Contents

The Preparation of this Submission

This submission has been jointly prepared by Mental Health Victoria and the Mental Health Legal Centre (MHLC).

While many of the best-practice models highlighted in this submission are drawn from MHLC programs, we encourage the Commission to look at all best-practice models across the state. There are numerous service providers which the Commission can draw upon in developing specific recommendations for system improvements.

There are key specific intersections between mental illness, justice and people with alcohol and drug issues, young people and first Australians. The specialist providers offer necessary expertise to the Commission through their specific range of submissions. MHLC encourages the Commission to endorse the recommendations of these specific areas.

1. Introduction: Mental Health and Justice

1.1 There are key social determinants of mental health, much in the same way that there are social determinants of physical health. As a result, although mental health issues are common, and occur across the population, there are some groups that are more vulnerable and at risk of developing a mental illness.

1.2 In Victoria, and internationally, it is widely recognised that people in contact with the justice system have a higher prevalence of interrelated social issues including mental health challenges, insecure housing, social isolation and poverty than the general community.

1.3 The rapidly increasing prison population in Victoria, and the disproportionate number of people in Victorian prisons with mental health issues, strongly indicates that an increased focussed on positively managing mental health needs in the community is required.

1.4 There are significant and specific concerns related to the experiences of people living with mental illness and their access to social and legal justice.

1.5 Some of these concerns relate to people living with mental illness' right to autonomy, to fair and equitable treatment and to the protection of their fundamental freedoms and basic rights as articulated in the United Nation's Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care[1] (hereafter referred to as The UN Principles) to which Australia was a key contributor.

1.6 For people living with mental illness there are barriers to accessing community support services and a complex and fragmented multi-service systems to navigate.

1.7 Unfortunately, in the lived experience of people living with mental health challenges, whilst Victorian legislation has identified that for sustainable recovery journeys, person-centred and whole person approaches are necessary, consumers report experiencing practitioner-driven, inadequate and siloed responses.

1.8 The stigma associated with mental illness also creates barriers to accessing early support for mental health challenges. The stigma attached to mental illness is

[1] adopted by General Assembly Resolution 46/119 on 17 December 1991

connected to the societal-wide distinctions between how physical illness and mental illness is understood, perceived and managed.

1.9 How mental illness is responded to is also related to social status – the affluent that suffer with their mental health, and publicly admit they struggle with their mental health, are considered 'brave' and role-models'. When people experiencing disadvantage struggle with their mental health they are perceived and portrayed as 'mad' and 'dangerous'.

1.10 The devastating impacts of misunderstanding the nature of mental illness is most obvious in particularly vulnerable populations including prisoners, people experiencing homelessness, people experiencing poverty and the aged.

1.11 To effectively and sustainably reduce the engagement of people living with mental illness within the criminal justice system requires increased resourcing to both consumer-informed crisis and consumer-informed early intervention approaches.

1.12 To promote and protect the social and legal rights of mental Health consumers requires:

- an accessible system
- that provides clear information
- where services work collaboratively
- that systemic injustices are identified and addressed
- best practices models are developed, evaluated, shared, replicated and resourced

1.13 Community-based approaches require the capacity and knowledge to provide individually tailored responses that are required for each person to successfully navigate the system to address the complex interrelated factors related to mental health and well-being.

1.14 Additionally, an effective mental health system requires effective accountability, governance and oversight.

1.15 All components of the mental health service system should be committed to measuring itself through its impacts on its consumers and set targets to achieve excellence in its outcomes.

Key Recommendations

1. **The Victorian Government to establish clear mechanisms to hold all government and community services to account for ensuring compliance with the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. This includes, but is not limited, to the fundamental freedoms and basic rights of all persons with a mental illness 'to be treated with humanity and respect for the inherent dignity of the human person[2].'**

2. **The Victorian Government should facilitate a consumer-led review of the whole-of-community improvements required to improve the mental health and well-being of Victorians, particularly those experiencing disadvantage.**

3. **The Victorian Government should resource the establishment of Health-Justice Partnerships to improve access to social and legal justice for people experiencing mental health challenges.**

4. **The Victorian Government should effectively implement a therapeutic justice approach to managing the intersection of people living with mental illness and the justice system. The Victorian Government should ensure that people with a mental illness are effectively diverted from incarceration whenever possible.**

5. **The Victorian Government should ensure that all Victorian prisoners with mental illness have appropriate identification of their mental health needs and access to person-centred Recovery-based treatments.**

6. **The Victorian Government should ensure that all Victorian prisoners with mental illness have access to embedded and independent legal assistance services to ensure easier rehabilitation back into community through resolving civil law matters and ensuring their legal and human rights are upheld.**

7. **The Victorian Government should establish community-based Crisis Houses which offer day support programmes to reduce acute presentations, risk issues and social isolation and to improve symptoms and social functioning.**

[2] United Nation's Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care Principle 1:2

8. **The Victorian Government should increase consumer access to appropriate legal representation at all Mental Health Tribunal hearings in accordance with UN Principle 1.**

9. **The Victorian Government should increase the uptake and utilisation of Advance Statements to provide person-led and informed treatment responses and protection of the human rights of people living with a mental illness during periods of diminished capacity.**

10. **The Mental Health Tribunal should be the repository for all Advance Statements and Nominated Persons. This would enable system-wide identification of the existence of an individual's Advance Statement and/or Nominated Persons immediately when anyone is placed on any type of Treatment Order.**

11. **The Victorian Government should establish Multi-disciplinary Community Support Hubs with easy non-judgemental, individually responsive access to a broad range of community services that work collaboratively to support and address mental health and well-being needs within communities. Services working in partnership with consumers and each other will develop approaches which prevent and reduce contact between persons living with mental illness and the criminal justice sector.**

2. Context - the Mental Health of Victorians

2.1 In 2017-18 there were 72,859 registered clients of mental health services in Victoria. One in five Victorians will experience a mental health condition this year and almost half of all Victorians will experience a mental health condition at some point during their life.

