ***Importance of Addressing Broader Legal Issues***

*On the Edge of Justice: The Legal Needs of People with a Mental Illness in NSW*<sup>13</sup> examines the broad legal needs of people with mental health problems. It found a ‘considerable number of Australians experience mental illness, and this is often associated with other social and economic disadvantage.’<sup>14</sup> Stakeholders and participants indicated that ‘while people with a mental illness experience a number of legal issues with potentially serious personal and financial consequences, they can also face many barriers in having these legal issues addressed.’<sup>15</sup>

The legal issues identified were:

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

The report into the legal needs of people with a mental illness highlights the limitation on the focus of criminal justice equated to justice. It is supported by the *Access to Justice Review*, which details different communities who experience difficulty when accessing justice. For example:

Traditionally, and understandably, the highest priority in allocating legal assistance resources has usually been given to people facing criminal charges, in light of the

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<sup>12</sup> Productivity Commission, ‘The Social and Economic Benefits of Improving Mental Health’ (Issues Paper, Australian Government, January 2019) 23 – 4.

<sup>13</sup> Maria Karras, Emily McCarron, Abigail Gray and Sam Ardasinski (2006).

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

prospect of deprivation of liberty or other serious penalties. Civil justice is treated as ‘the poor cousin’ in the legal assistance family. Increasingly though, unresolved civil legal problems, such as those related to a community member’s housing, mental health, employment or family, are recognised as having far reaching consequences for both the individuals involved and the state. For individuals, unresolved legal problems can lead to diminishing health and restrict social and economic participation.<sup>16</sup>

The prevalence of mental health problems for victims of family violence cannot be ignored. It is widely acknowledged and reported that family violence has a direct negative impact on the physical and mental health of victim/survivors of family violence.<sup>17</sup> A quantitative assessment evaluated by the Law and Justice Foundation of New South Wales shows that:

Their<sup>18</sup> legal problems were more likely to lead to stress-related illness, physical ill health, relationship breakdown, loss of income or financial strain, and moving home. They were more likely to require assistance from professionals, particularly lawyers and health and welfare professionals, and to require recourse to formal legal processes to achieve resolution.<sup>19</sup>

Victim/survivors of family violence are also ‘significantly more likely to experience a legal problem other than DFV<sup>20</sup> victimisation’ and these legal issues have a ‘substantial’ impact – that is, a moderate or severe impact – on their everyday life.<sup>21</sup> The Law and Justice Foundation of New South Wales’ assessment also confirms that criminal matters are only one of the common legal issues faced by family violence victims/survivors.<sup>22</sup>

In addition to access to justice issues, the Mental Health Commission of New South Wales has identified that ‘many people who experience disadvantage do not recognise that their social or economic problems have legal remedies’.<sup>23</sup> If broader legal needs are left unmet, the impact on a person’s mental health and recovery are severely impacted. Oftentimes this creates further vulnerabilities by accelerating their pathways into the criminal justice system. However, we know that people with mental health illness have other significant legal needs than merely those in relation to criminal law and the impacts of these legal issues can be detrimental.

We submit that legal assistance to aid people intersecting with *any* aspect of the legal system, including civil, criminal, and family law matters is essential to prevention and recovery for persons experiencing mental health problems. Further, assistance is required

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<sup>16</sup> The Department of Justice and Regulation, ‘Access to Justice Review’ (Summary Report, Government of Victoria, August, 2016) 4.

<sup>17</sup> Christine Coumarelos, ‘Quantifying the legal and broader life impacts of domestic and family violence’ (Paper 32, Law and Justice Foundation Justice Issues, June 2019) 6.

<sup>18</sup> Victims/survivors of family violence.

<sup>19</sup> Christine Coumarelos, ‘Quantifying the legal and broader life impacts of domestic and family violence’ (Paper 32, Law and Justice Foundation Justice Issues, June 2019) 1.

<sup>20</sup> Domestic family violence.

<sup>21</sup> *Ibid* 12.

<sup>22</sup> *Ibid* 11.

<sup>23</sup> Mental Health Commission of New South Wales, ‘Health Justice Partnerships in New South Wales’ (Position Paper, The State of New South Wales, October 2016) 4.

to triage and detect potential legal issues and needs, in addition to developing easily accessible legal assistance pathways for the broad spectrum of legal issues that a person with mental health problems may face.

