



Peninsula  
Community  
Legal Centre

# PCLC SUBMISSION TO THE ROYAL COMMISSION INTO VICTORIA'S MENTAL HEALTH SYSTEM

July 2019



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## **1. INTRODUCTION**

Peninsula Community Legal Centre (PCLC) welcomes this opportunity to contribute to the Royal Commission into Mental Health.

## **2. ABOUT PENINSULA COMMUNITY LEGAL CENTRE**

PCLC is an independent, not-for-profit organisation that has been providing free legal services to vulnerable and disadvantaged people in Melbourne's outer south east since 1977. Today, it is one of the largest community legal centres in Australia, spanning a catchment of over 2,600 square kilometers, six local government areas and a population of almost one million people, with larger catchments for some programs. The Centre's head office is in Frankston, with branch offices in Bentleigh East, Cranbourne, Pines (Frankston North) and Rosebud, with visiting outreach services in Chelsea, Clayton South, Clyde Sth, Pakenham and Hastings.

As is typical of community legal centres, PCLC provides legal information, advice, ongoing legal assistance and representation and undertakes community legal education, community development and public advocacy activities. It is important to note that PCLC does not provide services relating to the *Mental Health Act 2014* or the Mental Health Tribunal.

In addition to its general legal services, the Centre operates programs and services in family law, family violence, fines, private tenancy, rooming house outreach, civil and criminal law, with a social worker and a visiting financial counsellor to support the legal programs.

Of particular relevance to this review, is that one quarter of our clients are identifying mental health issues.

We provide clients with free and accessible legal services, particularly the most disadvantaged and marginalised in our community who may otherwise 'fall through the gaps' because they cannot afford private lawyers and would not qualify for legal aid. Our clients are low income earners with 75% on no or low income (less than \$26,000 gross per annum).

PCLC is primarily funded through the Community Legal Services Program of the Australian Attorney General's Department and Victorian Department of Justice and Regulation. It also receives funding from local governments and private foundations.

### **3. SCOPE OF SUBMISSION**

Our submission highlights the incidence of mental illness in our client group, identifies the most frequently occurring legal issues for this cohort and the barriers that exist for them. We will provide examples of individual client cases where we have been able to support clients experiencing mental health issues. We will also demonstrate how our integrated mode of practice is attempting to reduce barriers experienced by people suffering from mental illness and describe how the resolution of legal issues can assist in recovery. We will also provide recommendations with the aim of improving the provision of legal assistance for the most disadvantaged and vulnerable clients in our community.

Our submission addresses the following questions from the Outline of questions: 2, 5, 8 and 11.

### **4. SUMMARY OF RECOMMENDATIONS**

#### **General**

- Substantially increase funding to the legal assistance sector to provide services to more clients with mental health issues and complex needs.

#### **Health Justice Partnerships**

- Increase funding to the establishment and continuation of existing Health Justice Partnerships. Evaluations of new HJP's need to take into account that the development of a good service model takes at least 12 – 18 months to establish.
- Support early intervention in legal problems through funded training for health professionals to enable them to identify legal issues and make appropriate referrals.

#### **Rooming House Residents**

- Long-term government investment in adequate, stable and affordable housing.
- Co-ordination of local mental health services to make access and navigation easier.
- Funded provision of integrated, intensive, flexible and responsive outreach services, like PCLC's Rooming House Outreach Project, that can successfully engage this marginalised and disenfranchised community and assist them into better health and accommodation.

## **Family Law**

- Further training for family lawyers, the Judiciary and Registry staff to assist in the recognition of the impact family dissolution and family violence have on the mental health of children and parents.
- Increase resources to Family Consultants so that child dispute conference reports are based on a more thorough investigation of the issues than can be gleaned from one interview with the children and the parents.
- Expansion of and development of holistic and integrated programs such as FASS and the Family Violence to Family Law Continuity Program, that can support people struggling with mental health issues through the process with consistency.

## **Infringements**

- Adopt policies to encourage more agencies to become Work and Development Permit accredited, particularly for medical and mental health care. Including funding for WDP sponsors and administration of the scheme.
- Funding and support for a expanded StreamlineFines model to be rolled out to more inpatient/community outpatient psychiatric facilities.

## 5. DETAILED RESPONSES TO QUESTIONS

### Question 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.

It is not the role nor within the expertise of the legal assistance sector, to prevent mental illness, but it is possible to see improvements in client's mental health when their legal issues are effectively dealt with.