2.2 Current services do not have the capacity to adequately address the mental health and well-being needs of Victorians. According to the VAGO Access to Mental Health Service 2019 report there has been "a lack of sufficient and appropriate system level planning, investment and monitoring over many years"[3] and despite Victoria's 10-year Mental Health Plan "real progress is unlikely within the life of the plan unless DHHS accelerates and directs efforts towards the fundamentals: funding, workforce and capital infrastructure"[4]

2.3 Although the prevalence of mental health conditions is widespread and impacts on many Victorians, there are social determinants of mental health. According to the World Health Organisation determinants of mental health include "social, cultural, economic, political and environmental factors such as national policies, social protection, living standards, working conditions, and community social supports"[5]

2.4 People living with mental health challenges are more likely to experience a range of complex and interrelated challenges including financial hardship, social exclusion, abuse, discrimination, unemployment, homelessness and imprisonment. Also, mental health disorders are themselves impacted on by poverty, social isolation, marginalisation, abuse, family violence, homelessness and imprisonment.

2.5 Victoria has one of the lowest mental health beds nationally resulting in 'psychiatric units continually operate at or above 95% capacity – well above desirable levels of 80-85%'[6]. The Victorian Budget 2019/20 announcements contain a $173 million increase in mental health spending which will include three new PARCS facilities and an extra 28 mental health inpatient beds.

[3] Victoria Auditor General's Office Access to Mental Health Service March 2019 pg. 8
[4] Victoria Auditor General's Office Access to Mental Health Service March 2019 pg. 8
[5] World Health Organisation Mental Health Action Plan 2013-2020 pg. 7
[6] Victoria Auditor General's Office Access to Mental Health Service March 2019 pg. 12

2.6 Effectively implementing the recovery-oriented Mental Health Act 2014 will not be achieved by simply spending more on the current system. Significantly improved mental health and well-being for Victorians will require improvements in the way mental health and well-being resourcing is approached.

2.7 Mental health and well-being is a whole of society concern and requires cross-sector collaborations and genuine person-centred wrap-around services which are regularly monitored and evaluated for positive outcomes.

3. Mental Health and Social and Legal Justice

3.1 Many people experiencing mental health issues face disproportionate individual and systemic barriers to accessing social and legal justice.

3.2 Individual barriers to legal justice can include lack of information relating to legal rights and obligations, negative experiences of service interventions, challenges related to communication and/or behaviours, diverse decision-making experiences and varying capacity to navigate a complex legal system.

3.3 Systemic barriers to justice include the lack of availability of fit-for-purpose socio-legal assistance services, lack of consumer-voices influencing service developments, the costs of legal assistance and an absence of therapeutic justice responses.

3.4 People with compromised mental health can also experience specific challenges related to effectively participating in the legal system including:

- stress
- problems with time-management which can impact on compliance
- cognitive impairment which can impact on comprehension of legal directions and documents
- communication issues
- lack of legal representation
- tribunals and courtroom environments can be intimidating
- lack of identification that they have a mental illness, and
- if it is known, that their mental illness can result in being perceived as less than credible.

3.5 Consumers may experience legal assistance service access barriers due to the physical environment they are placed in such as hospital and psychiatric wards, prisons, forensic hospital and aged care facilities.

3.6 Lack of legal representation at Mental Health Tribunals creates another barrier to social and legal justice and is a significant concern in Victoria.

3.7 The provision of effective legal education, legal information, legal advice and legal assistance to people with mental illness is critical. Legal need in this area is well documented, and there is clear evidence that people with mental illness are over-represented in the criminal justice system and in our prisons.

3.8 Access to social and legal justice requires careful consideration related to access itself and ensuring that barriers to accessing information, advice and support are reduced is critical.

3.9 For people experiencing mental health issues there are further considerations related to varying capacity and accompanying periods of confusion, heightened anxiety, digital exclusion, lack of decision-making autonomy and historical and current institutionalisation.

3.10 There must be system-wide embedded opportunities for consumers to utilise their lived experience and to provide their expertise and knowledge to inform and influence service and system networks and enhance consumer voice.

3.11 Examples of Victorian Best Practice – MHLC

The Mental Health Legal Centre (MHLC)

The Mental Health Legal Centre is committed to ensuring that people living with a mental illness have access to appropriate and specialist legal services, representation and information, to encourage opportunities for this vulnerable cohort to effectively participate within equitable and inclusive Victorian communities.

MHLC was established in 1987 and has developed and maintained a reputation as a trusted and independent legal service, recognised by both mental health services consumers and cross-sector practitioners as flexible and committed to improving social and legal justice outcomes for people experiencing mental health challenges.

During the last 6 months of 2018, MHLC recorded the data of over 2880 phone-calls through their main contact number. Of these calls almost 1700 were consumers with mental health needs asking for legal information, advice and support.

MHLC has extensive expertise in disseminating important complex information that has significant impact on people with co-occurring mental health and legal challenges, to increase their capacity to understand and exercise their legal rights.

MHLC have a diverse and talented multidisciplinary team and deliver a variety of consumer-centred projects which are able to evidence effectiveness of service, and importantly, flexibility of modalities which include outreach, in-reach, co-locations, in person, by phone, and in partnership with others.