### ***Northern Community Legal Centre Approach and Impact on Clients***

NCLC assisted 568 persons who identified as having a 'diagnosed mental illness' in the 2018 - 2019 financial year.

The breakdown of legal assistance for those clients was as follows:<sup>24</sup>

Family Violence Matters - 22%<sup>25</sup>

Family violence victims/survivors present with a number of legal issues that need unpacking. NCLC provides comprehensive assistance to family violence victims/survivors for a multitude of legal matters. For example, NCLC operates a Duty Lawyer service for Applicants in Family Violence Intervention Orders (FVIO) at the Broadmeadows Magistrates' Court. FVIOs most often protect vulnerable women and children. As stated, a significant portion of our clients who are victims/survivors of family violence experience mental health problems. The benefit of legal assistance in FVIO matters is to ensure that clients understand the implications of Intervention Orders, have support during the court process, and are linked with appropriate services.

Infringement Matters – 20%<sup>26</sup>

Infringements are a civil penalty rather than a criminal sanction; however, unaddressed infringements can result in risk of imprisonment. A by-product of significant reforms in Victoria is a special circumstances infringement system which enables persons who have a nexus between their mental illness and their infringements to have their infringements dealt with more favourably. Unfortunately, the infringement system is complex and difficult to navigate and without access to legal help, these people, who are most often the most vulnerable, may be missed in the system. However, in cases where NCLC has intervened, clients have avoided imprisonment due to infringement matters.

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<sup>24</sup> All numbers are approximate. NCLC clients may attend for assistance with multiple legal issues.

<sup>25</sup> NCLC assisted approximately 125 clients in relation to family violence matters who identified as experiencing mental health concerns in the 2018-2019 financial year.

<sup>26</sup> NCLC assisted approximately 115 clients in relation to infringement matters who identified as experiencing mental health concerns in the 2018-2019 financial year.

### Family Law Matters – 15%<sup>27</sup>

A significant number of our clients suffering from mental health problems seek assistance for family law matters. Family law is the umbrella reference for parenting, property, child support, and divorce matters. Each family law matter has standing as an independent legal issue, even where the matters intersect. Family law is a complex and dense area of law and legal advice and assistance is indispensable, in particular where mental health problems can be magnified by the stress of legal proceedings and where family violence concerns exist.

### Criminal Matters - 13%<sup>28</sup>

Assisting young people who have offended due to their mental illness is a priority for our service in circumstances where our clients are not eligible for legal aid, cannot afford a private lawyer, and yet have a high likelihood of eligibility for the Criminal Justice Diversion Program.<sup>29</sup> However, for young people, successful outcomes in civil matters are just as critical, including avoidance of a poor credit rating, understanding their employment rights, and addressing infringements, and mitigating other debts before they escalate beyond control.

### Motor Vehicle Accident Matters - 8%<sup>30</sup>

NCLC's most vulnerable clients generally have vehicles worth nominal values and choose not to obtain insurance. Unfortunately, this puts them at risk of recovery and/or civil action in circumstances where they are at fault in a motor vehicle accident. As with civil debts, clients can seek a waiver of the amount of damages due to their classification as judgement proof and avoid the same repercussions. The importance is acting before the matter is referred to Court. Clients without assistance, or who are only able to access assistance late into their matter, often have limited options for resolution.

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<sup>27</sup> NCLC assisted approximately 85 clients in relation to family law matters who identified as experiencing mental health concerns in the 2018-2019 financial year.

<sup>28</sup> NCLC assisted approximately 74 clients in relation to criminal law matters who identified as experiencing mental health concerns in the 2018-2019 financial year.

<sup>29</sup> The Criminal Justice Diversion Program in the Magistrates' Court of Victoria enables successful participants to avoid the typical path of the criminal justice system and ultimately a criminal record.

<sup>30</sup> NCLC assisted approximately 48 clients in relation to motor vehicle accident matters who identified as experiencing mental health concerns in the 2018-2019 financial year.

