



Mental Health Legal Centre

ANNUAL REPORT  
2007/2008

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## **CHAIRPERSON'S REPORT**

The past year has seen the centre move to our wonderful new premises in Queen Street. The Committee would like to convey their thanks to all staff for their patience and hard work during what was a time-consuming and on occasion, stressful process. All are in agreement that the new premises are a vast improvement on the old, with enough space to accommodate future growth and new projects. In particular, Sophie and Jill are to be congratulated for the considerable efforts made to negotiate very favourable terms for the lease, and for achieving the move with the least disruption to our clients.

A planning weekend was held June 2008 to formulate a strategic plan for the centre for the next three years. For the first time, the centre invested in the services of a professional facilitator in an attempt to ensure the process was efficient, and that specific outcomes were achieved. This was a great opportunity for staff and committee members to think about the philosophy and direction of the centre and its present and future goals and challenges. While staff were still obliged to spend significant time preparing the strategic plan in a form suitable for the centre's major funders, having a structured process proved a valuable experience and raised a broad range of issues to consider over the next few years. I would like to thank all staff and committee members who gave up a Friday night and Saturday in order to participate in this very important process.

Staff has continued to provide excellent representation and advice to consumers of mental health services, as demonstrated by the reports below. The last couple of years have seen significant growth in staff numbers, with longstanding staff mentoring newer staff. One of the goals identified in the new strategic plan involves the development of a more structured mentoring program for both staff and committee.

Of particular interest over the last year has been the initiation of arguments at the Mental Health Review Board (MHRB) in respect of the Charter of Human Rights and Responsibilities. Barbara's report details one case of note where arguments using the Charter were explored. It is disappointing that the Board saw fit to take a narrow approach in that case; however, it is early days yet in respect of jurisprudence based on the Charter. It is also a shame to note that the Board has taken a quite formal approach regarding a practice direction in respect of arguments based on the Charter and it is hoped this may be reviewed in future.

The pro bono project has now run for over 12 months and it is fantastic to now have statistical data regarding the success of the program. As noted in The Pro Bono Report, representation of consumers at MHRB hearings has increased by 50% since the commencement of the project. It is very pleasing that the success of the program has led to further funding. It is hoped that facilitating educational training for the pro bono solicitors and their subsequent assistance to the centre, will become a core aspect of the centre's work and provide the added security of recurrent funding.

The commencement of an evening advice service has been a long contemplated goal and it is very pleasing to see its inception this year. Again, like the pro bono project, the pursuit and development of partnerships with private law firms has proved a success in extending our service and ability to assist the centre's clients.

This past year also saw the extension of the work carried out by the centre with the credit and debt project utilising the services of a financial counsellor. Many of the centre's clients experience difficulties associated with their mental illness in terms of management of finances and particularly in respect of entering into contracts and incurring debts when they are unwell. This project has gone some way to meeting the needs of consumers in this regard. Both clients and staff have benefited greatly from Vanessa's expertise regarding the financial difficulties that often arise for people living with mental illness.

As the Policy & Law Reform report shows, the centre continues to operate as a leading voice in law reform and associated issues concerning consumers of mental health services. The centre continues to pursue proactive consultation with a wide range of government and non-government stakeholders in all areas touching on mental health and the law. As noted in the Policy & Law Reform report, an exciting and recent development has been the grant of funds by the Legal Practice Board for a pilot project in respect to a dedicated legal service for consumers in prisons and secure hospitals. In this first stage of the project, the centre will auspice the establishment and development of a model for a distinct legal service for this particularly disadvantaged group.

The 7<sup>th</sup> edition of our core publication – Patients' Rights – A self help guide to the Mental Health Act – was distributed this year. At the same time, the first edition of a new resource – the Advocates' Guide to the Guardianship List – was made available. In the new financial year, the centre looks to commit some surplus funds to developing another priority publication.

In the coming year the centre will complete the next stage of the organisational review. It was necessary that the review take a back seat last year in order to

address the pressing need to re-locate the centre and organise the three-year strategic plan. The Committee looks forward to participating in this very important process. As noted, the centre has grown substantially over the last several years and is presently involved in an unprecedented number of funded projects. The centre is committed not only to increasing representation of consumers at MHRB hearings, but also in extending legal advice to other areas of law including lobbying for law reform, continuing the provision of legal education to legal professionals, consumers and the wider community, and to continue the pursuit of new legal initiatives to assist those living with mental illness. As the centre has been so successful in gaining funding for new projects, it is now of critical importance that the organisational review be completed in order to assess how staff and Committee can best attempt to meet all goals in the future without compromising the quality of representation and advice. It is of critical importance that the centre's reputation as a leader in all areas concerning mental illness and the law be upheld, and that the fundamental Interests of our clients are protected.

I would like to take this opportunity to thank outgoing committee members David Webb, Keir Saltmarsh, Pierre Baume, Julie Anderson, Greg Oke and Sara Clarke. We were extremely pleased to hear that Keir was appointed as a member of the Mental Health Review Board but, unfortunately, their gain is our loss. I would like to convey a very big thank you to Keir for his dedication and unprecedented contribution as a member of the committee since November 2001 and Chair from September 2004. We wish him all the very best in his new role.

Finally, on behalf of people living with mental illness, I would like to thank the staff of the centre for their continued passion and commitment to their work. As always, the breadth and quality of the work undertaken by this small number of dedicated staff in the interests of our clients has been nothing short of astounding. On behalf of the Committee of Management and the wider community, I take this opportunity to thank each of them for their consistent hard work and zealous advocacy in the interests of consumers over the past year.

## CO-ORDINATION REPORT

2007/2008 was a period of significant positive change for the centre at a number of levels. The search for new premises was on in earnest from June 2008. Having grown by around 50% since we moved into the city and our existing premises bursting at the seams, we undertook a rigorous exploration of alternative tenancies. There was extensive debate about key issues such as CBD location, minimum size and proximity to public transport and disability access and facilities. It became increasingly clear that engaging with agents and inspecting available tenancies ourselves was not achieving optimum results, and we seized on the suggestion of a centre supporter whose organisation had used a property broker that we do likewise. Peter Trumble of Tenancy Solutions Australia provided brilliant service and assisted us in securing a ten year lease with an option for a further five on 10-16 Queen Street. We negotiated a very reasonable rent and a hefty cash incentive towards our fit out costs.



Enormous thanks are due to Victoria Legal Aid and the Department of Human Services for sharing the cost of increased rent, contributing to one-off relocation costs, and, in the case of VLA, negotiating the waiver of the usual security deposit requirement. We are also grateful to Maddocks lawyers for pro bono assistance in finalizing our lease, and Consumer Action Law Centre for sharing their expertise and experience relocating in the CBD around 12 months previously. Thanks too to staff, Management Committee and volunteers for facilitating such a major undertaking. We are very fortunate to have been able to secure significantly larger, brighter premises close to public transport, with reasonable disability access and continued proximity to many of our stakeholder organizations, courts and tribunals where we work, and the city law firms who are now such an integral element of our service through pro bono partnerships.

The commencement of the Night Service was another exciting development. It is wonderful to have been able to increase the public's access to legal advice, and, in some cases, ongoing assistance, offer an alternative time for access and engage further with volunteer lawyers. Our appreciation of the recurrent funding boost from VLA to support this is immense.

Our statistics again reflect an increase over the previous year in legal service clients and information provided, in part due to the Night Service. Policy and Law Reform and Community Legal Education activities have also continued apace. The centre has an unprecedented number of funded projects, also – see the Operations Management report.

Our 20<sup>th</sup> Anniversary report and celebrations, the move and service expansion provided a context for the facilitated organizational review and strategic planning processes undertaken in 2007/2008. Staff and Management Committee members are to be thanked for their input into these processes on top of heavy workloads. The organizational review continues into the next financial year, with three out of four priority areas of staff addressed, strategies still to be developed in relation to one, and the Management Committee phase for the process still to be undertaken. A welcome grant from the Mental Health Council of Australia will enable us to work with a consultant on an optimum management and governance model to support staff, Committee and the organisation as a whole into the future in terms of our core activities as well as new projects as they come on board.

A pervasive theme in the centre's strategic planning process was the implementation of the Charter of Human Rights and Responsibilities. The Charter is impacting on all areas of centre work, and exploring the extent to which it may further our clients' rights are both engaging and resource intensive. This is yet another area where pro bono assistance is proving invaluable – from the extensive detailed advice lawyers Allens Arthur Robinson provided to us to the assistance of pro bono counsel in relation to individual cases in which we are beginning to test the Charter's meaning.

Much of our exploration of the Charter's impact this year has related to the Mental Health Review Board. The Charter provides even greater support for the case to increase legal representation at the Board, and we were pleased to secure a pilot funding extension from the Department of Human Services for the Board Pro Bono Project. It was heartening to see this Pro Bono project and Advance Directives as key examples of supporting and promoting consumers' active involvement in their treatment and care in the "*Because mental health matters*" consultation paper (May 2008). The Charter only strengthens the case for such initiatives and we will continue to work towards their permanent establishment. Next year's review of the Mental Health Act will be a key focus of these efforts.

We currently benefit from a great balance between long serving staff with extensive experience and talented, energetic newcomers joining us. Staff are to be thanked for this year's achievements in a context of major change. On Committee, too, there has been significant generational change, with long serving members who have made impressive contributions being replaced. In all areas of our work we are also fortunate to be able to draw on committed and resourceful student volunteers who contribute significantly to our work.

As always, and above all, our thanks and recognition go to those whose legal challenges and unrealized rights are the reason for the centre's existence.

## **CASEWORK REPORT**

### **Women's Safety in Psychiatric Wards:**

The Department of Human Services has commenced their project on "gender sensitivity and safety in adult acute mental health inpatient units". We were interviewed by Dr Margaret Grigg, one of the consultants engaged in the project. The Victorian Mental Illness Awareness Council also commenced a women's safety project which was funded by The Reichstein Foundation. The centre provided legal advice throughout the project and was a member of the women's safety advisory team.

After years of campaigning by the centre and others, DHS have now acknowledged that women's safety needs to be addressed in acute inpatient units. Grants have been made to all inpatient units to enhance safety. In some facilities, women's only sections have been established.

We provided assistance to one client who had been sexually assaulted while she was an involuntary inpatient. We became involved after the client had made a complaint to the Health Services Commissioner, and they had decided to proceed with conciliation.

Our client's complaint was that while she was an inpatient she was raped by another patient. She had felt uncomfortable around this patient, and had expressed her concerns to nursing staff. Nursing staff stated that they would place her on a 15 minute watch. The client states that this did not happen. Our client was raped by this patient during the night. Our client notified staff the next day, she was removed from the ward, and a complaint was made to the police. A police brief was prepared, but it was decided not to prosecute the matter. The incident was particularly distressing for our client as she has previously been a victim of sexual abuse. Additionally, her privacy was breached as a family member who worked in the hospital was made aware of the incident.

We assisted the client leading up to conciliation. One of the more significant issues was that the client wanted an apology and compensation. Due to dissatisfaction with the process leading up to compensation, the client withdrew from the conciliation process, and decided to pursue a claim of medical negligence. We referred her to a private solicitor.

The client was dissatisfied with the conciliation process for a number of reasons. Firstly, the conciliator was to arrange for an independent assessment of

impairment, but before this had been arranged the view was expressed that the client would have difficulty in proving impairment, especially to a degree to warrant compensation. This is despite the fact that the client had a VOCAT psychological assessment indicating post traumatic stress, separate from pre existing mental impairment.