MHLC have successfully secured government, philanthropic and LSB funding to deliver innovative, specialist projects in response to the specific needs of particularly vulnerable clients, namely:

- **Inside Access** for people experiencing incarceration and mental health challenges, services are now embedded into DPFC and Ravenhall
- **Health-Justice Partnership** delivered in collaboration with Bolton Clarke Homeless Person Program to increase access to legal assistance for people with mental health challenges and homelessness or insecure housing
- **Advanced Statements** project to provide independent legal support for consumers of mental health services to enable them to inform practitioners (and the Mental Health Tribunal) of their treatment preferences
- **MHLC Night Service** provides direct legal assistance to callers on Tuesday and Thursday evenings
- **MHLC Day service** coordinates paralegal support, triages phone-calls received during the day, provides information / referrals, stakeholder training and non-project specific legal assistance services including representations at court and the Mental Health Tribunal
- **Pro Bono Project** provides training across the private and community legal sector and coordinates Mental Health Tribunal representations

MHLC utilise consumer and stakeholder co-design practices to develop and embed their outcomes framework, evaluation mechanisms and tools and utilise strong continuous improvement processes through service delivery, service adaptations and developments and new initiative design.

3.12 Learning from International Best Practice

3.13 Mental Health Courts

Victoria should explore the development of therapeutic justice-based specialist Mental Health Courts so that people living with mental illness can be effectively and appropriately diverted from the criminal justice system.

The United States have designed specialist Mental Health Courts to reduce the number of people with a mental disorder arriving into the prison system.

Victoria has already developed specialist and problem-solving courts and has evidence of their importance and effectiveness in delivering appropriate justice outcomes.

Mental Health Courts, when developed and utilised properly can reduce the number of people with mental illness engaged in the criminal justice system, can divert people with mental illness from prisons into engagement with community-based mental health services and minimise the further stigmatising effect of criminal convictions on people living with a mental illness.

3.14 The Sequential Intercept Model7

Mental Health America considers that whilst Mental Health Courts can be highly effective there are increased benefits in developing The Sequential Intercept Model. Victoria already has Police, Ambulance and Clinical Early Response (PACER) and Crisis Assessment and Treatment Team (CATT) services so already has some of the effective mechanisms in place that could be adapted to this model.

Below are some of the key issues at each intercept.

Intercept 0

- **Mobile crisis outreach teams and co-responders.** Behavioural health practitioners who can respond to people experiencing a behavioural health crisis or co-respond to a police encounter.
- **Emergency Department diversion.** Emergency department (ED) diversion can consist of a triage service, embedded mobile crisis, or a peer specialist who provides support to people in crisis.
- **Police-friendly crisis services.** Police officers can bring people in crisis to locations other than jail or the ED, such as stabilisation units, walk-in services, or respite.

Intercept 1:

- **Dispatcher training.** Dispatchers can identify behavioural health crisis situations and pass that information along so that Crisis Intervention Team officers can respond to the call.
- **Specialised police responses.** Police officers can learn how to interact with individuals experiencing a behavioural health crisis and build partnerships between law enforcement and the community.
- **Intervening with super-utilisers and providing follow-up after the crisis.** Police officers, crisis services, and hospitals can reduce super-utilisers of emergency phone number and ED services through specialised responses.

Intercept 2:

- **Screening for mental and substance use disorders.** Brief screens can be administered universally by non-clinical staff at jail booking, police holding cells, court lock ups, and prior to the first court appearance.

[7] Policy Research Associates The Sequential Intercept Model Advancing Community-Based Solutions for Justice-Involved People with Mental and Substance Use Disorders PRA SIM One-Pager 2018

- **Data matching initiatives between the jail and community-based behavioural health providers.**
- **Pretrial supervision and diversion services to reduce episodes of incarceration.** Risk-based pre-trial services can reduce incarceration of defendants with low risk of criminal behaviour or failure to appear in court.

Intercept 3:

- **Treatment courts for high-risk/high-need individuals.** Treatment courts or specialised dockets can be developed, examples of which include adult drug courts, mental health courts, and veterans treatment courts.
- **Jail-based programming and health care services.** Jail health care providers are required to provide behavioural health and medical services to detainees needing treatment.
- **Collaboration with the Veterans Justice Outreach specialist from the Veterans Health Administration.**

Intercept 4

- **Transition planning by the jail or in-reach providers.** Transition planning improves re-entry outcomes by organising services around an individual's needs in advance of release.
- **Medication and prescription access upon release from jail or prison.** Inmates should be provided with a minimum of 30 days medication at release and have prescriptions in hand upon release.
- **Warm hand-offs from corrections to providers increases engagement in services.** Case managers that pick an individual up and transport them directly to services will increase positive outcomes.

Intercept 5

- **Specialised community supervision caseloads of people with mental disorders.**
- **Medication-assisted treatment for substance use disorders**. Medication assisted treatment approaches can reduce relapse episodes and overdoses among individuals returning from detention.
- **Access to recovery supports, benefits, housing, and competitive employment.** Housing and employment are as important to justice-involved individuals as access to behavioural health services. Removing criminal justice-specific barriers to access is critical.

4. Mental Health and People in Prison

4.1 The National Statement of Principles for Forensic Mental Health, developed by the health authorities of the Commonwealth, States and Territories articulates that "Legislation must recognise the special needs of people with a mental illness involved in the criminal justice system and comply with the International Covenant on Civil and Political Rights, the United Nations Principles on the Protection of People with a Mental Illness and the Improvement of Mental Health Care."[8]

4.2 There are currently more than 8,200 people in prison in Victoria which is almost twice as many as there were in 2013.