### Civil Debt Matters – 7%<sup>31</sup>

Civil debts may arise for many reasons, including those due to unpaid mobile phone or gym contracts, unpaid car loans, and overdue credit card bills. Many NCLC clients experiencing difficulties with civil debts have no assets and are in receipt of Centrelink benefits. These clients are judgement proof, meaning their income is protected from enforcement action.<sup>32</sup> However, without legal assistance to seek debt or hardship waivers, address unfair or misleading contract terms, and otherwise advocate for clients, clients may face civil litigation, impacted credit histories, and continued and relentless follow up from recovery agencies. NCLC is often successful with negotiating debt waivers and most often our matters conclude without any referral to Court.

### Other Matters – 15%<sup>33</sup>

NCLC also seeks individuals presenting with other legal issues, including but not limited to Victims of Crime Assistance Tribunal, Personal Safety Intervention Order and Tenancy matters.

We have identified that the particular vulnerabilities of our clients result in susceptibility to complex family violence and/or family law matters, consumer debts, significant accumulation of infringements, involvement in or exposure to criminal matters, and an overall inability to adequately self-represent or self-help in legal matters.

The following case study examples demonstrate the spectrum of legal issues and the importance of legal advice and assistance for those with mental health problems.

## CASE STUDY

### Civil Matter

#### Mental Health Problems, Vulnerability, and Risk of Legal Issues Arising

*Peter\* has a diagnosis of schizophrenia and his only income is the disability support pension. While he was living with a family member in Broadmeadows, Peter was approached by a door to door salesperson from a consumer rental company who signed him up to a consumer lease for a brand-new TV and DVD player. A few months later, they signed him up to another consumer lease for a brand-new iPhone.*

<sup>31</sup> NCLC assisted approximately 37 clients in relation to civil debt matters who identified as experiencing mental health concerns in the 2018-2019 financial year.

<sup>32</sup> *Judgement Debt Recovery Act 1984* (Vic) s12.

<sup>33</sup> NCLC assisted approximately 84 clients with various legal matters who identified as experiencing mental health concerns in the 2018-2019 financial year.

The iPhone contract required 39 fortnightly payments of \$112, which totaled \$4,368 for a phone worth \$1,149. The TV and DVD player contract required 52 fortnightly payments of \$61, which totaled \$3,172 of payments for goods worth \$699. These payments were made through Peter's Centrepay.

Since entering into these consumer leases, Peter moved into supported accommodation and was struggling to keep up with the payments. Peter instructed us that at the time that he entered into the contracts, because of his mental health issues, he did not understand the contracts and did not realise that he would be paying so much more than what the goods were worth. Peter told us that he felt that he had been taken advantage of because of his mental health issues. We made a complaint to the rental company, who denied that they had breached any laws in signing Peter up to these contracts. They stated that the only way to get out of the contracts was for Peter to return the goods, but that he would not get any refund for the amounts that he had already paid, which amounted to over \$3,000.

After we made a complaint to the Australian Financial Complaints Authority, the rental company agreed to make a refund of \$1,408 to Peter, which was the total that he had paid minus the value of the goods that he had received. Peter did not need to return the goods.

\*Name changed

## CASE STUDY

### Civil Matter

#### Mental Health Problems, Impact of Non-Criminal Legal Issues, and Effect on Mental Health

Jane\* has a diagnosis of schizophrenia, and is a resident at a long-term residential service for people with complex mental health issues who are not able to live independently. Before her mental health had worsened, Jane had run her own business. One of her kids was involved with a youth program that was organized through a local association. To help assist this program, Jane agreed to pay for advertising in their newsletter for her business. She had thought that this was just for a one-off advertisement.

A few months later Jane had experienced a severe down-turn in her mental health and ceased to operate her business, and had moved into the long-term residential service. She then started to receive emails from the newsletter asking for payment for a new invoice for an advertising in another newsletter. Jane had not asked for the advertising to continue, and they would not explain why she was being charged again. There were constant emails to her demanding payment of approximately \$400, which she couldn't afford. She was finding these emails highly distressing and stressful and wasn't able to cope with them.