It also appeared that information was withheld from the client, or that there was misleading information given to her. In her conversations with the conciliator the client had been told that there were no witnesses to the assault, and that no one came forward with information relating to the assault. Our review of the file indicated that there was an independent witness of the assault, and that two patients had mentioned the assault to nursing staff.

The client was left with the impression that the conciliator was ‘on the side’ of the hospital. This was further reinforced when the conciliator expressed the desire to conduct two conciliation meetings. One would be between the hospital and the client where the hospital was willing to apologise. The second meeting would not necessarily require the presence of the client, but was to discuss compensation. The conciliator expressly stated that when patients are placed in the situation where they meet with hospital staff, and an apology is made, then they may no longer wish to pursue compensation.

The client became increasingly dissatisfied with the conciliation process and the attitude adopted by the conciliator, especially the way in which the matter appeared to have been prejudged. The client decided to engage a private solicitor and commence proceedings in medical negligence.

### **MHRB Hearings:**

As always, around half of the centre’s ongoing casework during '07/'08 involved representing people on community treatment orders at the Board. We continue to achieve a significant number of successful outcomes ranging from discharge to orders such as revision of treatment plans or early reviews.

A significant feature of this work has been the inconsistency of decision makers and outcomes. Some members are extremely fair, and robust; even if they decide not to discharge the client, the client is able to walk away with a feeling that they have



been heard, and that the treating team had to justify the treatment. Other Boards act like a rubber stamp of the treating teams' decisions.

Another source of frustration is the Board's reluctance to vary treatment plans. Even though we often raise the argument that the treatment plan has not been complied with, it is often not even addressed. Too often the Board does not order a revision unless the plan is non-compliant in the most blatant of ways i.e. it is clearly a pro forma that has not been filled out. On one occasion, the treatment plan was not up to date and thus, not a reflection of current treatment. The treating team admitted this, and the Board felt that there was no need to make an order due to the fact the plan was to be 'varied by consent'. This approach continues to trouble us. When the Board has the discretion to order a revision and fails to do so, an opportunity to treat the process with appropriate seriousness and give the client a written record of the outcome is lost.

We value the open lines of communication we have with the Board's President and staff. Though we are not always happy with the responses, we continue to raise issues of concern about their policies and procedures with the Board. Examples this year were adjournments on the morning of hearings due to Board members' previous dealings with patients, and scheduling of hearings in relation to public holidays meaning there were no hearings at some services during March.

Generally most clinics are agreeable to work with and are very helpful in arranging file reviews and hearings. Heidelberg, Moorabbin and Clayton stand out as being particularly difficult. There have been occasional instances where files have not been ready at times when file reviews have been arranged. We have had to make it general practice to call the day before the file review to confirm availability of the file, which should not be necessary. Clayton is particularly testing in failing to have a private room available before the hearing. Any consultation that is required prior to the hearing is to be held in the general reception area or the building foyer, unacceptably compromising client privacy.

### **Charter of Human Rights and Responsibilities and the Mental Health Review Board:**

The Charter came into operation on 1 January 2007. The requirement to interpret legislation in a way that is compatible with human rights, as well as the obligation on public authorities to also act in a way that is compatible with human rights, commenced operation on 1 January 2008. The case work highlight of this year has been a challenge to the validity of a CTO on the basis of the Charter.

It was anticipated that the commencement of the operation of the Charter would have a significant impact on the decision making of the Mental Health Review Board, as well as the practices and policies of DHS and Area Mental Health services. The centre has been a leader in advocating for the Charter rights of consumers before the Board and other jurisdictions.

In a number of cases we have raised Charter arguments without requesting a special fixture, and the Board has been willing to consider arguments made on the day. However, none have been determined in favour of the client. The Board's approach varies; most Board's will address issues raised in the Statement of Reasons, others will not.

An example of a case where we raised Charter rights concerns a client who is being treated with Electro-Convulsive Therapy (ECT). She wished to cease ECT treatment, and continue with medication only. She suffers from Schizo-Affective Disorder, and is often acutely unwell. We have raised Charter issues relating to her treatment, arguing that it constitutes cruel and degrading treatment, and that her rights have not been taken into account by the treating team when preparing her treatment plan. The Board avoided deciding on the issue by stating that the clinic agreed to vary the treatment plan by consent, in that they agreed to phase out ECT treatment. Currently ECT treatment has stopped, but in the past it has recommenced when the patient has become acutely unwell. We are currently obtaining advice from counsel as to whether we have grounds to take Charter related action to stop treatment if it were to resume.

A particularly significant Charter case involved a client subject to a CTO, where the extension of that CTO was not reviewed by the Mental Health Review Board "within eight weeks" as prescribed by s. 30 (4) of the Mental Health Act 1986 (Vic). This sub-section states that the Board "must conduct a review of the extension of a Community Treatment Order within eight weeks after the order is extended". The Act is silent as to the consequences of the Board's failure to comply with this sub-section.

The Board listed a review of the client's CTO, however adjourned it to a date to be fixed to enable the client to obtain an independent psychiatric opinion. As it transpired, the CTO was not reviewed by the Board until it was extended again, more than one year later.

As this matter raised important issues relating to the interpretation of the Mental Health Act and the application of the Charter, the Attorney-General intervened in the matter.

The centre submitted that the act "plainly provides an imperative duty upon the Board to conduct a review of a CTO within eight weeks of its extension" and that failure to conduct such a review within the eight weeks (or indeed at any stage in the twelve month period) rendered the CTO invalid. It was further submitted that the Charter strengthens the argument that s. 30 (4) requires "strict compliance", and a conclusion that failure to conduct the mandatory review within eight weeks (or at all) results in invalidity of the CTO.

In its decision, the Board took a narrow reading of the Charter and held that the Board had substantially complied with the Mental Health Act and the CTO remained valid.

An application for review of this decision has been made to the President of the Victorian Civil and Administrative Tribunal, Mr. Justice Bell. Because of the importance of the issues raised by this case, the Attorney-General, the Department of Human Services, the Human Rights and Equal Opportunity Commission, the Mental Health Review Board and the Human Rights Law Resource Centre have all intervened.

The number of significant issues raised by this case in relation to the Charter includes:

- Does the Charter apply to Board proceeding and, if so how?
- Is the Board a "public authority" and/or a "court or tribunal" for the purposes of the Charter?
- How does the Charter apply to the Board when hearing matters?
- Is the Board required by the Charter to ensure a "fair hearing"?
- What are the obligations of the Board and its staff as public authorities?
- What Charter rights are engaged by involuntary mental health treatment?
- What is the scope of the Charter obligations to interpret legislation consistently with human rights?
- How should s. 30 (4) of the Mental Health Act be interpreted and applied in light of the Charter?

### **MHRB Practice Direction:**

With the advent of the Charter, the Board issued a practice direction requiring documents to be filed when issues are raised regarding interpretation of the Mental Health Act in light of the Charter. Whilst the Board is to be commended for setting out a procedure for dealing with Charter issues, the Practice Direction has tended to cause confusion for Board members and the centre. It may also prove to be a disincentive for unrepresented persons to raise Charter issues, as the Practice Direction requires parties to list legal authorities upon which they

propose to rely. As a lot of human rights jurisprudence relies on overseas cases, it would require a particularly resourceful consumer to undertake this task and to generally comply with the Practice Direction.

This is particularly concerning when more than 90 percent of people appearing before the Board are unrepresented. The Mental Health Act does require the Board to hear matters "without regard to technicalities or legal forms" so that it is hoped that the Board will make amendments to the Practice Direction to reflect those principles. It should be noted that VCAT, a higher tribunal, has dealt with these matters with a greater degree of flexibility than the Board. Also of concern has been the Board's demand that the centre strictly comply with the Practice Direction yet allowing other parties considerable latitude. With respect, a continuation of such a practice may lead to a perception of bias by the Board.

### **Mental Health Review Board and Non-Disclosure Applications:**

Natural justice issues continue to be a problem with some members of the Board when dealing with applications by services to exempt clients from seeing their own file. With respect, some Board members have shown a poor understanding of the appropriate approach to these matters to be undertaken by a solicitor acting for a consumer and the duties imposed on solicitors by law.

There is troubling inconsistency of approach from both clinics and the Board. Some clinics routinely disclose the material which is subject to non disclosure to lawyers, others do not at all. Some clinics are extremely unfamiliar with the process, and it needs to be highlighted to the Board that information has been removed, disclosed to the Board, and that an application for non disclosure has not been made. On more than one occasion centre lawyers have been conducting a file review with a client and come across information that is highlighted as not to be disclosed to the client, which has not been removed. This material has later been subject to an application for non disclosure. We routinely receive late notice that there will be an application for non disclosure, becoming aware on the day of the hearing that there will be an application. This is unacceptable, as it places an advocate in a difficult ethical position.

The Board's approach to applications also varies. Some Boards will encourage the service to withdraw the application if the service does not intend to reply on the information. This procedure is deemed acceptable so long as we are permitted to view the material and decide if we wish to rely on the information. Other Boards will go through the information, and decide whether it should be disclosed, varying in how conservative their decision making is. Lawyers may find it very difficult from an ethical perspective to have access to material that they cannot disclose to clients, and the difficulty in representing someone when

instructions cannot be obtained on the removed material. Most clients accept this situation, however, and it is probably beneficial that the lawyer has access in order to at least make a thorough assessment as to whether the material should be exempted from disclosure or not and make appropriate submissions, albeit in the client's absence.

The Board produced a guideline which seeks to clarify some issues relating to file access. It does not, however, address issues relating to lawyers' access to exempted materials. Unfortunately, the Board's approach to these applications has placed our advocates in an invidious position. Judicial review in the Supreme Court may be required to clarify the correct approach. Needless to say, such proceedings are costly and time consuming for the centre and we hope the development and application of clear, appropriate guidelines will avoid the necessity for this.

Particular thanks go to long time supporter of the centre, Peter Cavanagh of Maddocks Lawyers, who assisted a client of the centre pro bono in an appeal to VCAT of a decision by the Board to withhold the client's entire file.

### **Pro Bono Barristers:**

A special thank you must be made to Michael Stanton of Counsel who has represented a client on Charter issues before the Board. He has put many hours into this case both in preparation of submissions and appearances before the Board. Barristers undertaking pro bono work lose income, unlike solicitors from firms taking on pro bono work.

Those solicitors continue to be paid for their work by their firm who take on the cost of pro bono work, in the expectation that the firm will receive legal work from government departments. A barrister undertaking pro bono work does not have this financial incentive and makes a significant financial sacrifice by undertaking pro bono work. To some extent, there is understandable reluctance by barristers to undertake complex work on a pro bono basis.

Although pro bono work has provided significant access to justice which would otherwise be denied, it should not be regarded as a replacement for a shortage of funds for Victoria Legal Aid or community legal centres.

### **Discrimination against Forensic Patients:**

As reported in the last annual report, discrimination continues against forensic and former forensic patients, particularly in the areas of employment or prospective employment. Although forensic patients are found not guilty of a

criminal offence because of mental impairment, some legislation treats such a finding as an equivalent of a finding of guilt. This occurs in the Transport Act 1983 (Vic.). A client wishing to obtain accreditation as a taxi driver has been refused a Taxi Driver Certificate by the Victorian Taxi Directorate because of a finding of not guilty of homicide on the grounds of mental impairment. Proceedings have been issued in the Victorian Civil and Administrative Tribunal challenging the refusal by the Victorian Taxi Directorate. This case which awaits a final hearing will set a precedent as to how these applications should be dealt with.