4.3 In Victoria between 2010 and 2016:
- The overall prison population increased by **67%**
- The female prison population increased by **75%**
- On June 30 2006 there were less than **250** women incarcerated in prison in Victoria, on June 30 2016 there were more than **425** women incarcerated in prison in Victoria

4.4 According to the Victorian Ombudsman:[9]
- 40% of all Victorian prisoners have been identified as having a mental health condition
- prisoners are 10 to 15 times more likely to have a psychotic disorder than someone in the general community

4.5 AIHW report 2018 confirms that 40% of prisoners across Australia have been told by a mental health professional that they have a mental health condition. More than 1 in 4 (26%) of prisoners are on mental health-related medications at the point that they enter the prison system.[10]

4.6 For many people experiencing disadvantage and living with mental illness the justice system itself forms part of the continuum of mental health services responses and has a significant role to play in ensuring access to appropriate mental health treatment responses.

[8] National Statement of Principles for Forensic Mental Health 2002, p. 18.
[9] Victorian Ombudsman Investigation into the rehabilitation and reintegration of prisoners in Victoria 2015
[10] Australian Institute of Health and Welfare The Health of Australian Prisoners 2018

4.7 Although all prison entrants in Victoria participate in a mental health screen at reception into the prison, this is most often performed by correctional staff who may not be appropriately trained to identify and triage the mental health needs of the person commencing incarceration.

4.8 Many of the people with mental health care needs currently in Victoria's prison are being held on remand or for short sentences. Ensuring effective and timely screening and triaging of people's mental health care needs will provide increased opportunities for continuity of care between the criminal justice system and community-based health and well-being services.

4.9 Identifying and addressing the mental health needs of people being incarcerated improves the opportunity for effective therapeutic approaches and has the potential to reduce incarceration and recidivism rates.

4.10 Better screening and identification of mental health needs should be embedded at all entry points of the justice system. For people with previously diagnosed mental illness, access to appropriate and preferred treatment and therapeutic approaches should be provided.

4.11 "The level of mental health services for adult male prisoners is grossly inadequate".[11] Most prisons in Victoria have only visiting psychiatric services. Other states have psychiatric services embedded within each prison.

4.12 Mental health care in prisons should be aligned with the standards and approaches of community based mental health services which includes providing support to manage mental illness within the general community setting of the prison and access to specialist mental health units as appropriate.

4.13 In a detailed study of mental illness amongst prisoners it was identified that 90% of female reception prisoners and 78% of male reception prisoners self-reported that they had experienced a mental disorder in the 12 months before their incarceration.[12]

[11] Victorian Ombudsman: Investigation prisoner access to health care 2011 pg. 19
[12] Butler and Allnut, New South Wales Corrections Health Service: Mental Illness Among New South Wales Prisoners 2003 p 30

4.14 A significant proportion of women prisoners have a history of trauma, abuse, physical and sexual assault research studies consistently show at least 85% have experienced being the victim of crime**.** There is a high correlation between the experience of abuse and mental illness.

4.15 For many people living with mental illness prison is a challengingly restrictive environment and incarceration can have a debilitating impact on their mental health and well-being. This increases the risk of self-harm or behaviour management challenges.

4.16 For other people living with mental illness, prison can offer the routine and structure, and security of food and shelter, that enable them to stabilise their mental health.

4.17 Either way for effective rehabilitation, transitions from prison should include appropriately informed community-based follow-up mental health care.

4.18 There is currently a lack of discharge planning between prisons and area mental health services despite studies showing that 20% of female prisoners about to be discharged reported high levels of psychological distress.

4.19 Community services and court-based mental health services should be resourced to focus on diverting more people with mental health challenges from custody and incarceration wherever possible and appropriate.

4.20 Examples of Victorian Best Practice – Inside Access

The Inside Access Project

Inside Access is a bespoke direct prisoner civil legal service. It supports people with a mental illness in prison or forensic hospitals by providing specialist civil law advice, case-work and legal education sessions.

Established by MHLC as a pilot initiative in 2009 in response to legal needs analysis and consumer service demands, Inside Access plays a unique role in assisting people within their institutional settings to address unresolved civil legal matters.

Many Inside Access clients have multiple and complex legal and non-legal needs. Through the delivery of Inside Access, MHLC seeks to improve client outcomes, enhance opportunities for effective rehabilitation and create efficiencies for resources by reducing

expensive tertiary and crisis responses to the legal needs of people living with mental health concerns.

This responsive service model increases access for clients to positive socio-legal outcomes through the provision of specialist, efficient and effective legal assistance services including advice, information, casework, referrals and representation.

Outcomes for Inside Access clients include understanding of legal processes and mechanisms about their legal needs, increased ability to navigate systems and increased knowledge and information related to their specific circumstances, as well as resolution of legal matters related to family violence, tenancy, debt and family law.

Inside Access is supported by a dedicated multi-disciplinary team who work together with a collaborative focus based on the clients' needs. The team includes four lawyers, a social worker, a part-time paralegal, and a Community Legal Education coordinator. All positions are part-time and funded through a combination of government, philanthropic and in-kind resourcing.

4.21 The Inside Access Service for Women

Inside Access for Women

Inside Access delivers weekly in-reach civil legal clinics sessions to women directly, within DPFC on Thursday mornings.

The regular visiting team includes specialist lawyers providing legal support for victims of crime, women involved with Child Protection, women with fines and infringements and a social worker to address clients' non-legal matters.