She sought our assistance, and we emailed them explaining Janes current situation and asking them to waive whatever claim they had against her and cease contacting her. For a while they didn't respond to our correspondence, and continued to email Jane directly, which Jane continued to be

*highly distressed by. We wrote to them again explaining the distress their emails were causing Jane, and threatening action under the Australian Consumer Law for prohibited debt collection activities that were causing distress, and they then agreed to waive their claim against Jane and stop contacting her, which was an enormous relief to Jane.*

\*Name changed

## CASE STUDY

### **Infringement Matter**

#### **Mental Health Problems, Link to Infringements, and Lack of Court Assistance**

*Over a period of about 10 years, our client Ash\* incurred a large number of fines for driving on Citylink and Eastlink without a pass. Ash was primarily using the toll roads over this period to drive her sick father to medical appointments. She was suffering from depression and anxiety, which her doctor and psychologist stated caused her to incur tolls and not deal with them before they escalated to become infringement warrants.*

*In 2014, the Sheriff knocked on Ash's door and bailed her to appear at the Broadmeadows Magistrates' Court for \$18,000 of Infringement Warrants. She spoke to a duty lawyer at Court, but when she got called in to Court, her lawyer was busy and she appeared without a lawyer. The Magistrate didn't ask her about any of her circumstances or how she incurred so many infringements, and made an Order that she had to pay \$10,000 of her fines in monthly instalments of \$1,000. If she defaulted on just one payment, then the Sheriff would have the power to take her directly to jail where she would stay for up to 70 days.*

*Our client kept up her monthly payments and had paid off just over \$3,000 by the end of 2017. Ash attended the Northern Community Legal Centre in late 2017 when she was struggling to keep up with the payments of \$1,000 a month. She told us the constant fear that falling behind on just one payment could result in her being sent to jail was a major source of stress and anxiety for her.*

*We were able to obtain reports from Ash's doctor and psychologist that explained how her mental illness had caused her to incur the fines. We then appeared for Ash in the Magistrates Court and successfully applied for a re-hearing on the basis that the way that her mental illness contributed to the infringements should have been considered at the original hearing. The Magistrate accepted that in our client's circumstances, she should not have to pay any more fines, and fully waived the outstanding amount.*

\*Name changed

### **Action Required to Address Broader Legal Issues**

We recognise that legal issues which fall outside the criminal justice system may fail to illicit a response from people experiencing them. Unlike matters that involve police, have a rapidly approaching hearing date in court, or result in incarceration, broader legal issues are often ignored until they reach tipping point. This is understandable, and expected, when a person is experiencing acute mental health problems and the resulting social and economic consequences. However, we submit that these individuals are the most vulnerable and at-risk, and consequently, should command the most support from services.

In circumstances where clients are engaged with mental health services, NCLC recognises the opportunity for assessment and referral for legal assistance by mental health workers especially when persons are unable to self-identify legal issues. Ongoing training for mental health workers will be necessary to ensure appropriate use of existing legal health check-up and legal needs assessment tools for identification of potential legal problems.<sup>34</sup> The Law and Justice Foundation of New South Wales recommends legal diagnosis for victims/survivors of family violence, and we support this recommendation in the context of both victims/survivors of family violence and those experiencing mental health problems. We submit that the recommended approach of the Law and Justice Foundation of New South Wales should be adopted, but implemented with consideration of and to address specific needs of those experiencing broader mental health problems:

Comprehensive legal diagnosis obviously needs to be supported by suitable service infrastructure and resourcing, so that the legal needs accompanying DFV victimisation that are identified can be appropriately addressed.

Integrated service models where lawyers are present onsite at mental health services will encourage and facilitate attendance at appointments for the most vulnerable people. Effectiveness of integrated models will be measured by examining the complimentary support a client receives, which must be an informed combination of legal, social, and medical treatment, and the resulting mental health and legal outcomes.

NCLC submits that significant core health justice funding is paramount for both Community Legal Centres (CLCs) and mental health services to successfully develop integrated models, implement the programs within both sectors, and monitor the progress of the evolving ventures.

Finally, we submit that a shift in the definition of 'justice' to incorporate *all* legal matter types can also contribute to the recognition and identification of pressing legal issues by workers, professionals, and community members. This change requires a modification to the public dialog, which can be led by the results of this Royal Commission.

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<sup>34</sup> See <http://legalhealthcheck.org.au/> for the existing Legal Health Check resources developed by LawRight (Formerly Queensland Public Interest Law Clearing House Inc) for the National Association of Community Legal Centres (NACLC).