Similarly, the Aged Care Act 1997 (Cth) introduced amendments which require staff and volunteers who provide care and services to the aged to provide a satisfactory police check. A client who had been employed by an aged care facility for a number of years was concerned that a finding against him of not guilty of homicide because of insanity would be disclosed to his employer by a police record check. Police in Victoria have wide discretion as to what can be released in a police record. It is not only limited to convictions but can disclose any "discloseable court record". In this particular case, the police advised that it would provide a police record indicating the finding against our client.

A written complaint was lodged with the Victorian Privacy Commissioner as well as proceedings being issued in the Victorian Civil and Administrative Tribunal for an interim order pursuant to the Information Privacy Act 2000(Vic). Extensive negotiations were held between the Victorian Privacy Commissioner, senior police and the centre. Unfortunately, the client chose to resign from his employment before VCAT made a decision, so no legal precedent was set.

This case did make the police aware of the sensitivity in dealing with these issues and it gave the opportunity for the Information Privacy Commissioner to provide guidance on this practice.

Thanks must be extended to Antony Zaspel from the Office of the Victorian Privacy Commissioner, as well as Helen Versey, the Victorian Privacy Commissioner, who both provided significant support and assistance to the centre. Once again, thanks must be extended to Paul Bingham of Counsel who was prepared to act in this matter on very short notice, despite not knowing whether the grant of legal assistance from VLA would be made. Fortunately, VLA did make a grant.

### **Family Law and Child Protection:**

Both the Family Court and Magistrates from the Children's Court have requested us to provide assistance to clients who have been unrepresented in contested court hearings, where those clients have been unable to obtain legal assistance from VLA. In one case, it was necessary for the centre to contact Bernie Geary, the Children's Safety Commissioner, as there were concerns that DHS were not properly investigating allegations that our client had made about the father of her children having sexually abused the children. Apart from contacting Senior Officers at DHS, the Children's Safety Commissioner was not prepared to intervene further on the basis that DHS and the Children's Court already had a statutory duty to make decisions "in the best interests of the children".

Unsurprisingly in this jurisdiction, clients face considerable obstacles in attempting to establish their fitness to parent despite having a mental illness. In proceedings under the Family Law Act, an independent family consultant provided an adverse report about our client to the court. Prior to the final hearing, legal representatives for all parties had a meeting with the family consultant. When he was presented with the psychiatric report from our client's treating psychiatrist who had very impressive qualifications, the family consultant was prepared to amend his views and ultimately supported the return of our client's child to her. This case demonstrated the importance of clients obtaining access to advocacy and expert evidence from psychiatrists and other relevant parties.

Similarly, in the Children's Court, DHS has a reluctance to return children to parents with a mental illness. DHS may become involved in cases where parents with a mental illness are hospitalised and children need to be placed with foster carers. However, DHS seem to be very reluctant to return children to their parents' care, even when evidence is presented that the mental illness has stabilised and the parent is capable of resuming care. Often in these cases, clients are forced to proceed to a contested hearing before DHS accepts evidence that the client is now capable of caring for their children.

### **Administration and Guardianship:**

We have continued to represent many clients at VCAT in relation to administration orders. It is very much the case that without supporting medical evidence it is very difficult to come off a order. Generally dealing with administrative staff at VCAT is frustrating – there are delays in receiving notices, adjournment requests not received, hearings not being set for considerable time, and then being set with little notice.

We had one case where the application for an administration order was made by a family member, and the client was not a public patient, or seeing a private psychiatrist. There was no psychiatric report, and the VCAT member adjourned the matter for a psychiatric assessment to be prepared. The client did not have funds to pay for an assessment, and it was not possible to have it done via the public system. We wrote to the Deputy President and requested that VCAT fund the report, especially since they had requested it. VCAT agreed to fund the report, which was favourable, and the application for the administration order was not granted. The client was obviously very happy with the outcome

### **Criminal Charges:**

Appearing in the Magistrates Court continues as a very small proportion of the centre's work, with most of these clients provided with advice and referral only. We generally act only in matters where diversion or the mental state defense can be usefully pursued or there is some other issue of legal significance. This work has proved invaluable in guiding us in our response to Department of Justice mental health list/court proposal.

An example of a criminal charge matter we acted in came through our night service. A client was charged with an offence while on a suspended sentence and acutely unwell. The jail sentence was reinstated by an unsympathetic Magistrate. His private solicitors got him bail but could not get legal aid for the appeal and stopped acting. He was admitted to hospital. An administrative error at the Court meant he was taken by police to custody when he was released from hospital, the mental health services having notified police of this discharge. Barrister Ashley Halphen acted pro bono and had the appeal reinstated and our client released on bail. We then obtained legal aid funding, the appeal was heard and the imprisonment order was revoked. After four months in hospital he was rightly spared time in prison.

### **Assisting Forensic Patients:**

There is a high demand from clients with reviews and/or applications to vary non custodial supervision orders in the County and Supreme Courts. Many of these referrals come through Forensicare who are pleased with the model of representation developed by MHLC. We are keen to push the limits with these matters, promote the person's thoughts and endeavor to make Charter submissions when appropriate.

We are disturbed by the number of people who remain on court orders despite their mental health and well-being maintained by them in an exemplary and commendable way. We will continue to assist these clients and to lobby for an

end to this punitive, unnecessary, counter-therapeutic, costly approach. We never cease to be amazed at the resilience and good grace of clients who have to persist with this process.

Acting for people subject to Supervision Orders under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 alerts us to the urgent need for review of this Act- in its application today as moribund as the Governors Pleasure Act it was designed to modernise.

We are also disturbed by the number of people who were ill advised by their lawyers when entering a plea and languish on non custodial and hospital orders.

### **Health System Complaints:**

We continue to assist some clients with complaints to the Chief Psychiatrist or Health Services Commissioner.

One case we had been assisting with for some time came to a conclusion this year, highlighting some of our concerns with Victoria's mental health service complaints system. This was a case where a client was given ECT without proper authorisation under the Mental Health Act.

The mental health service refused to offer more than an apology and changes to its policies, and, partly because it could not force the service to participate, the Health Services Commissioner did not arrange conciliation. This was disappointing in light of advice from Maurice Blackburn (which they generously provided pro bono) that in the ordinary course of events a client would expect to get a modest amount of compensation through negotiation/conciliation. This case highlighted the limitations of complaints system where there is no capacity to refer matters to a body with power to make binding decisions, such as VCAT.

What was achieved, however, was extensive change to the service's policies and procedures relating to ECT - they went from two pages to over 20. The Health Services Commissioner also, did, as a result of negotiations, alter a position it had previously adopted whereby this client was effectively barred from raising complaints about matters which occurred more than 12 months ago. It was clarified that older matters could be raised with the Commissioner if they hadn't been complained about before.

**VLA – Grants of Assistance:**

We have generally been pleased by our capacity to obtain grants of assistance in most matters. These have included grants for medical reports for VCAT matters relating to Administration Orders, for counsel for a VCAT appeal from a Mental Health Review Board hearing, and also for counsel and a psychiatric assessment for a case in the Magistrates Court where we intend to raise a defense of mental impairment.



## NIGHT SERVICE REPORT

After months of preparation and consultation, we conducted 4 training sessions in November last year to train solicitors interested in volunteering for the night service. Approximately 25 solicitors attended, and we received very positive feedback about the quality of the sessions. The sessions focused on the centre's philosophy and approach to working with clients, and training the solicitors on substantive areas of law such as mental health law, criminal law, infringements, freedom of information, complaints, privacy, guardianship and administration, employment issues and personal injury compensation. In total, each volunteer solicitor attended 6 hours of seminars and sat in on 4 hours of telephone advice. We are immensely grateful to Freehills lawyers for hosting the training sessions.

In March 2008, the night service was opened, operating on Tuesday and Thursday evenings from 6:30pm to 8:30 pm.

In the early months, we were receiving an average of 4 calls per session during the night service. This gave clients the opportunity to spend a substantial amount of time with the volunteer solicitor to discuss the client's legal issues in detail. This level of attention for clients may not be possible during the day telephone advice, as the volume of incoming calls is usually much greater and only one lawyer is available during day sessions.

The range of issues arising from the night service has been quite varied including matters arising from the *Mental Health Act*, family law, criminal law, infringements, consumer complaints and medical negligence. Where appropriate, we referred clients to other community legal centres or organizations. We have also endeavored to send clients any relevant publications to further inform clients of the law and procedures.

In some cases, clients require some follow up work before their matter is resolved. This may include making a telephone inquiry on the client's behalf or conducting further research. If the client's matter falls under one of the centre's core practice areas, then the matter may be taken on as ongoing casework.

At present there are approximately 15 solicitors actively volunteering for the night service. They come from a range of different law firms and have varying legal backgrounds. They have proven to be reliable, professional and enthusiastic. Here is a brief profile of one of our volunteer solicitors, Helen;

## **VOLUNTEER PROFILE**

**Name:** Helen

**Area of legal experience:** Commonwealth Workers Compensation litigation



**Why did you decide to volunteer with Mental Health Legal Centre?**

My legal career has been largely based in respondent work, and I don't often have the opportunity to assist individuals in need of legal advice. I have a medical background and decided that this combined with my legal training would be well suited to the centre.

**How have you found your experience with volunteering at Mental Health Legal Centre?**

I have enjoyed volunteering immensely. It can be quite challenging at times, but I value the opportunity to donate my time and skills to assist our clients and have learned a great deal from my experiences at the centre.

As the volunteer solicitors have become more confident and more familiar with the relevant areas of law, we gradually advertised the night service more widely. We first advertised the night service to consumer consultants and then later to Adult Area Mental Health managers. It seems this may have been effective as average calls have increased in recent weeks to about 8 calls per session. We will gradually promote the night service further as it becomes more established.

We were previously allocating 2 volunteer solicitors per session. Due to the growing number of incoming calls and to accommodate for last-minute cancellations by volunteers, we have decided to roster 3 volunteer solicitors per session. We have also recruited a volunteer law student for each night service to provide administrative support.

We are also looking to recruit more volunteer solicitors in the future. Freehills has kindly offered to host the training sessions again. Hopefully we will be in a position to hold another round of training sessions sometime in January 2009.

## MENTAL HEALTH REVIEW BOARD-PRO BONO REPORT

### **The Pro Bono Justice Project:**

*“Before the hearing, seeing the lawyer gave me renewed hope that someone was listening to my story.... I had felt so demoralised and disempowered by the system, and that everything I said was ignored by the psychiatrist. So having the lawyer speak on my behalf, gave real credence to my thoughts.”*

The availability of independent advice and advocacy for consumers is critical to a fair and participatory democracy and Victoria’s recent *Charter of Human Rights and Responsibilities* further enshrines the right to a fair trial, including the right to legal representation. In a jurisdiction where many, if not most, clients suffer additional financial and social disadvantage, the increased provision of free or pro bono legal advocacy through the Pro Bono Justice Project is crucial.