This is currently being facilitated in a variety of ways, such as specialist and therapeutic courts, assertive outreach, integrated practices and existing health justice partnerships (HJPs). HJPs enable legal practitioners to work in health service environments, such as hospitals or maternal health services.

As providers of community legal assistance over many years we regularly see that people with or without a mental illness are not aware that their problems are legal in nature, nor are they aware of where to get the assistance they require. Non-legal support services play a significant role in:

- identification of a legal issue and the provision of preliminary legal information
- referral to legal service providers
- support for a client when they seek legal assistance
- advocacy
- education, training and awareness raising about mental illness.<sup>1</sup>

To increase collaboration with non-legal support services PCLC currently has three HJPs, an assertive outreach program and an integrated service model. We have a social worker employed as part of the practice three days per week and have an outside agency provide financial counselling from our Frankston office four days per week. We believe that these partnerships can significantly benefit client's lives.

#### HEALTH JUSTICE PARTNERSHIPS

Health Justice Australia in its publication *'Mapping a new path – the health justice landscape in Australia 2017'*, pointed to medical and legal research showing that people in the groups most likely to be impacted by a combination of health and legal issues, were more likely to turn to non-legal advisors, such as health professionals, than legal services for solutions.<sup>2</sup>

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<sup>1</sup> Law and Justice Foundation On the edge of Justice – The legal needs of people with a mental illness in NSW. (May 2006) pxvii

<sup>2</sup> Health Justice Australia – *'Mapping a new path: The health justice landscape in Australia 2017* p.v

As mentioned previously PCLC currently has three Health Justice Partnerships (HJP's). We have a lawyer working in the Social Work Department at Peninsula Health, a community lawyer who visits Frankston Youth Prevention and Recovery Care (YPARC) and Frankston Hospital Psychiatric Unit (2West), Psychiatric Assessment and Planning Unit (PAPU) and Frankston & Mornington Drug & Alcohol Service (FamDAS). Finally, we have the Glen Eira Mums Service (GEMS) in which one of our family violence lawyers works within one of the Council's enhanced maternal health team.

The relationship between the medical professionals and the lawyer is invaluable to the client. Once trust and understanding is developed through secondary consultations and training, there is a shared goal of addressing health harming legal need through the provision of holistic services.<sup>3</sup>

When a client is more likely to disclose legal problems to health care professionals, it is important that the health care professional can spot the legal issue and make an appropriate referral. PCLC has developed materials to assist family violence workers in the identification of legal issues and appropriate referrals. Similar materials may be beneficial to health professionals.

When there is trust and co-operation between medical and legal services the outcomes for the client/patient can be life changing.

### **Helena's story**

*Helena lives with her husband Yuri and their four month old baby. Yuri is an Australian citizen and Helena is here on a spousal visa. Helena suffers from postnatal depression. English is not her first language, she has no friends or family here, no access to social security, no income and no savings; she is totally reliant upon Yuri. Not long ago feeling isolated and desperate, Helena phoned Lifeline stating that she had experienced thoughts of killing her baby. She was admitted to a mother-and-baby psych unit where she stayed for three weeks before being discharged when it was deemed safe for her to go home. Five weeks later Helena alleged that Yuri had kicked her in the stomach and called police. Yuri told the police that Helena was crazy and she had earlier talked about killing her baby. On this basis police ignored Helen's allegations and applied for an intervention order against her, naming Yuri and the baby as protected persons. The sole ground for this decision was the call to Lifeline, despite treatment already being provided.*

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<sup>3</sup> Health Justice Australia – 'Mapping a new path: The health justice landscape in Australia 2017 p.vi

*When the matter went to court the Magistrate identified Helena as vulnerable and adjourned the matter for 48 hours to enable a psychological assessment to be undertaken. The Magistrate declined to make an order against Helena.*

*Helena contacted her maternal health nurse, who was very concerned about her and agreed to attend court with her. The nurse contacted our GEMS lawyer who represented Helena at court.*

*There were lengthy negotiations between the parties with police reluctant to withdraw their application. The matter was adjourned for six weeks, allowing support services to monitor the situation. Now housing was the most pressing issue for Helena. Our GEMS lawyer negotiated with Yuri's lawyer and managed to get agreement for Yuri to leave the house so Helena could return there with her baby. He also agreed to pay the next months rent. At the following mention six weeks later, the police agreed that an FVIO was not necessary and withdrew their application. Helena was supported at court by the nurse, an interpreter, the court's applicant worker and our GEMS lawyer. This was possible because there was a good working relationship between the maternal health service and legal services created by the HJP. If our GEMS lawyer had not represented Helena, with the background knowledge and support of the maternal health nurse, the outcome could have been considerably different.*

Early intervention and being able to address legal issues with the support of a mental health care team benefits clients and can improve their health outcomes.