The core work of Inside Access at DPFC is focused on timely, responsive resolution of civil legal matters and ensuring that women are released with fewer barriers and unresolved civil law issues related to housing, debt and access to children, which will impact on their community rehabilitation.

The Inside Access team seek to enhance clients' opportunities to return to a safe and secure home, achieving this through the multi-disciplinary approach of MHLC and in collaboration with other key agencies.

Inside Access receives referrals from other co-located services, DPFC staff and women can self-refer through the Programs services. Fines Victoria also provide referrals into their Fines Clinic / Fines resolution project.

Inside Access provides monthly CLE sessions relevant to the specific common legal issues of incarcerated women. Sessions are conducted in a participatory way to encourage engagement and curriculum content relevance.

Due to the high level of women prisoners on remand, CLE sessions subject areas are regularly revisited.

Embedded evaluation is essential. For example, MHLC has used evaluation mechanisms to continually improve service responsiveness and effectiveness:

- In response to high levels of service demand and increasing prison population - MHLC have increased attendance at DPFC from fortnightly to weekly.
- In response to high number of clients who are victim/survivors of current or historical abuse - MHLC have embedded a specialist lawyer to work with victims of crime to apply for compensation.
- In response to complex and inter-related legal and non-legal needs of clients - MHLC have developed a multi-disciplinary practitioner approach embedding social workers as part of the team to enable holistic responses.
- In response to the enormously high levels of fines and debts of clients - MHLC developed and managed a Clean Slate service.
- In response to the number of cases involving children MHLC employed a Child Protection lawyer.

5. Mental Health Tribunals

5.1 The Victorian Mental Health Tribunal (MHT) is an independent statutory tribunal established under the Mental Health Act 2014.

5.2 "The Tribunal is an essential safeguard under the Act to protect the rights and dignity of people with mental illness.

5.3 The primary function of the Tribunal is to determine whether the criteria for compulsory mental health treatment as set out in the Act apply to a person. The Tribunal makes a Treatment Order for a person if all the criteria in the legislation apply to that person.

5.4 A Treatment Order enables an authorised psychiatrist to provide compulsory treatment to the person, who will be treated in the community or as an inpatient in a designated mental health service for a specified period. The Tribunal also reviews variations in Treatment Orders and hears applications for the revocation of an Order."[13]

5.5 The functions of the MHT satisfy UN Principle 1:6 which specifies "Any decision that, by reason of his or her mental illness, a person lacks legal capacity, and any decision that, in consequence of such incapacity, a personal representative shall be appointed, shall only be made after a fair hearing by an independent and impartial tribunal established by domestic law."[14]

5.6 UN Principle 1:6 also specifies "The person whose capacity is at issue shall be entitled to be represented by counsel. If the person whose capacity is at issue does not himself or herself secure such representation, it shall be made available without payment by that person to the extent that he or she does not have sufficient means to pay for it."[15]

5.7 The provision of effective legal advice and assistance to people with a mental illness is critical particularly in relation to Treatment Orders which can have devastating

[13] Mental Health Tribunal 2017-2018 Annual Report page 6
[14] United Nation's Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care
[15] United Nation's Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care

impacts on a person's recovery journey when not applied in the appropriately least restrictive way and/or against the treatment wishes of the person.

5.8 People living with mental illness appear before the MHT during a specific point in their lives where they are potentially experiencing diminished capacity and are feeling unwell and overwhelmed.

5.9 Legal support and representation are critical in protecting the legal and human rights of people living with mental illness, particularly with regard to mandated mental health treatment.

5.10 The MHT Annual Report for 2017/18 shows that there were 8,279 MHT hearings conducted in Victoria during 2017/18, resulting in a total of 6,467 Orders made or revoked.

5.11 There were 3,547 Community Treatment Orders made (55%), 2,580, Inpatient Treatment Orders made (40%) and 340 Treatment Orders revoked (5%).

5.12 There were 4,751 'patients attendances' recorded at MHT hearings, therefore over 40% of the Order decisions are made by the Tribunal without the person subject to the decision present.

5.13 For 2017/18 reports there were 1,213 legal representative attendances at the Tribunal; legal representation was present for less than 15% of the hearings conducted.

5.14 Due to eligibility criteria and capacity Victoria Legal Aid only provide legal representation at the MHT in very specific circumstances and only for inpatients.

5.15 Community Treatment Orders make up the majority of Orders made by the MHT (55%) and people subjected to these Orders to not qualify for VLA support.

5.16 People living with mental illness and subjected to Inpatient Treatment Orders, who have funds which are controlled by the State Trustees, often fail the means test eligibility and are not able to access Legal Aid services.

5.17 Examples of Victorian Best Practice – Pro Bono Project

MHLC work with a diverse portfolio of some of Melbourne's top private law firms to increase the access and provision of legal support and representation for people appearing before the MHT.

MHLC provide training and co-ordination across a network of pro bono lawyers to ensure they have the appropriate skills to undertake representation at the MHT across metro Melbourne.

MHLC also work in partnership with Gippsland Community Legal Centre, training their staff to undertake representation for people placed on Community Treatment Orders across the La Trobe Valley.

6. Health–Justice Partnerships (HJPs)

6.1 People experiencing disadvantage and living with mental illness experience a range of legal matters, challenges identifying their legal needs and significant barriers to accessing justice.

6.2 The Executive Summary of On the Edge of Justice concludes "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."[16] This study also identified a range of individual and systemic barriers to accessing legal assistance experienced by people with a mental illness.

6.3 Research has demonstrated that a significant proportion of persons with multiple and complex needs will seek advice related to legal matters from health and welfare professionals.