The Pro Bono Justice Project, begun in July 2006, aims to address the lack of representation for people subject to enforced psychiatric treatment before the Mental Health Review Board, by engaging lawyers in private practice to represent clients, pro bono as lawyers for the centre, before the Board.

Pro bono lawyers through the support of their firms commit to each representing clients on a monthly or bi-monthly basis and with almost 30 lawyers from five firms participating in the training program this year, it is clear that the Project has gained momentum within existing firms and sparked interest among several others.

Advocacy through the pro bono program has, for many clients, turned the mere right to representation before the Board, into a reality.

### **Recruitment and training of pro bono lawyers and allocation of hearings:**

Training of new pro bono lawyers continued periodically throughout the year for lawyers from new partner law firms as well as those replacing their colleagues who had, for example left the firm. We held two informal orientation/ training session in November 2007 and again in April 2008, attended by a total of 14 new pro bono lawyers. We also ran a substantive legal training session in November 2007 on the five criteria for involuntary treatment and other key procedural issues and we are grateful to Allens Arthur Robinson for their generosity in hosting the event and in assisting with printing materials.

The pro bono lawyers range from first year to senior associate level with a variety of legal and advocacy experience and lawyers have by and large remained involved for at least 12 months. While the orientation sessions are a valuable opportunity to inform pro bono lawyers about a rigorous instructions-based approach to advocacy and to confront and discuss myths about people with mental illness and working effectively with clients, it is the hands-on training that lawyers find most valuable. Mentoring by the lawyers at the centre is an important part of this training program, as is the ongoing support from the Pro bono coordinator.

*I decided to become involved in the centre's Pro Bono Justice Project as a way to diversify my legal skills, with the potential to make a meaningful difference in the lives of various individuals. I am often surprised at the heartfelt gratitude expressed by those who have not previously had the opportunity to have good legal representation and exercise their right to have their particular case stated and considered. In addition to providing personal satisfaction in achieving a good result for a client, the centre provides an opportunity for lawyers to gain legal skills not readily available in a pro bono lawyer's normal practice. For example, advocacy - that skill which is traditionally considered so important in a good lawyer, can otherwise be a forgotten art. Combined with the opportunity to develop the strategic decision making involved in building a case the centre provides a useful service for both its clients and its volunteers.*

*The ability to see the first hand effects of your work on a client's daily life is probably the most significant thing about working for the centre. One particular example I recall is the release of a client from her CTO which enabled her to focus on gaining proper employment and spend time with her family and, in particular, her young daughter. These kinds of cases alone tend to make the work worthwhile.*

*(Pro Bono lawyer from Allens Arthur Robinson)*

A significant proportion of the Pro bono coordinator's time is spent liaising with clients, centre staff and pro bono lawyers to allocate hearings generally and to arrange interviews and hearings for observation and supervision.

In addition to recruiting and training pro bono lawyers, part of the role of Pro bono coordinator has also been to coordinate the allocation to available lawyers (both staff and pro bono lawyers) of all those clients who have requested legal representation at the Board. In this financial year, the centre received around

280 individual requests for representation from clients and in most cases, hearings have to be adjourned to ensure a lawyer is available to represent the client.

**Pro bono advocacy:**

*“A psychiatric nurse did comment [about my lawyer] that “Shit he’s wearing a suit,” and that I might have a real chance.”*

Over the course of the year, pro bono lawyers represented approximately 30 clients at hearings, with a further 15 clients benefiting from a file review and detailed advice without formal representation before the Board itself. Pro bono advocacy resulted in six clients being discharged from their CTO. In a further four cases, the CTO was upheld; however an early review was achieved. In addition, the Pro Bono Coordinator represented approximately 16 clients and interviewed and advised a further four. Cumulatively, this comprises 30% of the centre’s total advocacy before the Board and 50% of the interview and advice-only work.<sup>1</sup>

We have succeeded in “partnering” firms by and large with hearings listed on a particular day of the week to enable lawyers to have a degree of certainty about the practices and procedures at the clinic/s where their clients attend. Clayton Utz lawyers have been “partnered” with hearings on Fridays subject to avoidance of any conflict of interest between the client and the firm. Maddocks and Allens Arthur Robinson have been “partnered” with hearings each at two clinics on Wednesdays. This has enabled the centre to better meet the demand for representation in areas of most urgent need; East Ringwood (Wednesday) and Dandenong (Friday) in particular.

We were delighted to be in a position to provide the Department of Human Services, which funds the Pro Bono Coordinator position, with estimates of the number of Board matters in which pro bono lawyers could be expected to provide detailed legal advice and/or representation. Based on the Project running at optimum capacity from 2009 for 12 months, we would expect pro bono lawyers to have represented at least 60 clients, that is: almost doubling the capacity of centre lawyers – a wonderfully encouraging result.

The overall number of clients represented is likely to increase commensurate to the growing interest expressed by additional law firms and lawyers. We also anticipate that some of the lawyers who have been trained by the centre to

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<sup>1</sup> Based on estimated 120 hearings and 19 detailed advice-only cases by Centre lawyers (excluding pro bono coordinator).

provide advice during the centre's Night Service will naturally want to progress from advice to casework and representation at some point and may therefore wish to participate in the Project.

### **Additional resources:**

We are delighted that most firms have also committed to covering all or part of the cost of their lawyers' travel to and from clinics. For each individual client represented, this involves four trips to or from the clinic for the interview and the hearing, and thus quite a significant cost.

Furthermore, private firms housing the centre's pro bono lawyers often carry the burden of administration costs, such as telephone calls, stationery, printing, postage and facsimile, not to mention the time spent by support/administration staff.

Importantly this year, the Pro Bono Coordinator position will be assisted by the inimitable Sara Clarke who will provide administrative support one day a week. Sara will be working on file administration for pro bono lawyers to lessen the workload of the front-desk administrative staff. Sara's role involves consistent recording and updating of hearing outcomes, establishing a common MHRB online calendar and password-protected MHRB pro bono advocacy section of the centre's website for pro forma materials and other resources.

### **Acknowledgements**

We would like to acknowledge the amazing contribution and support of many individuals and organisations in making the project so successful thus far, including the consumers who have assisted with information and training sessions, John Lesser; President of the Mental Health Review Board, Dr Cris Mileskin; Clinical Director of St Vincent's Mental Health Service, and of course all our clients.

It has also been wonderful to work with some very committed and enthusiastic volunteer law students; Melissa Bencic and Madeleine Topp, who assist in adjourning hearings, drafting letters, research, collating Statements of Research and other key administrative tasks.

Particular thanks must be conveyed to law firms; Allens Arthur Robinson, Blake Dawson, Clayton Utz, Ebsworth & Ebsworth, and Maddocks, and their respective pro bono coordinators, and of course the fantastic pro bono lawyers who have been involved. The success of the project so far is testament to their

enthusiasm, professionalism and commitment to empowering clients and giving them a voice before the Board.



## **POLICY AND LAW REFORM REPORT**

The focus of government strategy on mental health has meant that most government departments have developed mental health plans. We have participated in many consultations and provided constructive feedback on documents whenever possible. Those involved with the Department of Justice project; developing a mental health strategy, have been keen to liaise with the centre and have involved the centre in discussions at all levels. So too has the Department of Human Services. This has demanded a considerable amount of time from policy whilst we have also been maintaining the projects we have initiated.

### **Staffing:**

Martin Thomas continued in the role of general policy worker and project worker on the Advance Directives (AD) and Mental Health Review Board and Involuntary patient Experience (IPE) project.

He picked up the box of data from the IPE Project and remolded it into a comprehensive and thoroughly researched document. Martin spent one day a week working on the Advance Directive Project and although he resigned in September to move to Canberra agreed to continue writing up the findings on Stage One of the project. Just as well - we miss him terribly. Martin's academic rigor, eye for detail and good grammar polished our policy submissions to an A grade level; his views as a philosophy scholar provided a depth to the policy that we valued enormously and have learned much from. His humour, generosity, thoughtfulness and good spirit have kept us going for the last 2 years (which is why we refused to let him go completely!). Martin offered terrific assistance and mentoring to students and left us with a great legacy in terms of the level of support and guidance we now offer.

Catherine Leslie is to commence as the project worker for the second stage of the Advance Directive Project in the new financial year.

Sara Clarke commenced on the AD Project too with money from Freehills to develop a website to link a proforma to Advance Directives. She is a fabulous attribute to the project and quickly developed a proforma which we will trial. Merinda Epstein has continued to assist the Centre through her involvement on the AD Project too.

Paula Dunn in a voluntary capacity has continued slogging away at the criminal justice research, which will hopefully be finished by the end of the year.

Vanessa Stanton, employed to strengthen the services of the financial counseling sector to consumers of mental health services, has also buoyed the focus of policy and the given further depth to the work that we do.

Korina Leoncio, presently coordinating the night service, is to take on the two day general policy work position vacated by Martin. Venetia Bombas has been working on policy and developing the 'Inside Access' project.

### **Policy/Legal Liaison:**

We maintain membership of various advisory networks and committees including the Law Institute of Victoria Disability Law Committee, Charter of Rights Committee, Access to Justice and Health Law Committee, the Guardianship List matters users group, the Law Institute of Victoria Charter of Rights Committee, the Human Rights Law Resource Centre Advisory Group, the Independent Third Party Reference Group, the Justice Environment working group, Corrections Stakeholder meetings, Federation of Community Legal Centres Committees including the Centre for Human Rights of Imprisoned People (CHRIP), the Decarceration Committee and Coroners Court Committee.

We have made submissions to the vexatious litigants inquiry, the review of the coroners jurisdiction, the mental health strategy document "Better Mental Health Outcomes", the supported residential services review, all of the Sentencing Advisory Committee reviews, liaised closely with Michael King in developing a Bench book for judges, with Professor Bernadette McSherry's team Rethinking Mental Health Laws Project, DHS mental health strategy, Department of Justice Strategy, Equal Opportunity Act review and discussion paper, police strategy review Sex Offenders register and Act, Criminal Procedure Bill, Evidence Act review, Bail Act Review and Family Violence Bill and contributed to National Shadow Reports on International Conventions on Economic, Social and Cultural Rights and Civil and Political Rights.

We have also had considerable input into the Department of Justice Mental Health Strategy and the Mental Health Act review - this work will continue into 2009.

### **Issues worked on in 2007/2008 include;**

#### **Advance Directives:**

Advance Directives (AD's) are consumer-driven documents that stipulate treatment preferences and practical information that other people may need to know in the event that the person becomes unwell. Unlike some other Western

countries (e.g. the United States, New Zealand and Scotland) these documents are not legally enforceable in Australia.

We continue to promote AD's in all aspects of our policy and law reform work as well as conducting the research – which has involved collating individual experiences from people interested in preparing an Advance Directives or those who have already drafted the document. The research is a qualitative study, generously funded by the Reichstein Foundation. To date we have interviewed about 40 consumers.

The centre's research is into the experience that consumer's have had in Victoria of attempting to convey their wishes to clinicians in an environment that offers little legal support to do so. The ultimate aim of the study is to seek law reform in this area

We secured further funding from the Legal Practice Board to speak with clinicians on their experiences and views of AD's. Speaking with consumers alerted us to the importance of informing and education clinicians about the documents. Consumers spoke about the importance of conversation in preparing the documents - discussion with health professionals about any proposed treatment and past treatment experiences, discussions with family members, employees and friends. For this reason we sought this funding and plan to trial AD's in a couple of mental health clinics who have expressed interest in participating.