### **Harley's story**

*Harley is a 23 year old man who was admitted to YPARC (Peninsula Health) for assessment, treatment and planning of post discharge management. Harley had an established diagnosis of Borderline Personality Disorder (BPD) and depression. Prior to his admission Harley had been itinerant with limited or no family support in the community; he was employed as a chef on a part-time basis with low income and was finding it difficult to manage his life. His life situation contributed to the deterioration of his mental health. During Harley's assessment at YPARC he informed the treating team that he had been involved in a motor vehicle accident and the other driver was pursuing him for \$3,600. Harley was booked in to see the PCLC lawyer during his next visit to the facility. During this consultation Harley disclosed that Ambulance Victoria was also pursuing him for \$1200.*

*PCLC's lawyer was able to gather supporting material for a hardship application to Ambulance Victoria. This was a seamless process as all the professionals assisting Harley*

were at YPARC.

*Our lawyer was successful with a debt waiver application to Ambulance Victoria resulting with the \$1,200 debt being waived. We are also in the process of making another debt waiver application to AAMI (the insurers of the other party in the motor vehicle accident matter).*

## RECOMMENDATIONS

- Increase funding to the establishment of Health Justice Partnerships. Evaluations of new HJP's need to take into account that the development of a good service model takes at least 12 – 18 months to establish.
- Support early intervention in legal problems through funded training for health professionals to enable them to identify legal issues and make appropriate referrals.

### Question 5: What are the drivers behind some communities in Victoria experiencing poorer mental health outcomes and what needs to be done to address this?

Mental illness is a direct cause of poverty for many people. Poor mental health is strongly associated with reduced employment<sup>4</sup>, with 34 per cent of those receiving the Disability Support Pension doing so due to mental illness<sup>5</sup>. Many other people experiencing significant mental illnesses receive the lower Newstart Allowance. The Disability Support Pension is just 28 per cent of the average adult full time earnings, while Newstart is just 17 per cent.<sup>6</sup> Such low rates of payment leave many people living in poverty<sup>7</sup>

In 2017 17% of PCLC's clients were homeless or at risk of homelessness. This can be due to a variety of factors, including a lack of available affordable housing, fleeing family violence, or inability to obtain private rental accommodation due to previous breaches of lease. 36% of clients reported experiencing family violence and 12% a history of trauma.<sup>8</sup>

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<sup>4</sup>Frijters, P., Johnston, D.W. and Shields, M.A., 2014, *The effect of mental health on employment: evidence from Australian panel data*, Health Economics, vol. 23, no. 9, pp. 1058–1071

<sup>5</sup> Productivity Commission, 2019, *The Social and Economic Benefits of Improving Mental Health; Productivity Commission Issues Paper*, p.19

<sup>6</sup> Willis, M., 2018, *Supported Housing for Prisoners Returning to the Community: a review of the literature*, Australian Institute of Criminology for State of Victoria, Corrections Victoria, p.38

<sup>7</sup> Victorian Government Department of Health and Human Services, 2019, *Rental Report March Quarter 2019*, p.19

<sup>8</sup> PCLC Complexity Survey (2017)

To respond to this need, the Centre operates a specialist tenancy assistance and advocacy program (TAAP) funded by Consumer Affairs Victoria and the Rooming House Outreach Program (RHOP) funded by the Department of Health & Human Services.

The Centre's TAAP team provides advice, casework and representation services, including duty work, at the Victorian Civil & Administrative Tribunal to private rental tenants including rooming house and caravan park residents, across the Southern Metropolitan and Bayside Peninsula regions of Melbourne.

The RHOP conducts a visiting outreach service to residents and tenants of Rooming Houses, providing advice and support services. The aim of this program is to identify single people who are inappropriately housed in rooming houses and to actively connect them to support services. Through these services, residents are assisted to secure long term housing appropriate to their needs and reduce their risk of homelessness. The RHOP covers a vast catchment area in the South East region, consisting of 17 local government areas (LGAs) and over 800 registered rooming houses. In this past year the program has conducted 326 rooming house visits. The Centre's social worker supports the outreach worker on visits with the provision of health and material aid assessments one day per week.

It is clear that homelessness and the risk of homelessness impact the mental health of clients and their ability to address legal issues.