## DELIVERY AND IMPROVEMENT OF MENTAL HEALTH OUTCOMES

### *Current Approach and Concentration*

Health Justice Partnerships are internationally recognised and employed. Australia and Canada have followed the lead of the United States in its development of Medical Legal Partnerships.<sup>35</sup> In the United States, these partnerships currently operate across 46 of the country's 50 states.<sup>36</sup> Similarly, over 380 health justice partnerships are in operation across the United Kingdom.<sup>37</sup>

In Victoria, a number of Victorian legal services are already engaged with health services, hospitals, and community medical centres for the purposes of Health Justice Partnerships following on the back of the Advocacy and Right Centre Ltd.'s 2012 pilot program.<sup>38</sup> However, as the Mental Health Commission of New South Wales recognises, partnerships are an 'essential minimum' and 'integration is the ultimate aim'.<sup>39</sup>

We submit that currently, funding restrictions prevent full integration and limit programs, including those at NCLC. As a result, many programs are informal, ad hoc, and their challenges, successes, and improvements are not able to be adequately monitored.

We further submit that community based social, medical, and legal work is essential but not the only contributor to mental health outcomes. Even with the increased appreciation for, and implementation of Health Justice Partnerships, social and legal assistance is not the only mechanism for delivery and improvement of mental health outcomes. We recognise that there are limitations of the court systems, at both the state and federal levels, in identifying and responding to a person's mental health problems.

The Justice Project identifies the myriad of issues facing people with mental health concerns in the court system:

Many people with disability who are offenders have a long history of undiagnosed or untreated impairment. Concerted efforts to support targeted prevention and early intervention initiatives for people with disability are needed. These initiatives would include better identification of disability, greater access to mental health services and rehabilitation programs, and accessible community legal education and information.

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<sup>35</sup> *International Medical-Legal Partnership* (2019) National Centre for Medical Legal Partnership <<https://medical-legalpartnership.org/partnerships/international/>>.

<sup>36</sup> National Centre for Medical Legal Partnership, *Medical-Legal Partnership* (2019) <<https://medical-legalpartnership.org/>>.

<sup>37</sup> Sarah Beardon and Hazel Genn, 'The Health Justice Landscape in England and Wales: Social welfare legal services in health settings' (UCL Centre for Access to Justice, 2018) 28.

<sup>38</sup> See the following report for more information on the application of Medical-Legal Partnership in Australia as implemented by the Advocacy and Right Centre Ltd and Clayton Utz Foundation by Loddon Campaspe Community Legal Centre: Peter Noble, 'Advocacy-Health Alliances: Better Health Through Medical-Legal Partnership' (Final Report, Clayton Utz Foundation, August 2012).

<sup>39</sup> Mental Health Commission of New South Wales, 'Health Justice Partnerships in New South Wales' (Position Paper, The State of New South Wales, October 2016) 5.

People with disability face many systemic and structural barriers to accessing justice. These include physical inaccessibility, inflexible court procedures, negative attitudes and stigma towards people with disability, lack of understanding of disability by those who work in the justice system, lack of critical supports at all stages of the justice system, and an under-resourced legal assistance sector. Physical, cultural and social environments often fail to accommodate the needs of people with disability and inhibit them from participating in the justice system on an equal basis with others.<sup>40</sup>

We submit that wrap-around services must be available at the community level and also integrated into court systems; at the registry and in the court room. While the Justice Project exemplifies difficulties within the criminal justice system, we submit that similar hurdles exist in civil and family law matters.

### ***Importance of Incorporation of Wrap-Around Integrated Services***

We submit that wrap-around integrated service models are vital to improved mental health outcomes.

The National Centre for Medical Legal Partnership reports the following impact from the integrated services in the United States:<sup>41</sup>

- People with chronic illnesses are admitted to the hospital less frequently.
- People more commonly take their medications as prescribed.
- People report less stress and experience improvements in mental health.
- Less money is spent on health care services for the people who would otherwise frequently go to the hospital, and use of preventative health care increases.
- Clinical services are more frequently reimbursed by public and private payers.

Australia's Health Justice Partnerships are in their infancy. Development of Health Justice Australia in 2016 indicates that Australia's legal and medical professions are committed to expanding and strengthening these initiatives across the country.