The research method which we devised in speaking with consumers which involves a process of information exchange will also be applied to clinicians. Our discussions provide an opportunity to inform people about Powers of Attorney and people's right to prepare a will.

The Office of the Public Advocate, the Victorian Law Reform Commission, and the Equal Opportunity Commission continue to support law reform to enhance and legislate for ADs. Reichstein Foundation has provided project funds to progress the consumer research and fund Martin's position and Vivienne's time on the project.

We continue to promote ADs in many ways including the publication of articles. We scan the horizon for additional resources for further development of the project to inform clinicians and lawyers of the documents. Sara Clarke will trial the AD proforma through website links to our community, VMIAC and other consumer sites. The proforma will be adjusted in accordance with consumer feedback.

Both projects have guided the Rethinking Mental Health Laws Project work and we continue to involve Penny Weller, a researcher on the Rethinking Project as a member of the steering group for both AD projects.

### **Sexual Offences Project:**

This project, to examine the difficulties for victim survivors with disabilities when reporting sexual assault and seeking justice is now being managed by DDLS and we will have input as required. It has incorporated the findings of the campaign on women's safety which was coordinated by VMIAC and resulted in the report *'Feeling Unsafe in a Sanctuary'* which is the first phase of an ongoing project with which we will be involved.

### **Police Involvement:**

We continue to liaise with police and make submissions to the Office of Police Integrity and the Victoria Police Services Review. We are closely monitoring the use of tasers and capsicum spray in mental health crisis situations. We continue to promote the reintroduction of crisis support units whereby experienced mental health professionals accompany police to ensure that people in crisis are safe and appropriately referred to services.

### **Child Protection:**

We continue to articulate the concerns of parents with mental illness (significantly over represented in child protection jurisdiction) and are exploring ways to audit the impact of the child protection intervention on our clients.

### **Young People:**

Together with Youth Law, centre workers have been concerned about issues for young people with disabilities in juvenile justice/youth detention. It continues to be a priority area for the centre and we continue to work with Youthlaw in response to sentencing law reform and criminal justice dispositions for young people with mental illness.

### **Criminal Justice Project:**

Funding from the Victoria Law Foundation allowed the centre to interview many people on their experience of the courts when mental health is an issue. Also interviewed were magistrates, a county court judge and advocates. A report will be completed towards the end of 2008.

The work has provided us with source material to shape our response to the Department of Justice (DOJ) Mental Health Strategy, the proposed mental health list or court, prison services and many other DOJ and court initiatives.

We have resisted the proposal for a separate court/list at the Magistrates court for many reasons including:

- People who offend when unwell must be diverted to the mental health system – not caught up in counter-therapeutic and costly court processes and court reviews
- There exists a pure defense of mental impairment that is at present under-utilized
- Separate entrance to the mental health system via the courts, does not avail people of the review and appeal mechanisms as exist under the Mental Health Act
- Conditions when applied to people in the higher court remain in effect for indefinite periods.
- The courts are conservative and risk averse
- The sentencing hierarchy and the principles of the Mental Health Act are in contradiction
- The mental health system is already over stretched by those obliged to treatment - a new class of involuntary detention and treatment will further deprive those voluntarily requesting support

Nevertheless there is a genuine concern and good reason for the courts and DOJ are seeking options as there is an overwhelming over representation of people with cognitive disabilities in the criminal justice system and warehoused in prisons.

We submitted a budget to DOJ for the employment of additional lawyers to ensure that people with mental health issues before any separate or new court structure are provided with advocacy and advice from appropriately skilled lawyers.

We have been involved as a member of the steering group with the Villamanta Disability Rights Legal Service to develop a guide to lawyers acting for people with an intellectual disability in the criminal justice system. Issues of taking instructions/consent will assist the above project and clients more broadly labeled as having cognitive impairment.



### **Guide for Advocates Appearing at VCAT:**

The document produced by the project, joint managed project by Villamanta Disability Rights Legal Service and MHLC is being well utilized. It needs updating to ensure that advocates utilize the Charter of Rights and to include new decisions. VCAT does not provide many statements of reasons and without written statements it is difficult and we encourage advocates to apply especially when the Charter is raised. Written decisions must be requested within 14 days of an oral decision.

MHLC and VLA both continue to have problems with receiving notices from VCAT and we remain skeptical as to whether those under orders are aware of hearings, their right to appear and to a legal advocate to assist.

Together with the Office of the Public Advocate we have lobbied for a review of the Guardianship and Administration Act (GAA). We were hopeful that this review would coincide with the review of the Mental Health Act that issues of consent, substitute and supported decision making and the legal processes for the protection and enhancement of the rights of people with mental illness were all considered together and recommended that such a review be conducted by the Victorian Law Reform Commission. It is likely that the GAA Act review will be referred to the Law Reform Commission. However we will need to lobby to ensure that this review addresses the interface with involuntary mental health treatment and detention.

### **Involuntary Patient Experience:**

As David Webb so succinctly states; ‘we [Victoria] are the "world champions" at forced psychiatric treatment in the community!’ It is also increasingly difficult to get services in a voluntary capacity and case managers readily admit to keeping people on CTOs so that Area Mental Health Services can guarantee an ongoing service.

As this is the situation it is crucial that the Mental Health Review Board exercise their powers to review these inappropriate orders appropriately, they cannot collude in the resources argument but can only apply the Act.

The project is reaching completion and we thank everyone for their patience and perseverance. There were some hiccups with Mim leaving the project and Martin taking on the role and the responsibility of processing the data- then

leaving too. The response has been good to the first draft – fabulous response from consumers but some concerns from the Board. In particular the Board perceives the report as being particularly negative. This may indeed be so. However, it is unsurprising from the perspective of an involuntary patient or from advocates privileged to the experience that the consumers leave a hearing frustrated and disappointed. Those who attend a hearing do so with the expectation that they may get off the order and anything short of this result is disappointing to them – and leaves them with an extremely negative view of the Board process. A study focusing on the experiences of people who are discharged may well show much greater satisfaction with the Board process. However, one of the main aims of this project was to understand and improve people’s experience of people’s experience of hearings, and around 95% of people do not get discharged from orders.

It is a skill and challenge for members to ensure that people leave the hearing with affirmation in terms of their progress and optimism that everyone is assisting them to work towards autonomy and independence. It will take some courage for the Board to listen to the experiences of those who appear. It is a salutary reminder that involuntary detention and all of its accoutrements, including the Board experience are humiliating.

The report will be completed and distributed next year with the recommendation that further research occur within 3 years - this will be crucial in terms of evaluating the impact of the Charter of Rights on the Board. A key issue for the centre has been the views of consumers in relation to advocacy these views were some given in interview. GF tell us how intimidating and overwhelmed she feels by the process;

*"It appeared to me that the hearings had a predetermined outcome . . . [the] decision was made before I had gone in. There was no testing of evidence, there was no probing of evidence, and it was just whatever the psychiatrist said..."*

*". .. I would describe the process as quite intimidating and possibly alienating, and you need to be very strong in your awareness of it to survive it because you may find that you will be a pawn in some game, you might feel more powerless than you actually are".*

GF’s experience was a one frequently expressed - many people felt assisted in this process by a legal representative as DF describes:

**Do you think if you had a lawyer with you in future hearings that would be different?**

*"I wouldn't feel so powerless"*

**Okay, how do you think they would be able to help you?**

*"Well I'd be able to be more outspoken. And say what I want instead of them telling me what I have to have or telling me what I have to do. Like if the medication I was taking was giving me an allergic reaction . . . I'd tell the solicitor that I don't want to have that and that I want them to find something else to give me that doesn't have the horrible side effect. I could tell them how I want my treatment and what sort of treatment I'd like. I'd be more outspoken about things or if anything happened to me at the hospital I could tell them."*

TF agrees with the above and states succinctly;

*"When a person is silenced by their illness and by the situation I think advocacy is really important."*

**Neighborhood Justice Centre (NJC):**

Our involvement with the development of the NJC in the city of Yarra resulted in a joint submission with Fitzroy Legal Centre and a grant for a community lawyer. We have not spent the money which we have allocated to resource this project but aim to use it for professional legal education for the community lawyers and pro bono lawyers involved in criminal justice and prison work, to educate them on how to take instructions from people with mental health issues.

**Coroner's Office:**

We have contributed whenever possible to assist with the development of the new Bill, our key issues of concern being findings of contribution, binding recommendations, extending the definition of reportable deaths to include people who were on orders (for at least 8 weeks following discharge) and to provide legally aided representation to families of deceased and other parties with a mental health issue. The report of the parliamentary committee is excellent and provides the framework for the drafting of a creative bill. Although we do not appear in the jurisdiction, we get a number of referrals, and assist families to understand the process and get representation. We have also assisted with suppression orders. We have had some success in referring these matters to pro bono lawyers, however it is difficult. Although enthusiastic, most of these firms have a conflict, having acted for the hospital, the community services, the ambulance or police. Our experience is that the coroner's brief is usually lacking crucial witness statements and the Counsel assisting is not familiar with the mental health system to the extent that they can delve into any failings in service response and duty of care.

### **Inside Access:**

With the assistance of the Centre for Human Rights of Imprisoned Persons we applied for funding to the Legal Practice Board for a specialist prison law service for prisoners with mental illness or intellectual disabilities. The letters of support received from community organizations, police and forensic mental health services were overwhelming and affirms the work of the MHLC in the criminal justice system. These facilities are:

- Thomas Embling Hospital - 118 beds.
- Acute Assessment Unit, Melbourne Assessment Prison - 16 beds.
- Marmac Mental Health Service, Dame Phyllis Frost Correctional Centre - 20 inpatient beds.
- St Paul's Unit, Port Phillip Prison - 34 beds.
- Statewide Forensic Service - 30 beds.
- Marlborough Unit, Port Phillip Prison - 33 beds.

We were successful in securing \$60,000 - a small percentage of the amount for which we applied. Nevertheless we will commence the project before the end of the year employing a co-coordinator who, with the support of pro bono lawyers and legal clinics, will commence the service, the aims of which are:

- To provide access to regular, scheduled, legal advice and assistance to all Victorian prisoners accommodated in specialised facilities for prisoners with mental illness and intellectual disability.
- to provide access to legal advice and assistance, on request or referral, for all Victorian prisoners with mental illness and intellectual disability in a range of legal matters

As the funding was limited Inside Access will commence with Marmac unit and Melbourne Assessment Unit. Legal service provision will include mental health law, human rights, administrative, discrimination law, family law and Childrens' Court matters, parenting, privacy, FOI, health complaints, guardianship and administration, income security and Centrelink, debt and credit, and the law that governs imprisonment which impact on the day to day life of prisoners.

### **Credit and Debt Project:**

This project commenced on a two day a week basis in August 2007 after MHLC received funding from the Consumer Credit Fund of the Department of Justice. The impetus for such a Project was the nature of a significant number of calls to the MHLC phone advice service.