## **MENTAL HEALTH AND ROOMING HOUSE RESIDENTS**

Many people living in rooming house accommodation have mental health issues they have brought with them to the rooming house. Most of these issues are long standing and require intensive support. All issues are exacerbated by the rooming house environment. Some residents are fortunate to have mental health support services in place but many do not. This can be due to a number of factors, such as:

- Lack of capacity of local mental health services in the local area;
- The lack of connection between individuals and mental health services. Some residents are not aware of what is available, or do not want to engage as a result of previous experience.
- Exclusion from services due to 'unacceptable behaviour' and the workload of existing services making it difficult to respond to 'challenging' individuals.
- Many rooming house residents are itinerant and lose contact with services as they move from house to house.

Even if residents come to rooming houses without mental health issues, the environment challenges their mental health and/or well being, because they are living with unpredictable and unknown individuals in crowded and often sub-standard accommodation.

A greater focus is required on integrated programs – programs which include professionals from a range of disciplines as part of a service delivery team. For those with higher levels of support needs, wrap-around team-based services might include practitioners across a range of disciplines supporting mental health recovery, including peer support, clinical mental health and health treatment and disability support, primary care, housing, community legal services, and addiction support.<sup>9</sup>

Our social worker has found it difficult to refer rooming house residents to mental health services. There are different services across different Local Government Areas, with our worker having experienced being transferred through to 4 different mental health support teams when attempting to assist a particular client. Eventually this resident was advised that she was ‘therapeutically disengaged’ and therefore ineligible for support. At the very least, co-ordination of mental health services across LGAs would benefit rooming house residents.

### **Steve's Story**

*Steve had been living in a large rooming house for two years when our Rooming House Program first visited. Steve presented as extremely depressed, stating that the only thing keeping him alive was a family wedding in two months. Following a conversation with our social worker it became apparent that Steve had a significant problem with alcohol and was experiencing severe health issues as a result. Steve was adamant that he was not willing to change his behaviour and treatment programs had not assisted him in the past. Steve had been receiving infrequent visits from the local mental health outreach program but this ceased due to funding changes, he had also been excluded from his regular GP as a result of ‘inappropriate behaviour’.*

*At this stage the most important thing to Steve was to be able to attend the wedding in two months time. Our social worker connected him with a charity that provided both Steve and his best mate with clothes for the wedding and some casual wear. The photos show both men looking sharp.*

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<sup>9</sup> Council to Homeless Persons – Messaging guide to the Royal Commission into Mental Health; Housing, homelessness and mental health (2019)p.5

*Our social worker and rooming house worker continued to visit with Steve after the wedding and saw a marked improvement in his state of mind. He was pleased to report that a new housing/mental health support service had advised him that they would be able to provide him with additional support. They assisted Steve to attend necessary medical appointments and began searching for better quality housing for him.*

*The support service was successful in securing new accommodation for Steve and he has recently relocated to a three bedroom house with two other men in a beach side suburb. The Rooming House Outreach Program visited him at his new residence and reported that he has settled in well and is much happier with his life.*

## RECOMMENDATIONS

- Long-term government investment in adequate, stable and affordable housing.
- Co-ordination of local mental health services to make access and navigation easier.
- Funded provision of integrated, intensive, flexible and responsive outreach services, like the Rooming House Outreach Project, that can successfully engage this marginalised and disenfranchised community and assist them into better health and accommodation.

## MENTAL HEALTH, FAMILY BREAKDOWN AND FAMILY VIOLENCE

It is widely accepted that separation and divorce rank among life's most traumatic experiences, for adults and children. In children there is an increased risk of acute distress, depression and behaviours that are often regarded as stemming from poor self esteem. For adults there are increased rates of depression, substance abuse, suicidal behaviour and anxiety. Thus, it is not surprising that people who are vulnerable to mental illnesses appear reasonably frequently in family law courts. When it is raised, mental illness is often a pivotal issue in the determination of parenting cases, or the case is prepared as though it is.<sup>10</sup> The most significant legal issue facing people with a mental illness who are involved in the family system relates to parenting orders.<sup>11</sup> There is also evidence that suggests a strong relationship between family violence and poorer mental health outcomes.<sup>12</sup> Approximately

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<sup>10</sup> *Mental Health & Family Law – 'A Question of Degree'* Federal Magistrate Judy Ryan (FMCA[2006] FedJSchol 2

<sup>12</sup> *Chief Psychiatrist guideline and practice resource – Family Violence*, Department of Health and Human Services Victoria. p8

50% of PCLC's family law clients have experienced family violence and around 10% report a mental illness. It is acknowledged that many mental health issues go unreported.