6.4 Community health workers often successfully engage otherwise socially isolated community members who experience a range of barriers to accessing health and community services.

6.5 HJPs' integrated services approaches have been demonstrated to be a highly successful way of impacting positively on the stability, health and well-being of community members experiencing social disadvantage.

6.6 An effective and collaborative HJP enhances the capacity of service partners to determine effective and efficient mechanisms for improved sustainable outcomes for people with mental health challenges and legal needs.

6.7 HJPs also provide cross-sector formal and informal training opportunities to exchange valuable skills between highly skilled specialist practitioners, across disciplines, increasing the capacity of both the lawyers and health and mental health workers to enhance service delivery impacts.

6.8 To effectively meet the diverse range of identified needs of people living with mental illness service delivery approaches need to identify the specific modalities that suit the unique needs of people with co-occurring mental health and legal challenges.

6.9 It is established best practice to facilitate co-design of services with consumers and practitioners to ensure 'fit for purpose' service models and to increase the long term and positive impacts of service engagement.

[16] Karras, McCarron, Gray, Ardasinski Law and Justice Foundation On the edge of justice: the legal needs of people with a mental illness in NSW, Law and Justice Foundation of NSW 206 pg. xxiii

7. Advance Statements

7.1 In Victoria, Advance Statements were established in the Mental Health Act 2014 as an important component of its recovery-oriented framework.

7.2 "An advance statement sets out a person's treatment preferences and may include information about:

- treatment a person finds effective
- treatment that has been less effective in the past
- the person's views and preferences about electroconvulsive treatment.

7.3 Non-treatment related preferences can be provided alongside the Advance Statement for consideration and can be discussed with the person, their nominated person, carer and other support people. However, there is no legal obligation for the authorised psychiatrist to effect these preferences."[17]

7.4 "An authorised psychiatrist must have regard to a person's advance statement whenever they make treatment decisions."[18]

7.5 Advance Statements enable people with a mental illness to contribute towards their treatment plans prior to experiencing any diminished capacity that may accompany a deterioration of their mental health status.

7.6 Effective Advance Statements offer a genuine opportunity for people with a mental illness to input into key decisions about their treatment and have their voice heard even during times of mental health crisis. When developed properly, research confirms that both practitioners and consumers benefit from having treatment preferences clearly agreed and documented.

7.7 International research has shown that Advance Statements support a consumer-led recovery-oriented framework and improved consumer outcomes.

7.8 The use of Advance Statements has been demonstrated to reduce the frequency and duration of episodes of involuntary / compulsory treatment.

[17] Victorian Department of Health Mental Health Act Handbook: Advance Statements
[18] Victorian Department of Health Mental Health Act Handbook: Advance Statements

7.9 Of the currently 72,859 registered clients of mental health services in Victoria, there are only 1,887 recorded Advance Statements.

7.10 Only 2.59% of Victoria's mental health services consumers over 18 have an Advance Statement, 5 years after the Act came into force.

7.11 To effectively increase uptake of Advance Statement requires an increase in both practitioners' and consumers' awareness and knowledge of the existence, benefits and effective utilisation of Advance Statements.

7.12 There is still a significant amount of work to be done to increase the awareness and use of Advance Statements, in order to realise the person-centred intentions of the Mental Health Act 2014.

7.13 Examples of Victorian Best Practice – Effective Advance Statements Project

MHLC secured philanthropic support to pilot the implementation of their Effective Advance Statements for Improved Recovery Journeys.

The Mental Health Legal Centre's Advance Statements project provides critical support and information to those accessing mental health services and the clinicians who deliver mental health services. This service is not provided through Victorian government resources.

MHLC's legal team provided consumer specific legal clinics and individualised appointments to support consumers to develop advance statements identifying their treatment preferences and often documenting their negative experiences with medications and treatments that truly enable future treating teams to utilise that lived experience to inform better treatment approaches for that individual.

MHLC provide consumers with access to independent support to collaboratively develop effective Advance Statements, in consultation with the treating team as appropriate, and if consumer-driven.
A key element of the project includes delivering regular, specialised and comprehensive CLE sessions, training and legal assistance services, to increase both practitioners' and consumers' awareness and knowledge of Advance Statements.

8. Mental Health, Justice and People Experiencing Homelessness

8.1 The foundations of positive mental health rest upon safe and secure housing and financial security.

8.2 There is a very strong link between homelessness and poor mental health. Issues with mental health increases the likelihood of experiencing homelessness. Experiencing homelessness increases the likelihood of mental health issues developing. Whilst experiencing homelessness it is more difficult to access, manage and afford mental health treatments for mental illnesses.

8.3 People experiencing homelessness report that negative treatment by services, media, police, businesses and members of the public increases their sense of isolation. This significantly increases the risks of anxiety and depression.

8.4 Routes into homelessness and experiences of homelessness are often accompanied by multiple and complex legal and non-legal needs. For people experiencing street homelessness the combination of challenges includes loss of tenancy, financial pressures, relationship break-ups, and surviving abuse and trauma.

8.5 People experiencing homelessness understandably focus on immediate and day-to-day survival and fundamental needs, meanwhile legal problems escalate and combine to create significant additional mental stress.

8.6 When legal problems escalate and compound, homelessness is further entrenched.

8.7 People experiencing primary homelessness are more visible to the police and local authority enforcement officers and become vulnerable to accumulating fines and infringements and minor criminal charges. Accessing social security rights and compliance with requirements becomes difficult and results in further poverty. People experiencing homelessness are at high risk of being the victim of a crime, particularly assault.