The Project aims to identify and provide information related to the financial concerns of people experiencing mental health issues to those people and the professionals who work with them. A financial counselling advisory committee to the Project meets every two months and offers case studies and regional policy developments and requirements. This committee is comprised of financial counsellors located throughout Victoria: Margaret Pearson (Bairnsdale - State funded); John Hartnett (Melbourne CBD - Community Support Fund funded); Nicky Tsalamandris (City of Darebin - State funded/Local Government funded); Warren Rowbottom (Bendigo, Maryborough - State funded); Jo Boltin (City of Port Phillip - State funded) and Annette Lumsden (Warrambol, Hamilton, Portland, Camperdown, Casterton, Terang, Heywood - State funded). Equally important to the Project is the four member consumer advisory committee which is chaired by former financial counsellor Marie Shortal.

Throughout the Project, there has been ongoing liaison with the interstate financial counselling peak bodies regarding any similar projects being undertaken. Focus groups have also been organized and run with consumers of different services to gather feedback on the financial literature currently available. Rural areas of Victoria, such as Geelong, Cranbourne, Ballarat, the Mornington Peninsula and the Western region have been visited to enable workers to pass on case studies and put their views on future training options. As well, the Project has been in regular communication with VLA, CALC and Centrelink.

A series of articles on issues identified by the Project has been published in the Devil's Advocate, the bi-monthly newsletter distributed to all members of the Financial and Consumer Rights Council (FCRC). Other subjects of interest have been identified for future articles.

A recent initiative of the Project has been to establish a Mental Health Issues Working Group through (FCRC), the peak body for financial counsellors. The Working Group meets every two months at Consumer Law Action Centre (CALC). It has attracted a great deal of interest and currently has the highest membership of FCRC's eight working groups. There has been continual information sharing between the Mental Health Issues Working Group and the other FCRC working groups.

More recently, FCRC has requested that the Working Group participate in the provision of professional development for financial counsellors, in collaboration with Eastern Access Community Health.

The Project in its current form is due to be completed in December this year. Further funds, for a second stage of the Project, will be sought from the Consumer Credit Fund.

## **Presentations and Articles:**

We regularly contribute to conferences and publish papers. In the last year these have included;

- Advance Directives: New Paradigm (a second article on Ethics of Consumer Based Research to be published in the new year)
- Mental Health Review Board 20th Anniversary (conference paper)
- Women and Mental Health (Women Trauma and Mental Health Services paper to be published in new year)
- National Association of Community Legal Centres (conference paper on Advance Directives)



## COMMUNITY LEGAL EDUCATION REPORT

We worked hard to provide Community Legal Education (CLE) to consumers, the general public and advocates. As always, we prioritized CLE services for consumers.

We have continued to seek to capitalise on our technological resources. The Community Law website was migrated to a new system this year because the previous company folded. This involved significant change to the content management system we use and the way pages are filed. An example of a useful new application is the document management and access system established for our Mental Health Review Board Pro Bono volunteers. The change caused minimal inconvenience to the community but significant work for staff. We lost our website statistics in the migration. Our relationship with the new company is developing – they assisted us with the pro bono site and helped us re-establish the discussion forum also lost in the migration. We continue to maintain what we can on our website within our current resources, and will work on equipping more staff to use the web to promote their work. Despite these challenges our site continues to grow and we have received some positive feedback.



Alongside the move to new premises this year, software was upgraded across the centre. We also began work on implementing WebEx, a National Association of CLC's initiative that should increase our capacity to participate in and conduct meetings with colleagues in remote or distant locations via the internet. This is one way we propose to collaborate with other Community Legal Centres (CLC's) through working groups and CLE to maximize our resources. We also contributed to the Federation state conference, and remained a regular contributor to the CLEWS working group.

We also developed a spreadsheet that outlined which CLC's undertook what CLC matters across the state. Data was taken from various centres' brochures and websites to create a snapshot of services and matters to avoid referring consumers to centres who did not undertake that work, whether they be generalist or not. It was updated twice and after discussions with the Federation of Community Legal Centres they will hopefully maintain it, particularly given the appreciative feedback from the CLC sector after its circulation.

As more staff undertake education activities we try to collaborate to avoid duplication and reinvention of the wheel and this will continue into the new year.

As in all areas of the centre's work volunteers make an invaluable contribution to CLE in terms of education sessions, publications and other more general tasks. Supervising various volunteers and law students was a delightful privilege. Examples this year have been formatting the Convention on the Rights of Persons with Disabilities into a handout, and support in many aspects of the Charter of Rights Forum. We are enormously grateful for all the work volunteers do. All the work at the centre is valued. In future we will try to ensure an appropriate amount of involvement in the full range of the centre's legal and non-legal work.

### **Education Sessions:**

A significant trend this year was an increased interest in legal and rights issues outside the Mental Health Act. Whilst the largest category of legal problems handled by our lawyers remain connected to involuntary treatment and other Mental Health Act related matters, CLE has seen increased demand for information on the range of legal problems people face outside that – for example accessing services other than those offered by community mental health services, debts, particularly re mobile phones, paying gas and electricity bills, getting fines and wanting to get back their affairs from administrators. People being reached through CLE are a different group from our legal service clients, and their concerns may be less “crisis” orientated than those coming through the advice and casework service. Illness, medication and other difficulties can make absorbing complex information harder for our clients, law can be difficult and dry and some areas will only be of interest when people are in crisis. This trend also reflects the reality that our clients so often encounter a range of complicated legal problems.

A very successful major consumer forum was held in May on the new Victorian Charter of Human Rights and Responsibilities and Mental Health Law Rights.

The Victorian Human Rights and Equal Opportunity Commission and Victoria Law Foundation supported the forum through small grants, and the Victorian Mental Illness Awareness Council assisted in its organisation. Ninety people attended on the day to learn about possible implications of the Charter and many consumers contributed their ideas about what their issues of concern and priority areas were. Useful education resources and a report were developed, and the priorities people shared with us will be useful in future Charter and other rights promotion work such as the upcoming review of the Mental Health Act.

We participated in rural and regional road shows with the very successful joint Koori initiative between legal centres and Ombudsman's offices (Kooris Know

Your Rights project). This was put on hold by Consumer Affairs who were coordinating it. It is apparently only a temporary move as they attend to other commitments, which is fortunate as the project was making direct contact and getting specific information about legal problems to Indigenous people around the state. Hopefully the relationships developed will not be lost.

We received regular requests from mental health staff to our service to inform them about the specialist knowledge we hold on legal issues as they relate to people with psychiatric disability. Unfortunately, we are not generally in a position to respond to mental health worker requests, or can do so in a very limited way. We must prioritise service to consumers and cannot adequately meet even that demand. Clearly though, as workers have such a role in realizing people's rights the government must resource a rights orientated information and advice service for them.

Another trend this year in the legal sector has been away from community education for the non-legal public towards resources for advocates who have many professional development needs. There is very strong demand from legal advocates for knowledge and support about how to work with consumers whose situation or communication needs may require a particular approach. Requests come in relation to many different legal problems and jurisdictions, some of which the centre does not work in. One major area where people seek our assistance is obtaining instructions or people's capacity. Because the assumption that people with mental illness cannot instruct or do not have capacity like anyone else is so often wrong, because the centre does a great deal of work in areas where capacity must be assumed, and because of our skills, experience and commitment to facilitating people's autonomy wherever possible, we have a great deal to offer other lawyers in this area. We acknowledge, though, that many more general lawyers lack our resource and experience, and may work in areas that we do not. As with training on communication and working with clients, instructions/capacity training must be tailored to people's particular needs and context - resources need to be pitched for beginners, middle and advanced participants, and focus on the context in which they work. To the extent that resources allow, we will continue to develop the resources needed. A current example in high demand is material assisting people in assessing someone's capacity to instruct - as our clients almost without exception have capacity, our casework has not required us to develop that knowledge, but we will continue to work on resources for other advocates.

In this context, we are collating a list of competencies identified by the organisation as being desirable to cover, given the demand for this training and increasing number of our centre staff with a CLE component in their duties. The list is very long and requires some prioritisation and development of systems to

ensure competencies are realistic, measurable and that messages delivered are consistent.

### **Publications:**

The centre has 13 current publications in circulation, and six more not currently being distributed which require significant amendment. Copies of all our publications can be found on our website.

[www.communitylaw.org.au/mentalhealth](http://www.communitylaw.org.au/mentalhealth)

This year the joint seventh edition of the Patients' Rights book was promoted around the legal and mental health sector. Confusion in the sector over Mental Health Laws and Me, a publication produced and promoted by VLA about some earlier changes to the Mental Health Act was resolved eventually when VLA agreed to remove it from their list.

The Advocates' Guide to Conducting Mental Health Review Board hearings proved particularly popular as it is our only publication that outlines in some detail what the case law related to the 5 criteria for involuntary treatment are. A parallel guide for advocates to the Guardianship List of VCAT is our most recent new major publication and we are keen to distribute it as widely as possible.

The Mental Health Standards, "All Patients' Rights" fliers and centre brochure were updated this year. We were very grateful for the endorsement of our centre by the Victorian Aboriginal Legal Service (VALS), and their permission to place their logo on our brochure. We hope Koori consumers will be encouraged to make contact. This and the road shows reflect an increasing relationship with VALS which we deeply value.

There are also always many ideas for new products that we might develop. It is a significant challenge to maintain and develop specialist in-house publications when legal staff have little time to contribute, and when the law is constantly changing and impacting on so many areas of people's lives. We continue to refine our processes for revision and signing off of documents.

Our colleagues in other centres and allied organizations are keen for us to input into and support their materials where relevant, so there is no need to duplicate their valuable efforts.

We contributed to 'Child Protection: a guide for parents and family members' by Western Suburbs Legal Service. This was finished this year and put to immediate use. Hard copy stocks were going as quickly as it was printed. This is an invaluable and long overdue legal resource for our sector. Electronic copies are

available on the website [www.communitylaw.org.au/westernsuburbs](http://www.communitylaw.org.au/westernsuburbs) - or phone the Western Suburbs Legal Service on 9399 1686 for hard copy inquiries.

This year VLA reviewed their intervention order booklets and we raised concerns about how little information the Responding to Intervention Orders booklet contained in comparison to the Applying for Intervention orders book. As well as amending and updating the Fitzroy Law Handbook mental health law sections, we provided detailed amendments to the Springvale Lawyers Practice Manual sections on mental health law and guardianship, administration, powers of attorney and substituted decision making.

During the year we updated our database of legal information kept in other languages but abandoned our stock of publications in other languages as it was decided we would not be able to accommodate the stock in our new premises. We reviewed the centre policy re: publication styles, e.g. Disclaimers, ABNs and our new contact and night service details.

We continuously prioritise updating needs and survey staff. This year we surveyed in house staff on use of our Freedom of Information Handouts and drafted changes. The '*Liability for Contracts when Unwell*' flyer is still being worked on. It has circulated around a number of legal staff. Debt laws are an area of complexity of their own. The changes proposed now need consumer input but hopefully it will be resolved by the next report.

Priorities for next year will be updating the MHRB Advocates' Guide and as many other publications as possible to incorporate information on the Charter of Human Rights and Responsibilities, finalising a resource on the Charter and mental health law, continuing to note many potential changes to our two largest publications - Patients Rights: A self-help guide to the Victorian Mental Health Act and Mental Illness and the Criminal Justice System booklets, and producing a new resource in a priority area if resources allow.

We maintain a stock of a large number of external publications relevant to our clients' legal problems. We are in a constant process of reviewing, ordering and reordering these. This work too reflects strongly the large number and great complexity of the legal and rights related challenges faced by Victorians with psychiatric disability.