The LAW Survey found that in Victoria, family law problems comprised the highest proportion of "substantial problems" (80%) and had the highest mean number of "adverse consequences".<sup>13</sup>

This is illustrated in PCLC's experience. We see clients whose mental health has been detrimentally impacted not only by family violence, but also by the family law process itself.

### **Mairead's story**

*Mairead is a client of PCLC's Family Violence to Family Law Continuity Program. Through this program clients receive 'on the record' family law casework assistance on a legally aided basis, provided they have experienced family violence and are eligible for aid. Mairead's matter has been on foot for almost 3 years.*

*During her 12 year long marriage Mairead was subjected to most forms of family violence, as defined by section 5 of the Family Violence Protection Act 2008. After she finally garnered the courage to leave the relationship, she began to experience her ex partner's wrath in its full force. He was determined to do everything within his power to prevent her from having contact with her children, which he knew would hurt her the most. She had been primary carer of the children throughout the relationship. Not only did she want contact with her children, she wanted to protect them from their father's controlling and demeaning behaviour. Her ex partner engaged particularly aggressive and adversarial lawyers to act on his behalf which only accentuated the trauma she was already experiencing.*

*The PCLC lawyer began to see a deterioration in Mairead's mental health, which on more than one occasion meant that she was unable to attend a hearing and had to be admitted to hospital. Unfortunately some of her behaviour while ill led to criminal charges and a short time in custody. The delays in the court system, the continuing controlling and abusive behaviour of her ex partner, and the very little time she was able to see her children, which the father insisted had to be on a supervised basis until the final trial date, exacerbated her trauma.*

*Unfortunately the decline in Mairead's health has been used against her by her ex partner's lawyers. They allege Mairead has limited parenting capacity and that it would not be in the*

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<sup>13</sup> Law and Justice Foundation of NSW 'Legal Australia- Wide Survey of Legal Need in Victoria' 2012 xvi

*best interests of the children to have contact with her. The father subpoenaed hospital records and used these as evidence against her, despite these not providing the context of her admissions to hospital as a result of the family violence she had experienced over the years. The father also shared her mental health records with other courts to try negatively influence the outcomes of proceedings relating to Mairead in those courts.*

*Mairead's mental health practitioner was of the opinion that her behaviour was PTSD related and her ongoing trauma was causing her to be readmitted during the proceedings. In Mairead's view, the psychiatric report from the court appointed expert was superficial and supported the father's view. In our view the conclusions reached in that report have significantly reduced the likelihood of the Court making orders for the children to live with her. The matter has not yet been resolved and will go to trial later this year, but there are clearly hurdles that Mairead will have to overcome.*

Much of the family law assistance that PCLC provides to clients is dependant upon there being a history of family violence. The main mental health impacts on people experiencing family violence are depression, anxiety, post-traumatic stress and suicidal ideation, with there also being a link between family violence and post natal depression.<sup>14</sup>

As mentioned previously, family violence and its mental health effects can impact on an individual's ability to engage with services, particularly legal services. Family law clients who have experienced family violence and who have mental health concerns are often reticent to escalate matters by engaging lawyers. They often fear further traumatisation (and arguably victimisation) through the adversarial legal system.

There are often attempts by the perpetrator's lawyers to minimise the family violence alleged by the victim/survivor, and the mere fact that family violence is alleged is often used to cast aspersions upon the victim/survivor's judgement and more pertinently, their parenting capacity. This can overwhelm clients, and in extreme cases, entirely undermine their resolve to persist with the legal process. This is incredibly disempowering for clients, and some clients simply withdraw from the process.

For this reason it is critical that family law clients experiencing family violence, and who have mental health concerns, have access to trauma informed family law advice and family violence related support services.

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<sup>14</sup> Chief Psychiatrist guideline and practice resource – Family Violence, Department of Health and Human Services Victoria. p8

*Family Advocacy and Support Service*

An excellent example of such a service provided by PCLC is the Family Advocacy and Support Service (FASS). Through this service, the state and territory legal aid commissions have funded participating community legal centres to provide family violence focused, family law duty lawyer services at the Federal Circuit Courts around Australia. PCLC is funded to provide FASS services at the Dandenong registry. Through this service, clients' legal and non legal needs are triaged upon arrival at the Court by an Information Referral Officer. Duty lawyers assist with advice, negotiations, the drafting of documents and court representation. The duty lawyers regularly assist clients in urgent and distressing circumstances, and many of these clients have had no previous contact with the legal system.

Importantly, separate women's and men's specific non legal support services are present on site and they assist with a range of non legal services and referrals, including family violence support and mental health referral.