Mind Australia identifies that 'people with mental ill health can experience fear of disclosure, real and perceived communication problems and other capability issues. These can make even relatively simple legal problems appear overwhelming, while agoraphobia or panic attacks can contribute to a journey to a legal service or advice centre being difficult'.<sup>42</sup>

Despite the prevalence of mental health conditions, Health Justice Australia reports that 'nearly one in five Australians take no action for their legal problems. When they do seek advice, they are more likely to ask a non-legal advisor, such as a health professional, than a

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<sup>40</sup> Law Council of Australia, 'The Justice Project' (Final Report, Law Council of Australia, August 2018) 20.

<sup>41</sup> *Medical-Legal Partnership Impact* (2019) National Centre for Medical Legal Partnership <<https://medical-legalpartnership.org/impact/>>.

<sup>42</sup> Mind Australia Limited, Submission to the Productivity Commission, *Inquiry into the Social and Economic Benefits of Improving Mental Health*, April 2019, 47.

lawyer’.<sup>43</sup> The Law and Justice Foundation of New South Wales also recognises ‘health and welfare professionals as major ‘gateways’ to legal services.’<sup>44</sup>

We submit that Victoria should be influenced by the success of the well-established partnerships in the United States, the United Kingdom, and the existing Australian partnerships, and in turn be motivated to rapidly expand these collaborations across the state.

A leader in the field of mental health services, Mind Australia, confirms its support of Health Justice Partnerships through its work with NCLC and in its submission to the Productivity Commission Inquiry into the Social and Economic Benefits of Improving Mental Health.<sup>45</sup>

In relation to the crossover of persons experiencing mental health problems and litigation in civil, criminal, or family law matters, we submit that here is a risk of recidivism, unjust outcomes, and systems abuse if wrap-around services are not incorporated in court systems. Courts will not be able to adequately handle matters where mental health problems exist if they are not informed through court documentation and have staff trained appropriately. Further, decision makers must be attuned to the mental health of any party to proceedings to ensure fair outcomes.

### ***Northern Community Legal Centre Approach and Impact on Clients***

Due to no direct health justice funding, we are running limited outreaches and have limited involvement with the major mental health organisations in our catchment area. For example, our Mind Australia outreach is only once a month. With more resources, we know that we would be able to have a dramatic impact on a larger amount of people with mental health issues, as demonstrated in the below case studies. We also know that many of these clients will not seek legal assistance unless it is provided onsite.

We also see the importance of wrap-around services and have been working with a range of community partners outside and inside the mental health area. For example, we are part of a youth crime prevention project<sup>46</sup> based in the City of Hume which has the second highest number of youth offenders in metropolitan Melbourne. NCLC has been working with Banksia Gardens and is part of a consortium of 12 services delivering crime prevention programs, along with Headspace, a youth drug, alcohol and mental health service. NCLC is committed to this legal/health/community alliance as a mechanism to improve accessibility and enable our service to reach young people who may be experiencing multifaceted psychosocial issues and attendant legal issues. Working within this context has allowed NCLC to address the legal needs of young people from within a supportive and youth friendly environment, with a focus on the multi-dimensional needs of the young person.

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<sup>43</sup> Health Justice Australia, ‘The Rationale for Health Justice Partnership: Why Service Collaborations Make Sense’ (2018) 2.

<sup>44</sup> Christine Coumarelos, ‘Quantifying the legal and broader life impacts of domestic and family violence’ (Paper 32, Law and Justice Foundation Justice Issues, June 2019) 27.

<sup>45</sup> Mind Australia Limited, Submission to the Productivity Commission, *Inquiry into the Social and Economic Benefits of Improving Mental Health*, April 2019, 47.

<sup>46</sup> For which NCLC does not receive any funding.

The following case study examples demonstrate the positive legal outcomes, and in turn, mental health outcomes, resulting from our unfunded health justice partnerships.