## **OPERATIONS MANAGEMENT AND ADMINISTRATION REPORT**

### **Funding:**

The centre acknowledges and thanks our funders for their support over the last financial year. Recurrent annual funding was received from Department of Human Services (\$305,364.00) which includes the Pro Bono Coordinator position and Victoria Legal Aid (\$277,501.00) which includes the Night Services Coordinator position. Project money totaling \$53,943.00 was received up to the end of June – see details of projects below.

We have streamlined our finances by moving to electronic funds transactions for day to day expenses. Leonie Englefield from MHLC Management Committee has helped with reviewing and updating our financial policy to further protect the interests of our substantial funding base. It is envisaged that the centre will continue to streamline accounting practices over the next financial year.

### **Current Funded Projects:**

- Pro bono Project is a continuing pilot project funded by Department of Human Services – see Pro Bono report.
- MHRB project – Patient’ experience of the Mental Health Review Board (funded by Reichstein Foundation), completed and project report ‘Lacking Insight’ is to be launched at 2008 AGM – see Policy and Law Reform report.
- Advance Directives (funded by Reichstein Foundation) – see Policy and Law Reform report.
- Credit & Debt Project (funded through Consumer credit Fund by Department of Justice) – see separate report.
- Charter of Human Rights Forum (funded by Victoria Law Foundation) – to be completed and acquitted September 2008 – see CLE report.
- Advocate’s Guide to Guardianship List (funded by Victoria Law Foundation) – see CLE report.
- Consultation of Sentencing Options (funded by Victoria Law Foundation) – due for completion mid-2009 – see Policy & Law Reform report

## **Future Projects:**

- Advance Directives (Stage 2) - Planning for Community Well-Being (funded by Legal Services Board) due to commence October 2008.
- This project will undertake a study of 'advance directives' from the perspective of mental health practitioners who work with people living with mental illness with a view to recommendations for change in law and practice.
- Advance Directives – Computer Assisted project (funded by Freehills) -due to commence July 2008.
- This project will research and develop pro formas for an Advance Directives kit to be uploaded to our website
- Prisoner Legal Service (funded by Legal Services Board) - due to commence November 2008.
- This project will undertake research and planning to fully explore the possibility of a community legal service program providing legal services to people with mental disorders in Victorian prisons and secure hospitals.
- Information Technology and Information Management (funded by Mental Health Council of Australia) – due to commence in July 2008.
- This project will review existing information technology and information management practises with a view to improving and streamlining current practices.
- Management Enhancement Project (funded by Mental Health Council of Australia) – due to commence in November 2008
- This project is funded to facilitate effective committee participation and support the development of an optimum governance model and structure for the specialist psychiatric disability legal prisoners' legal service.

## **Staff:**

During the year we welcomed...

- Korina Leoncio to the role of Night Service Coordinator to replace Libby Hetherington who has taken maternity leave.
- Vanessa Stanton came on board as worker for the Credit and Debt project.
- Martin Thomas was already employed as project worker on the Advance Directives project and when Merinda Epstein resigned to take up a

position at 'Our Community', Martin also took on 2 day a week policy position. Martin also took on the role of volunteer coordinator.

- Venetia Bombas started in the role of Mental Health Review Board Solicitor from July 2007.
- Sara Clarke assisted as locum front desk administrator.

We are fortunate in the wonderful and committed workers we attract to positions at MHLC and of course the workers who continue to make such a positive commitment to the centre and use their expertise and experience to benefits consumers. We are also fortunate in the mentoring role of new workers undertaken by these experienced workers.

### **Volunteers and work experience students:**

Martin Thomas did a great job coordinating our volunteer program over the last 12 months.

The centre would like to acknowledge the work of student volunteers over the past year. Their contribution across all areas of the organisation has been invaluable. They have provided assistance to solicitors in matters of co-ordination and administration. In the area of policy, volunteers have assisted with research for all of the on-going projects and with a number of submissions. Regular support has also been provided to the legal education component of MHLC, ensuring that we are able to provide up-to-date legal advice to the sector. We at the centre would also like to offer our congratulations to a number of volunteers who will be moving on after 2008 – namely Jade, Kira and Havva – their enthusiasm and skill will be missed.

Paula Dunn continues to work in an unpaid capacity to complete the Sentencing Options project

### **Front Desk:**

The front desk continues to be a vital first point of contact for consumers, pro bono lawyers, volunteers, committee members and stakeholders. The front desk administrators are courteous and efficient in carrying out their duties. Their support in the day-to-day operation of the centre is valuable and acknowledged by centre staff and management.



Special mention to Rhonda Black and Sara Clarke who filled in when Leoni Phelan broke her wrist and needed to take extended leave. Thanks to Rhonda, Sara and Christina Evans who also assisted Leoni when she returned to work in a limited capacity for a number of weeks.

### **Statistics:**

Some interesting statistics taken by Leoni Phelan on our front desk includes a fortnight survey carried out over a month in April/May 2008;

- Calls to reception ranged from 52 to 59 calls per day with an average of 55; this translates to one call every 7.5 minutes. Of these calls, administration workers took an average of 15 written messages per day with a range from 12 to 30 on any one day
- Average referrals per day are 14.3 calls redirected. This represents 26% of the calls taken. By nature these referral calls are longer in duration, as client issues need to be explored sufficiently such that an appropriate referral can be made.

### **New premises:**

We were fortunate to locate new premises that met the centre's need for expansion in the CBD, 10 year lease, compliance with the Disability Discrimination Act, natural light and proximity to public transport, courts and tribunals and key stakeholders. The centre relocated in December 2007.

### **Future:**

Having settled comfortably into new premises it is time to review, consolidate and improve our practices. Prior to move to new premises we received a computer upgrade with the assistance of Victoria Legal Aid. Information technology and data management will be a focus over the next 12 months. Thanks to David White, partner of our chairperson, who has completed an audit of our IT system and we have received funding to review and improve data management and training of staff on current systems. Centre policies will also be reviewed in the next 12 months with a view to updating as needed.

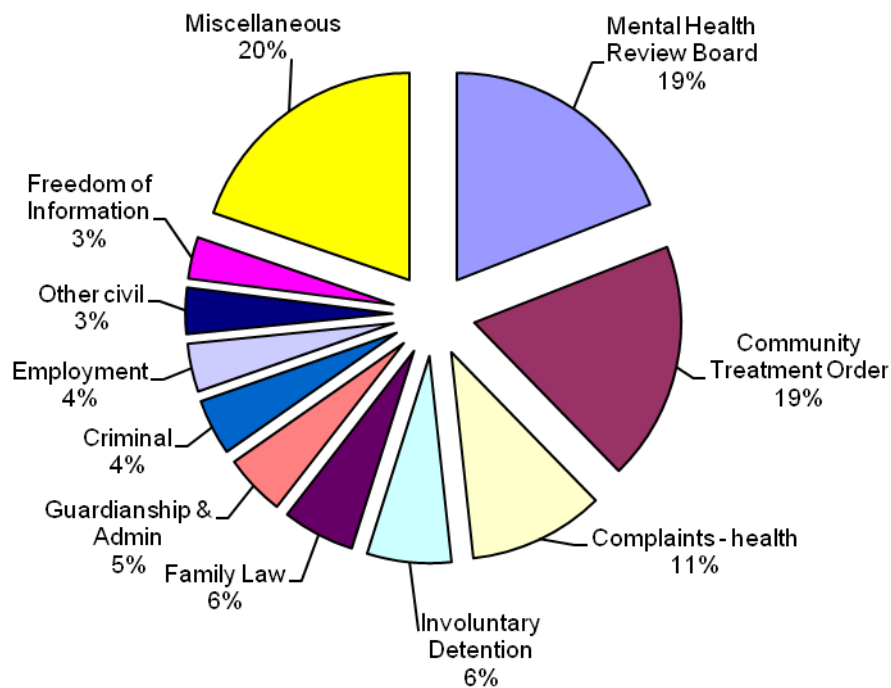
## STATISTICS

July 2007-  
June 2008

July 2006-  
June 2007  
Comparison

<b>TOTAL NUMBER OF CLIENTS</b>	<b>1263</b>	<i>1170</i>
<b>TOTAL ADVICE ACTIVITIES</b>	<b>1096</b>	<i>1040</i>
<b>INFORMATION ACTIVITIES</b>	<b>3687</b>	<i>3447</i>
<b>CASES OPEN DURING PERIOD</b>	<b>576</b>	<i>530</i>
<b>TOTAL NEW CASES OPENED DURING PERIOD</b>	<b>267</b>	<i>289</i>
<b>TOTAL CASES CLOSED DURING PERIOD</b>	<b>196</b>	<i>214</i>

### Top 10 Problem Types Advice



**Number of Advices dealt with by Problem Type  
July 2007 to June 2008**

<b>Legal Problems</b>	<b>Number 2007/2008</b>
Mental Health Review Board	223
Community Treatment Order	218
Complaints - Psychiatric services/hospital//doctor/health services commissioner	124
Criminal	51
Family law (includes 7 Child Protection Orders/applications)	66
Involuntary detention	77
Guardianship and administration	56
Freedom of information	38
Other civil (includes legal system or process x 20)	42
Employment (including injuries in employment)	44
Discrimination	26
Complaints (other)	30
Fines	17
Credit and debt	32
Intervention order	23
Medical negligence	13
Tenancy	19
ECT	12
Government pensions	9
Wills/probate/power of attorney	17
Treatment Plan	18
Victims of Assault	12
Other	268
<b>TOTAL RECORD OF ADVICE BY PROBLEM TYPE</b>	<b>1435</b>



**J L COLLYER & PARTNERS**  
ACCOUNTANTS & AUDITORS

Suite 1  
187-189 Coleman Parade  
Glen Waverley Vic 3150  
PO Box 340  
Glen Waverley Vic 3150  
Phone: 03 9500 0211  
Fax: 03 9561 5487  
Email: jan@collyerpartners.com.au

**INDEPENDENT AUDITOR'S REPORT**

**Report on the Financial Report**

**To the members of MENTAL HEALTH LEGAL CENTRE**

We have audited the accompanying financial report, being a special purpose financial report, of **MENTAL HEALTH LEGAL CENTRE** comprising the balance sheet as at 30<sup>th</sup> June 2008, and the income statement, statement of changes in equity and cash flow statement for the year then ended, a summary of significant accounting policies and other explanatory notes.

*Management's Responsibility for the Financial Report*

The management of **MENTAL HEALTH LEGAL CENTRE** are responsible for the preparation and fair presentation of the financial report and have determined that the accounting policies described in Note 1 to the financial statements, which form part of the financial report are appropriate to meet the needs of the members. The management's responsibility also includes designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

*Auditor's Responsibility*

Our responsibility is to express an opinion on the financial report based on our audit. No opinion is expressed as to whether the accounting policies used, as described in Note 1, are appropriate to meet the needs of the members. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

**DIRECTORS**  
**JANEI L. COLLYER FCPA**  
**LIONEL R. ARNOLD CA B.BUS**  
**RAELENE LAI CPA B.COM**



LIABILITY LIMITED BY A SCHEME APPROVED  
UNDER PROFESSIONAL STANDARDS LEGISLATION

-2-

The financial report has been prepared for distribution to members for the purpose of fulfilling the Management's financial reporting requirement. We disclaim any assumption of responsibility for any reliance on this report or on the financial report to which it relates to any person other than the members, or for any purpose other than that for which it was prepared.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

*Independence*

In conducting our audit, we have complied with the relevant independence requirements.