In our view, this triaged, holistic model should also serve as a template for the delivery of duty lawyer services not only in the federal family courts, but also in the state family violence courts.

Notwithstanding the successes of FASS, there has been widespread recognition that the provision of holistic duty lawyer services is insufficient to address those family law matters where ongoing family law casework assistance is required and where family violence and other complexities such as mental health are a feature.

*Family Violence to Family Law Continuity Program*

In October 2016, PCLC commenced the operation of the Family Violence to Family Law Continuity Program, funded by Victoria Legal Aid. This Program has enabled PCLC to provide 'on the record' advice, casework and representation services in family law matters where the client has experienced, or is at risk of experiencing, family violence. Importantly, Pilot lawyers attend the Frankston Magistrates' Court and the Moorabbin Justice Centre so that comprehensive family violence and family law advice can be provided when family violence intervention order matters are listed. Where eligible, clients can be referred back to PCLC for ongoing casework assistance. This Pilot therefore facilitates continuity of service from first point of contact at the Magistrates' Courts, through to final hearing in the federal family law courts.

In PCLC's experience, this Program has been exceptionally successful in providing holistic legal and non legal support to those clients with mental health issues. It complements PCLC's integrated approach to the provision of legal and non legal services, and supports the view that most legal issues have profound social and economic origins.

PCLC's clients not only receive family law assistance; they can also be referred to a range of PCLC's related internal and external support services. Additionally, clients presenting with complexities such as mental health concerns can receive ongoing support from PCLC's in house social worker, visiting financial counsellor and gambling counsellor.

The following case study illustrates how an integrated service model can support a person suffering with significant mental health issues. Through this holistic approach the client is not just a legal problem. It is acknowledged that their legal problems exist within the context of the rest of their life, including their struggle with mental health. If, in the example below, Pauline had been on her own through her family law matter, in all likelihood she would have completely withdrawn from the process. However, with the intensive and holistic assistance she has received from PCLC's integrated practice model she has been provided with the best chance possible to regain contact with her children.

#### **Pauline's story**

*Pauline experienced abuse in her family of origin which continued after she was placed in state care. She has struggled with mental health issues most of her life. A lack of support and diagnoses led to self medicating from the age of 12.*

*Pauline has two children currently aged 10 and 12. Up until 2014, the children lived with Pauline, and had no contact with their father due to an intervention order she had against him. In 2014, after a mental health episode, Pauline ended up in prison. Whilst in prison DHHS located the father of the children and placed them with him, contrary to Pauline's pleas not to, as she knew he was drug user and dealer with a constant stream of undesirable people passing through his home.*

*Finally whilst in prison, Pauline was diagnosed with severe PTSD, Bi Polar Disorder and Borderline Personality Disorder for which she received preliminary treatment.*

*DHHS have been closely involved with this family since Pauline's incarceration. Pauline reported that when DHHS became aware that the father was allowing her to look after the children when she was released from prison, they threatened to put the children in care if he allowed them to be cared for by her. In another earlier mental health episode Pauline revealed her breasts to her neighbour during an argument and because the children were present she was placed on the sex offenders register, notwithstanding the police, and the Court, considering it a very low level offence.*

*DHHS continue to maintain that Pauline is a danger to her children because of her sex offender status. She alleges that DHHS has failed to take into account her mental health diagnoses, which is directly related to the contact she has with her children,) and the treatment she is currently receiving. Pauline alleges that the position of the Department is detrimentally impacting the family law proceedings.*

*Pauline's mental health has also presented significant obstacles to the progress of her family law matter. Consequently, Pauline has become periodically disillusioned, disheartened and disengaged from service providers, including our lawyers. Consequently the future for Pauline's contact with her children is by no means certain.*

*Pauline's PCLC lawyer said that 'with the treatment she is currently receiving she can see the mother that Pauline could be, but the legal process, combined with her separation from her children, is impeding her recovery prospects.'*

## RECOMMENDATIONS

- Further training for family lawyers, the Judiciary and Registry staff to assist in the recognition of the impact of family dissolution and family violence on the mental health of children and parents.
- Increase resources to Family Consultants so that child dispute conference reports are based on a more thorough investigation of the issues than can be gleaned from one interview with the children and the parents.
- Expansion of and development of holistic and integrated programs such as the Family Advocacy and Support Program (FASS) and the Family Violence to Family Law Continuity Program, that can support people struggling with mental health issues through the process with consistency.