## CASE STUDY

### Civil Matter

#### Mental Health Problems and the Importance of Preventing of Re-Traumatisation

*We saw Besan\* at a collocation site after he was referred from one of the community mental health practitioners. The community mental health practitioners attended all the appointments with Besan and was able to assist conveying more sensitive issues with Besan's consent. The practitioner provided a background report regarding the childhood sexual abuse suffered by Besan, which ensured that he did not have to recount this traumatic experience.*

*We are now assisting him with numerous legal issues, including a \$4,000 debt with a phone company, which we had waived; a \$27,000 debt with a finance company, which we are working towards getting waived; and a Victims of Crime Assistance Application which could see the Besan receive up to \$10,000 as well as ongoing counselling and other expenses to assist recovery.*

*The community mental health practitioner has assisted the client with follow up work for his legal matters and has written letters of support which have greatly assisted. This is an example of working in a truly integrated practice.*

\*Name changed

## CASE STUDY

### Criminal Matter

#### Mental Health Problems and the Impact of Successful Wraparound Assistance

*Jackie\* sought the assistance of Northern Community Legal Centre after she was charged with possessing a drug of dependence, two graffiti offences and possessing cartridge ammunition.*

*When Jackie committed these offences, her living situation was unstable and she was disengaged from education, employment and her local community. She also reported struggling with significant anxiety.*

*Our youth lawyer agreed to assist Jackie with her criminal matter in the Children's Court. After several months of difficult negotiations, our youth lawyer was able to persuade the Police Prosecutors to withdraw both of the graffiti charges because the evidence against Jackie was entirely circumstantial. Jackie was prepared to accept responsibility for the remaining charges.*

*At the court hearing, although Jackie had previously completed a Diversion Program through the Children's Court and despite significant push back from the Police Prosecutors, our youth lawyer successfully advocated for Jackie to be given the chance to complete a second Diversion Program.*

*In deciding whether to give Jackie a second chance, the Police Prosecutors and Magistrate placed significant weight on the youth lawyer's submissions, which highlighted that Jackie had taken several positive steps towards her rehabilitation since offending. The youth lawyer explained that Jackie had engaged with a psychologist and had started a part-time job. In addition, she had completed some studies at her local TAFE institute and had stayed out of trouble with the police.*

\*Name changed

### **Action Required to Implement Wrap-Around Services**

The National Partnership Agreement on Legal Assistance Services 2015-20 (NPA) provides Australian Government funding to states and territories to distribute to legal aid commissions and CLCs. In Victoria this is now administered through Victoria Legal Aid.

Whilst the NPA purports to support a national legal assistance sector that is more integrated and improve access to justice for disadvantaged people, it neither sets priorities for specifically working with people with a mental illness (stated priority cohorts are people with Mental Illness/ Disability) nor does it provide for Integrated Services Funding for Mental Health. There is no incentive or resources for CLCs to respond and prioritise people with mental health problems, notwithstanding the significant impact that unresolved legal issues can have on their recovery. The NPA needs to specifically address the issue of providing legal services to people with a mental illness, and deliver incentives to work with mental health services.

A recent review of the NPA highlighted the importance of wrap-around services:

Australian Capital Territory stakeholders raised the importance of delivering holistic, wrap-around services in order to meet the needs of their clients. Often, a non-legal issue such as mental health needs to be addressed before (or in conjunction with) addressing a legal issue. It was suggested that consideration be given to how this approach to legal assistance services can be acknowledged within a future NPA.<sup>47</sup>

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<sup>47</sup> URBIS, 'Review of the National Partnership Agreement on Legal Assistance Services 2015-220' (Final Report, The Australian Government Attorney-General's Department, 19 December 2018) 22.

In Queensland, CSP<sup>48</sup> is driven through the QLAF<sup>49</sup>, five thematic forums and 12 Regional Legal Assistance Forums. The five thematic QLAF forums are: Community Legal Education Assistance Forum; Children and Families Legal Assistance Forum; Best Practice and Evidence Base Working Group; Aboriginal and Torres Strait Islander Service Planning Working Group; and, Mental Health Service Planning Working Group.<sup>50</sup>

We suggest that the NPA's mechanisms within the funding of the legal assistance sector ensure wrap-around services and guarantee incentives within the funding of mental health services that encourage integration of legal services with the mental health service sector.