*Auditor's Opinion*

In our opinion the financial report of MENTAL HEALTH LEGAL CENTRE.

- (a) gives a true and fair view of MENTAL HEALTH LEGAL CENTRE's financial position as at 30<sup>th</sup> June 2008 and of its performance for the year ended on that date in accordance with the accounting policies described in Note 1; and
- (b) complying with Australian Accounting Standards to the extent described in Note 1.

  
.....  
Janet Collyer  
**J L COLLYER & PARTNERS**

26th SEPTEMBER 2008

**AUDITOR'S CERTIFICATION****ATTACHMENT C**

**Name of Organisation : MENTAL HEALTH LEGAL CENTRE**

**Financial Year Period : 1<sup>st</sup> JULY 2007 TO 30<sup>TH</sup> JUNE 2008**


I hereby certify that :

- (a) I am not a principal, member, shareholder, officer, employee or accountant of the Organisation or of a related body corporate as defined in section 9 of the Corporations Act 2001
- (b) In my opinion, the attached financial statements which comprise a Balance Sheet, a Statement of Income, a Statement of Cash Flows and Notes to the Financial Statements of the abovementioned Organisation ("The Organisation") for the stated Financial Year Period are :
  - Based in proper accounts and present fairly in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and
  - In accordance with the terms and conditions of the Agreement,
- (c) The Statement of Income and Expenditure is provided in respect of Funds for all Funding Categories.

This is a qualified/unqualified audit report.

Unless written under separate cover, I hereby further certify that, in my opinion, there is no conflict of interest between myself and the Organisation or its Management Committee.

**AUDITOR DETAILS**

<b>Full Name:</b>	<b>Janet L Collyer</b>
<b>Name of Company:</b>	<b>J L Collyer &amp; Partners</b>
<b>ACN or ABN:</b>	<b>15 082 813 813</b>
<b>Registered Auditor Reg No.:</b>	<b>9110</b>
<b>Signature:</b> 	<b>Date : 22<sup>ND</sup> SEPTEMBER 2008</b>



**Statement of Income and Expenditure**  
Year ending 30 June 2008

**Mental Health Legal Centre Inc.**

	2007/2008	2006/2007
<b>INCOME</b>		
CLC Recurrent	277,501	255,357
Other VLA	4,009	1,595
Other Commonwealth	-	-
Other State	305,364	276,140
Local Government	-	-
Wage Subsidy	-	-
Other Grants	53,943	32,308
Administration	11,850	-
Interest	27,723	22,765
Membership	-	-
Community Legal Education Forum	100	2,792
Costs Recovered & Retained	-	1,364
Fundraising/Donations	12,168	-
Sundry income	1,743	36
Profit on Disposal of Assets	-	-
<b>A. TOTAL INCOME</b>	<b>\$ 694,401</b>	<b>\$ 592,357</b>
<b>EXPENDITURE</b>		
Salaries	344,381	330,167
Permanent Staff	32,071	8,560
Casual Staff	57,059	35,841
Superannuation	46	-
Permanent Staff	1,826	1,403
Casual Staff	3,197	4,271
Work Cover	11,070	3,763
Annual Leave Loading	1,437	1,436
Travel & Accommodation	2,302	2,056
Amenities	35	38
Audit	1,012	2,078
ASC Lodgement Fees	3,386	5,980
Bank Charges	-	-
Cleaning	1,397	4,876
Community Legal Education	-	-
Conferences	-	(282)
Disbursements	2,190	1,808
Electricity, gas and fuel	1,861	3,299
Staff Recruitment	1,868	3,041
Insurance (Other than PI)	4,575	1,862
Library	2,052	6,149
Memberships & Subscriptions	1,944	1,519
Postage	978	1,701
Practising Certificates	105	135
Equipment Repairs and Maintenance	-	-
Sundry Equipment Purchases	8,639	5,576
Parking	12,649	4,942
Programming & Planning	60,475	-
Relocation Costs	36,239	39,908
Rent	-	-
Structural maintenance	5,319	6,841
Stationery/Photocopying	1,279	716
Security	11,816	7,397
Telephone	5,160	3,473
Training	12,170	7,900
Car Leasing expenses	1,700	1,216
Computer software and supplies	4,267	2,396
Forum & Meeting expenses	1,509	16,756
Printing & publication costs	4,709	3,858
Accounting fees	774	771
Other		
<b>B. Sub Total Direct Expenditure</b>	<b>\$ 641,499</b>	<b>\$ 521,252</b>
<b>C. TOTAL INCOME LESS DIRECT EXPENDITURE</b>	<b>\$ 52,901</b>	<b>\$ 71,105</b>

**Statement of Income and Expenditure  
Year ending 30 June 2008**

<b>INCREMENTS TO PROVISIONS &amp; DEPRECIATION</b>		
Annual Leave	6,384	(358)
Long Service Leave	5,061	12,064
Depreciation	27,418	5,562
Time in Lieu	-	-
<b>D. Sub Total Increments to Provisions &amp; Depreciation</b>		
	<b>\$ 38,863</b>	<b>\$ 17,268</b>
<b>E. TOTAL EXPENDITURE</b>		
	<b>\$ 680,363</b>	<b>\$ 538,520</b>
<b>F. TOTAL EXPENDITURE LESS CAPITAL PURCHASES</b>		
	<b>\$ 680,363</b>	<b>\$ 538,520</b>
<b>G. NET SURPLUS/(DEFICIT) (Total Income less [Total Expenditure less Capital Purchases])</b>		
	<b>\$ 14,038</b>	<b>\$ 53,837</b>

**STAFF**

Coordinator/Principal Solicitor	Sophie Delaney
Operations Manager	Jill Richardson
Lawyer/ Policy Co-ordinator	Vivienne Topp
Solicitor	Barbara Shalit
Mental Health Review Board Solicitor	Venetia Bombas
Advice Line Solicitor	Leon Doyle
Policy Worker	Martin Thomas
Community Legal Education Worker	Fiona Seymour
Mental Health Review Board	Catherine Leslie
Pro Bono Coordinator	
Night Service Coordinator	Libby Hetherington
	Korina Leoncio
Administrative Officers	Christina Evans
	Rhonda Black
	Leoni Phelan
	Sara Clarke
Project Worker: (Involuntary Patient Experience of the Mental Health Review Board)	Vivienne Topp
	Martin Thomas
Project Worker: (Consultation on Sentencing Options: The Views of Clients with Psychiatric Disorders)	Paula Dunn
Project Worker (Advance Directives/Living Wills)	Martin Thomas
Project Worker (Credit & Debt)	Vanessa Stanton

## COMMITTEE OF MANAGEMENT

Executive Chairperson	Alison Smith
Secretary	Julie Anderson (to March 2008) Pierre Baume (to November 2007)
Treasurer	Sophia Panagiotidis (from August 2007)
Committee Members	Keir Saltmarsh (to July 2008) Greg Oke (to November 2007) Robert Deverell Leonie Englefield (from November 2007) Sara Clarke (November 2007 to March 2008) Shauna Hearity (from November 2007) Staff Representative

## VOLUNTEERS

Paula Dunn	Joel Townsend	Jade Ryan
Tasman Armitage	Havva Saban	Helen Babb
Kira Levin	Liana Grieves	Melissa Stahle
Melissa Bencic	Melissa Phillips	Craig Parrish
Sophie Marino		

## PRO BONO VOLUNTEERS

Jodi Ainsworth	Eloise Curry	Alexandra Folie
Meredith Gibbs	Jacqueline Goodall,	Kelly Griffiths
Jo Hall	Claire Harris	Euphemie Harris
Emma Leske	Michael Lyon	Bryony McCormack
Yehudah (Yudi) New	Cameron Nolan	Maree Norton
Adriana Orifici	Elena Pappas	Gary Pertile
Jane Polglase	Jessica Rose	Adam Santa Maria
Simon Sherwood	Daveena Sidhu	Fiona Spencer
Robyn Sweet	Ann-Maree Ventura	Melody Webb
Christopher Wiseman		

## NIGHT SERVICE VOLUNTEERS

Jane Adams	Melanie Armsby	Kate Austin
Kathy Bodycoat	Xenia Morgan	Adrian Murray
Julia Orbach	Emily Peverill	Michelle Rubin
Michelle Scott	Nicole Sransky	Helen St Jack
Jess Toop	Ann-Maree Ventura	Jade Winterburn

## LEO CUSSEN PLACEMENT STUDENT

Sylvia Szepietowska



# Maddocks

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Allens Arthur Robinson

 RUSSELL KENNEDY  
MEMBER OF THE KENNEDY STRANG LEGAL GROUP



## **Mental Health Legal Centre Inc.**

The Mental Health Legal Centre Inc. is part of a network of Community Legal Centres located throughout Victoria and Australia. Community Legal Centres provide a three-tiered approach to the law, through casework, community legal education and law reform/policy. The Mental Health Legal Centre is a Specialist Community Legal Centre in the field of Mental Health Law. The Legal Centre was established in 1987.

### **Vision:**

The Mental Health Legal Centre works towards empowerment, equality, and justice for people having or labelled as having a psychiatric disability.

### **Values:**

In all its work, the Centre aspires to accessibility, equity, demystification and independence. We aim for a legal community and system that is optimally equipped to deliver justice to people having or labeled as having a psychiatric disability. We strive for mental health services which are least restrictive, and most humane and appropriate. The Centre will be client centered and respectful, act on instructions not perceived best interests, and facilitate maximum possible participation by our community. We seek to facilitate self advocacy, power through knowledge and systemic change. The Centre is a safe, supportive workplace which maximises the contributions of all.

### **Mission:**

To advance the legal rights of people in Victoria who have or have been labeled with a psychiatric disability, through provision of legal services, community legal education and policy and law reform activities.

### **Objectives:**

- To provide legal services of advice, representation, advocacy and referral to people having or labeled as having a psychiatric disability who otherwise would not have access to those services.
- Through community legal education, to achieve knowledge of and attainment of rights for people having or labeled with psychiatric disability.
- To advocate with and for people having or labeled as having a psychiatric disability on policy and law reform issues, facilitating Consumer

- participation and basing Centre positions on Consumer views.
- To facilitate Consumer and some relevant non-Consumer specialist participation in all policy and law reform work and base Centre's positions on Consumer views.
  - To provide an effective and efficient organizational, administrative and human resources structure that best meets the needs of users and Staff (paid and voluntary) of the Centre.
  - To ensure Centre has an adequately resourced, maximally participatory management structure.
  - To ensure that the Centre is as well equipped as it can be in terms of resources to achieve its objectives.
  - Ensure Centre is responsive to service users and potential service users.

**Service Delivery Area: Victoria**

**OFFICE HOURS AND CONTACT DETAILS:**

The Mental Health Legal Centre Inc. offers telephone advice on:

- Monday, Wednesday, and Friday between 3pm and 5pm
- Tuesday and Thursday between 6.30pm and 8.30pm

The office is open to the public Monday to Friday 9am to 1pm and 2pm to 5pm.

Face to face assistance is provided by appointment only.

Ph: 9629 4422

Fax: 9614 0488

Toll Free: 1800 555 887 (country callers only)

12550 reverse charges Melbourne Metro

**[mental\\_health\\_vic@clc.net.au](mailto:mental_health_vic@clc.net.au)**