## MENTAL HEALTH AND THE INFRINGEMENT SYSTEM

Since PCLC's specialist Fines Clinic commenced operation in 2016 in response to spiralling infringement debts within its catchment, it has assisted clients facing more than \$10.5 million in fines debt. Our specialist lawyers assist people to navigate their way through the legal framework of the fines system, which is often difficult for people experiencing disadvantage to understand and negotiate.

The Centre operates three fines clinic sessions per week in Frankston & Cranbourne and provides additional fines specific services in conjunction with its Connect East Project Monday through to Friday.

High levels of infringement debt are a particular problem in outer suburbs such as Cranbourne, Frankston and further afield on the Mornington Peninsula, which all fall into PCLC's catchment. Toll road fines unfairly affect residents in these areas due to the heavy reliance on toll roads to move around the metropolitan area. Additionally, some of the most disadvantaged postcodes in Victoria are found in these locations and unsurprisingly also have some of the highest rates of unpaid collective infringement debt in Victoria. 28% of all toll fines issued in 2017/2018 were in the Centre's south east catchment, with over 269,041 fines issued at a monetary value of \$38,195,450<sup>15</sup>.

Many people incur fines concurrently with other personal, social and possibly legal issues. It is often a symptom or a consequences of their mental illness that they are disorganised, overwhelmed and avoid dealing with problems as they arise. 'Unlike other legal problems, fines inevitably escalate with inaction.'<sup>16</sup> Fines are often put on a lower priority than, housing, family and health matters. This means that the infringements system can have a disproportionately detrimental effect on people suffering with mental illness. PCLC's infringements clients have an average of over \$11,000 in fines debt with some of the highest debts reaching \$150,000. 71% of the currently open infringements with the PCLC fines team involve a special circumstances application, and, these applications predominantly relate to mental illness.

There are benefits operating a holistic practice. For example, even when clients are feeling bogged down in their family law matter it is easy for their family lawyer to refer them to the Fines team and reduce their stress by getting them assistance with the infringement debt hanging over their head.

### **Janie's story**

*Janie first contacted the Centre seeking assistance for family law issues. During the conduct of her family law matter, Janie disclosed that she had numerous outstanding infringements totalling approximately \$10,000. These fines were incurred by Janie's abusive ex-partner. Janie was referred to PCLC's fines team.*

<sup>15</sup> Infringement Management and Enforcement Services FOI Tolling Data 2017/2018

<sup>16</sup> Law and Justice Foundation of New South Wales, 'Fines: Are Disadvantaged People at a Disadvantage?' (Issues Paper, 2018) p.3

*Janie's mental health issues were numerous and longstanding, predating her relationship with her former partner. Both her counsellor and her GP stated that her mental health condition had been significantly exacerbated by the family violence she had experienced and her ability to deal with day to day responsibilities was compromised as a result. In March 2018 the PCLC Fines Team assisted Janie with an application to the Family Violence Scheme – Fines Victoria. In January 2019 all Janie's matters were withdrawn by respective enforcement agencies.*

Changes were made to the system pursuant to the *Fines Reform Act 2014 (Vic)* but we are still finding that large fines debts are frequently incurred by people experiencing mental illness. Finding mental health service providers who are willing and able to provide support letters with sufficient detail to satisfy Fines Victoria is still a major problem.

Furthermore, the common means of enforcement can aggravate other hardships, such as caring for dependants and increasing the individual having contact with the criminal justice system.<sup>17</sup> A good of example of this in Victoria is licence or registration suspension as a means of enforcement. Fines Victoria can direct VicRoads to suspend drivers' licenses, learners permits or a vehicle's registration.

#### **Austin's story**

*Austin came to PCLC stating that he had been charged with driving whilst suspended with his matter listed in court in two days time. As instructions were obtained, Austin disclosed that he had been raised in a highly dysfunctional family with a history of drug abuse and family violence. The Department of Health and Human Services had been involved in Austin's life from a very early age.*

*Austin had diagnoses of Aspergers/Autism and intellectual disabilities and had not attended a mainstream school. He had rudimentary literacy skills and would often take photos of correspondence he received and forward them to his mother to read. Therefore he had not known he license had been suspended. He was surprised when the police advised him that he was driving whilst suspended. He elected to take the matter to court as he didn't consider he had done anything wrong. The court date was adjourned to enable the lawyer to compile supporting material. During this process it came to light that Austin had a \$4000 infringement debt. It was difficult to obtain supporting medical reports as the ones that were provided were inadequate. As an alternative Austin's medical history was obtained*

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<sup>17</sup> Ibid p.4

*and put together with a letter from a teacher at the Specialist school that he attended.*