The Victorian Government's 2016 Access to Justice Review explicitly recommended a call to action for state and federal funding for integrated services:

The Victorian and Commonwealth Governments should seek to identify ongoing funding for integrated services where there are demonstrated legal needs for tailored or targeted services to reach particular client groups. Such services require cross-portfolio co-ordination between justice and human services areas. Certainty of funding would help legal service providers build long-term collaborative relationships with non-legal service providers, and provide more effective services to vulnerable and disadvantaged members of the community.<sup>51</sup>

Neither the Commonwealth nor the State Government funding of Community Legal Centre programs have provided any ongoing funding for Integrated Service Funding. The Victorian Legal Services Board grants program had a focus over the last ten years on Health Justice Partnerships and funded some CLCs for such projects. Their focus on this has now however declined. In recent years because of threatened reduction or a 'funding cliff' in Commonwealth funding to CLCs, the Victorian State Government set aside 'rescue' funds. With the reversal of the Commonwealth funding cliff threat, these funds were made available through the last two budgets for one off Integrated Services Funding and other CLC project funding. These funds assisted some community legal centres to further extend their integrated service projects many which had been established with VLSB funding, however services such as NCLC were not successful in obtaining these grants.

We therefore recommend that there be ongoing State funding to provide for the establishment and consolidation of Integrated Service Funding for all CLCs based on mental ill health demographics.

Once funding is in place, we submit that Victoria can be guided by the Medical Legal Partnership framework developed in the United States, in particular through implementation

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<sup>48</sup> Collaborative service planning.

<sup>49</sup> Queensland Legal Assistance Forum.

<sup>50</sup> URBIS, 'Review of the National Partnership Agreement on Legal Assistance Services 2015-220' (Final Report, The Australian Government Attorney-General's Department, 19 December 2018) 33.

<sup>51</sup> The Department of Justice and Regulation, 'Access to Justice Review' (Summary Report, Government of Victoria, August, 2016) 27.

of the National Centre for Medical Legal Partnership's Toolkit.<sup>52</sup> This Toolkit was seen as instrumental in the development and roll out of the pilot Health Justice Partnership established by the Advocacy and Rights Centre Ltd in 2012.<sup>53</sup> This program continues to imbed a lawyer within a community health service three days a week.<sup>54</sup>

However, identification and triage of legal issues and subsequent referrals for legal assistance alone will not ensure positive mental health outcomes. All court systems must commit to adopting recommendations of this Royal Commission that are relevant to court processes. The Law and Justice Foundation of New South Wales supports the 'coordination' of legal and justice services for the purposes of supporting family violence victims/survivors.<sup>55</sup> Again, we submit that outcomes for people experiencing mental health problems will be improved by a reworking of the medical, legal, and justice sectors. We submit that a unified approach, resulting from informed consideration of mental health problems, the individuals that experience these problems, and the specific and collective needs of these individuals must be adopted. Fragmentation between the sectors must be addressed and we submit that the recommendations developed by this Royal Commission will be instrumental to enacting change.

## RECOMMENDATIONS

1. That there be core State Government funding provided for all Victorian Community Legal Centres to enable health justice partnerships especially in areas where there is high levels of mental unwellness.
2. That there be specific Health Justice funding for lawyers in mental health programs.
3. That the Legal Assistance sector funding through the National Partnership Agreement ensure a more specific focus on mental health and promotion and funding of integrated service delivery with mental health services.
4. That funding agreements for other social services provide incentives for collaboration with other services including Community Legal Centres, thereby ensuring wrap-around services to ensure the reduction of mental unwellness.
5. That the generalised understanding of the justice system be broadened to include civil justice and that understandings obtained through the recent enquiries including *Access to Justice* and the *Justice Project Final Report* inform the inquiry.

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<sup>52</sup> *The Medical-Legal Partnership Toolkit* (2015) National Centre for Medical Legal Partnership <<https://medical-legalpartnership.org/wp-content/uploads/2017/11/MLP-Toolkit-Phases-I-and-II.pdf>>.

<sup>53</sup> See Peter Noble, 'Advocacy-Health Alliances: Better Health Through Medical-Legal Partnership' (Final Report, Clayton Utz Foundation, August 2012).

<sup>54</sup> Loddon Campaspe Community Legal Centre, *Health Justice Partnership* <<http://lclcc.org.au/programs/health-justice-partnership/>>.

<sup>55</sup> See Christine Coumarelos, 'Quantifying the legal and broader life impacts of domestic and family violence' (Paper 32, Law and Justice Foundation Justice Issues, June 2019) 26.

6. That processes in courts at the state and federal levels incorporate better identification of people with mental illness including: questions on all forms, requirements for judicial staff to identify if a person before the court, whether in the civil or criminal jurisdiction, has a mental health problem, and training of staff in better identifying and responding to people with a mental illness.