8.8 There are additional barriers to accessing legal help for people experiencing homelessness and mental illness including poor experiences of the judicial system and mechanisms, challenges with literacy, contact and communication points, limited resources, loss of relevant documents and lack of accessible legal services.

8.9 Legal assistance for people experiencing homelessness is critical, and not just for the individual. Escalating legal problems become more complex and expensive for the judicial system to manage.

8.10 Effective legal assistance services for people experiencing homelessness with mental health challenges need to be highly accessible, embedded within the service access points that they already utilise and coordinated alongside services addressing health and welfare needs.

8.11 Legal practitioners must be specifically skilled in working with people experiencing homelessness. This includes the abilities to develop trust, hear fully and without judgement, understand and explain legal rights and obligations and understand the whole person and their needs.

8.12 Collaborative HJPs create positive opportunities to wrap the appropriate holistic supports around a person experiencing homelessness to increase the sustainability of positive health and mental health outcomes by resolving and reducing unresolved legal matters.

8.13 Examples of Victorian Best Practice – MHLC & Bolton Clarke Homeless Person Program HJP

Since 2015, MHLC and Bolton Clarke Homeless Person Program (BC HPP) have worked collaboratively to deliver a unique HJP addressing the needs of some of Victoria's most vulnerable and health compromised community members.

This project has changed the way people experiencing homelessness access support, changed how lawyers approach their work and changed how nurses are able to resolve socio-legal barriers to positive health outcomes for their clients.

People experiencing homelessness have significantly higher rates of compromised physical and mental health and unresolved and escalating legal issues. These issues compound to create cycles of entrenched homelessness.

Prior to this project, the team of dedicated nurses at BC HPP (formerly Royal District Nursing Service HPP) were faced with constantly trying to find ways to access relevant legal assistance services and attempting to provide some type of support for their clients at courts.

Current service model

All BC HPP nurses have direct access to a specialist dedicated lawyer who has been effectively embedded as part of their team.

BC HPP nurses can make referrals at any time, for any client, through email or through the dedicated HJP phone number. The lawyer provides an outreach service, meeting clients wherever suits them best, most often at services that they already access.

The HJP legal team provides legal information, legal advice, legal referrals, casework and representation in response to the legal needs of the client. This unique HJP has also established a successful co-located outreach legal clinic model.

The MHLC legal team provides regular CLE sessions to the entire BC HPP team focussed on key areas of law impacting on their clients. Specialist legal speakers are invited to present on specific areas of law such as Disability Support Pensions, Superannuation and Tenancy.

To date there have been **365** legal matters referred to the HJP legal team including matters related to Child Protection, Family Violence, Infringements, Wills, Debts, Crime, Tenancy and VOCAT. Client-centred approaches have enabled the partnership to identify systemic issues.

Each month the Partnership agencies meet as a Steering Committee to monitor and review the project's activity, collaboratively identify and respond to any issues arising and discuss evaluation findings.

All stakeholders are provided regular opportunities to provide feedback through co-designed evaluation activities that measure service quality and effectiveness based on stakeholder determined indicators of success.

The vast majority of HJP clients have indicated that without the service they would not have addressed their legal issues or known what to do about their legal situation. Unresolved legal matters become increasingly complex to manage both for the individual and for the justice system.

73% of HJP clients consider that utilising the legal service has had a positive impact on their health and **86%** consider it has had a positive impact on their well-being.

9. Mental Health, Justice and the Aged

9.1 Across Australia, in 2016–17, people aged 65 and over received 9% of the total number of Medicare-subsidised mental health related services provided.[19]

9.2 Better identification and treatment of mental and physical illness has resulted in people living with mental illness and consumers of mental health services living longer.

9.3 'Older Australians access services to support their mental health needs through a number of pathways, including: hospital and community-based services, emergency departments, GPs, medical specialists and/or allied health professionals.'[20]

9.4 Aged Mental Health Services are specialist providers of mental health services for people over 65 with enduring or developing mental illness. Services provide assessment, treatment and acute care of aged patients including those on Compulsory Treatment Orders.

9.5 In 2017-18 there were 8,279 registered aged consumers of mental health services in Victoria, with 2,494 acute care hospital admissions for this cohort. [21] Almost half (46.9%) of these admissions were compulsory.

9.6 'People who were inpatients for more than 35 days accounted for more than one in four (26 per cent) of all aged persons' bed days.'[22]

9.7 37.9% of aged consumers have had no prior contact with mental health services.

9.8 Older people living with a mental health challenge have specific legal needs, which include:

- Lack of awareness of their rights
- Lack of confidence in asserting their rights
- Reluctance to take legal action
- Barriers to accessing information related to legal and non-legal matters
- Lack of specific resources tailored to the legal needs of the elderly.

[19] Australian Institute of Health and Welfare Older Australia At A Glance 2018
[20] Australian Institute of Health and Welfare Older Australia At A Glance 2018
[21] Victoria's Mental Health Services Annual Report 2017-18
[22] Victoria's Mental Health Services Annual Report 2017-18 pg. 52

9.9 Developing multi-disciplinary HJPs with aged persons mental health services will increase access to specialist and holistic responses to their legal and non-legal issues.

9.10 Potential for Victorian Best Practice – MHLC Aged Care HJP

Identified through their successful HJPs and service stakeholders, MHLC seeks to provide a holistic service response to elderly people utilising mental health services to increase their access to equitable legal and social justice outcomes.