*This supporting material along with submissions from our lawyer led to the Magistrate imposing a 12 month unconditional good behaviour bond; acknowledging that a heavier penalty would only complicate Austin's life. The supporting material has been submitted to Fines Victoria as part of a Special Circumstances Application.*

The NSW Law and Justice foundation found that 'when disadvantaged people do get appropriate assistance for their fines problems, they achieve outcomes on par with others. In particular, use of not-for-profit legal services was the strategy most likely to produce favourable outcomes.'<sup>18</sup>

## RECOMMENDATIONS

The Infringements Working Group at the Federation of Community Legal Centres (Victoria) have made a number of recommendations to this Royal Commission. PCLC's experience evidences and supports the following of those recommendations.

1. Adopt policies to encourage more agencies to become Work and Development Permit accredited, particularly for medical and mental health care, including funding for WDP sponsors and administration of the scheme.
2. Funding and support for a expanded StreamlineFines model to be rolled out to more inpatient/community outpatient psychiatric facilities.

### **Question 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?**

One of the main focuses of the legal assistance sector is 'access to justice'. This has led to several initiatives being implemented to assist our clients, with all their complexities, to access our services and the support they need.

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<sup>18</sup> Law and Justice Foundation of NSW, 'Fines: Are Disadvantaged People at a Disadvantage?' (Issues Paper 2018) p1

Firstly we have the Health Justice Partnerships (HJPs) as discussed under question 5. The other two 'access to justice' initiatives are Work and Development Permits and StreamlineFines.

## WORKPLACE DEVELOPMENT PERMITS

Community work permits were created in the *Infringements Act 2006 (Vic)* and then developed and expanded in the *Fines Reform Act 2014(Vic)* to form the Work and Development Permit (WDP). Under this scheme health practitioners and organisations can become accredited WDP 'sponsors' and provide eligible clients with activities. The time a client spends engaged with the health practitioners or organisations they can effectively 'work off' their fines debt. A health practitioner can provide services to clients experiencing mental illness and the client can work off \$1,063.85 (6.6 penalty units) per month off their fines debt.

PCLC currently has a WDP Project funded by the Legal Services Board, this two year project aims to increase access to the Work Development Permit Scheme for eligible consumers in the South East.

Our WDP Project worker notes:

*"That there are significant teething problems with the Fines Victoria WDP team as it receives significantly less funding than it's very successful counterpart in NSW. However, in theory the scheme enables a client to deal with their health and legal needs simultaneously. They are provided with a preventative and therapeutic measure to deal with their infringement debt. The Scheme also provides an additional incentive to remain engaged with mental health services, which could in turn reduce the legal problems they encounter."*

## StreamlineFines Project

Peninsula Community Legal Centre, Moonee Valley Legal Service, WEstjustice and Victoria Legal Aid have partnered to pilot *StreamlineFines* in three regions in greater Melbourne. The project is funded by the Public Sector Innovation Fund.

*StreamlineFines* is a process that combines technology and health-justice partnership (HJPs) to address the ever increasing number and complexity of special circumstances fines matters being handled in Victoria Legal Aid and Victorian community legal centres. *StreamlineFines* workers utilise a web tool to collect and manage special circumstances matters. The tool has a number of features including pro-forma documents that will ensure that medical reports and supporting materials by health professionals meet the legal requirements for revocation. A *StreamlineFines* lawyer is embedded in mental health and

alcohol and other drug services to assist in the early identification of eligible clients, improving outcomes for the client and reducing downstream costs such as court appearances or delays in processing revocation applications by Fines Victoria. The *StreamlineFines* lawyer is a generalist lawyer who can triage and, where possible, assist the client with the often multiple legal issues they face.

These initiatives are two fold, whilst facilitating access to legal assistance they also provide an opportunity for people experiencing mental illness to improve their social and consequently economic participation. Fines can be paid whilst under going treatment, attending counselling or engaging with a support agency.

**Question 11. Is there anything else you would like to share with the Royal Commission?**

The community legal sector is wide and varied with specialist and generalist centres. We all have a high proportion of clients with mental health issues. However, we do not all assist in the same areas of law or provide our services in the same way.

PCLC's submission is based on our experience. 50% of the work we do involves family law, family violence or both. The rest of our practice is in the areas of tenancy, fines and general legal issues which includes civil and a small amount of summary crime.

Overall PCLC supports the expansion of integrated practice initiatives and therapeutic and/or restorative justice programs across the whole justice system to better address the legal and other needs of Victorians affected by mental health issues.