Aims for this project include:

- Providing people aged over 65 experiencing mental health challenges with representation before the Mental Health Tribunal
- To identify and respond to the legal and non-legal needs of people aged over 65 living with mental illness
- Increasing effective use of Advance Statements for people aged over 65 living with mental illness
- Increasing opportunities for people aged over 65 living with mental illness to clearly articulate their treatment wishes
- Reducing the risk of physical, emotional and financial family violence and abuse of people aged over 65 living with mental illness
- Increasing clinician's awareness of Advance Statements and Advance Care Directives
- Enhancing capacity and capability of positive systemic responses for people aged over 65 living with mental illness
- Integrate effective practices of working within multi-agency multidisciplinary health, legal, social work teams to enhance health and well-being outcomes for people aged over 65 living with mental illness

Developed in response to service gaps, this multidisciplinary model seeks to include social workers and lawyers working in partnership with clinicians from these services to support the rights and dignity of vulnerable elderly consumers of mental health services.

This cohort are particularly vulnerable to elderly abuse including physical, psychological and financial forms of family violence,

The service model will be developed within a best-practice framework throughout implementation and flexibly adapted in response to the needs of clients. A key element of the project will be to provide CLE sessions to clinicians within aged persons mental health services to support the identification and resolution of the legal needs of elderly consumers.

The multidisciplinary team will work with the clinicians of each agency, providing secondary consult and collaborative approaches to working with individual clients. Although clients will have opportunity for direct access and self-referral to regular clinics,

it is anticipated that clinicians will play a key role in identifying clients in need and referring into the project.

Clinical governance and risk management frameworks will be developed in partnership and documented within co-location service agreements to ensure clarity of the project parameters, health and safety for staff and consumers and confidentiality of clients.

MHLC will ensure there are appropriate feedback mechanisms to enable clinicians at mental health services to have awareness of the positive client outcomes achieved through service engagement.

Regular co-location of MHLC's multidisciplinary team at Aged Persons Mental Health Units, would enable MHLC to work with consumers and clinicians to increase the necessary socio-legal support for aged persons appearing before the Mental Health Tribunal.

For aged mental health service consumers this socio-legal support would need to include legal representation at the Tribunal, facilitating the development of effective Advance Statements, support to access NDIS and DSP entitlements and referral pathways into relevant community based-services in accordance with their individual needs.

10. Monitoring and Evaluating Mental Health and Justice

10.1 Currently, Victoria lacks a robust and effective governance framework with oversight and accountability to ensure all services are working to effectively improve metal health and well-being.

10.2 The current Victoria 10-year Mental Health Plan and the Victorian Public Health and Well-Being Outcomes Frameworks lack effective targets, milestones and outcome measures for the improvement of the mental health and well-being of Victorians.

10.3 Accountability for monitoring and evaluation of systems and services are essential for effective planning and resourcing. Performance is often driven by the understandings that 'What gets measured, gets done' and 'If you can measure it, you can manage it.'

10.4 To determine whether and to what extent socio-legal systems achieve their stated objectives requires regular embedded evaluation mechanisms that monitor and report on meaningful metrics and indicators of success.

10.5 The consumers' voices and experiences have critical weight and significance for the service system to understand and improve the health and well-being outcomes at the intended point of impact.

10.6 A core focus of any appropriately informed evaluation activities is to identify consumer perspectives of service quality and effectiveness.

10.7 Working in collaboration with mental health services consumers to identify co-designed monitoring and evaluations frameworks would enable the system to assess its achievements from the perspectives of the intended point of impact.

10.8 Embedding strategically aligned consumer-informed outcomes-based monitoring and evaluation mechanisms within the system and each service will enable a population-wide approach, to identify areas of success and areas for improvement.

10.9 Examples of Victorian Best Practice

Evaluation and Monitoring at MHLC

All MHLC services are designed and implemented within a centre-wide outcomes framework which informs all strategic and operational decisions. MHLC utilises the services of Dove Ideal Project Solutions (DIPS) to co-design and develop monitoring and evaluation tools and mechanisms, conduct independent formal evaluations and implement a responsive continuous improvement framework to achieve outcomes.

The key themes of the outcomes framework are access to justice, empowered communities, holistic responses to needs, fairer laws and systems and an effective MHLC.

MHLC uses project specific monitoring and data framework and tools. Service data is also recorded, reviewed and collated through utilising CLASS.

MHLC monitors service activity through detailed quarterly data reports which identify the number and nature of:

- clients and client contacts, clinics held, legal assistance services, non-legal support services, Community Legal Education session held, CLE participants, representations at the Mental Health Tribunal, referral pathways, stakeholder engagements, and
- number of Advance Statements.

When MHLC identifies a service needs trend, it strives to develop comprehensive service responses, in collaboration with institutions and other service providers, which will create positive sustainable outcomes for their clients. They are flexible in designing services that will enhance opportunities for all stakeholders to increase the impact of their services.

MHLC anticipate outcomes for clients will include increased clarity of legal processes and mechanisms related to their legal needs, increased capacity to navigate processes and increased knowledge and information related to their specific circumstances, as well as resolution of their legal matters and increased support for their non-legal needs.

However, it is just as vital that clients feel heard and understood as well as being provided information that is clear. The best way to measure whether this has occurred is to ask the clients, so they do.

MHLC prioritises measuring the outcomes for clients through the perspective of its client and therefore regularly seeks evaluation from its clients. They utilise feedback from clients to drive the development of client responsive services.

Project client feedback surveys are co-designed by DIPS and project clients to be quick and simple, with opportunities to assess service quality and provide important consumer insights anonymously. They are designed to be filled in independently or with support as appropriate.

All stakeholders are encouraged to participate in evaluation activities which include surveys for project staff, stakeholder agency staff, Steering Committee members and CLE participants.