

### WEstjustice submission

#### *Diverting vulnerable offenders away from the traditional criminal justice system*

##### **About WEstjustice**

WEstjustice (the Western Community Legal Centre) was formed in July 2015 as a result of a merger between the Footscray Community Legal Centre, Western Suburbs Legal Service and the Wyndham Legal Service. WEstjustice is a community organisation that provides free legal assistance and financial counselling to people who live, work, study or access services in the western suburbs of Melbourne.

We have offices in Werribee and Footscray as well as a youth legal branch in Sunshine and outreach across the West. WEstjustice provides a range of legal services including: legal information; outreach and casework; duty lawyer services; community legal education; law reform; advocacy; and community development projects.

##### **Screening people with serious mental health conditions out of the courts**

People with mental health conditions are being charged with minor criminal offences or issued with fines for conduct directly related to their psychosocial disability. These people should be screened out of the system to prevent unnecessary charges or fines being issued where the person's mental health condition is significant.

WEstjustice and other community legal centres regularly assist clients with infringements or who have been charged with minor criminal offences including for being drunk in a public place, begging, minor driving offences such as driving unregistered or driving on a toll road without paying, or other regulatory offences.

The 'special circumstances' system allows people with mental health conditions to have their fines deregistered by Fines Victoria and withdrawn by enforcement agencies, but this doesn't go far enough because it requires a 'nexus' – that is, a direct causal link between the conduct constituting the offence and the mental health condition. In our experience, the nexus requirement unfairly excludes people with very serious conditions from accessing the system because they cannot establish through medical evidence that they were experiencing the mental health condition at the time the infringements were incurred. Sometimes this is because the person was not accessing psychiatric treatment at the time or because their condition was undiagnosed. In our view, the nexus requirement should be removed and instead special circumstances should be established where the person is experiencing a significant psychiatric disability at the time of their application. This would be fairer because it would assess the person's current circumstances rather than require them to provide evidence of their condition retrospectively, which can be extremely challenging.

Samara has been diagnosed with schizoaffective disorder and is experiencing chronic symptoms of her condition. She experiences substantial impairment in all aspects of her life. She has been accepted onto the National Disability Insurance Scheme. She incurred fourteen fines for driving on the toll road without paying in 2014 before she was

diagnosed. She is on a Disability Support Pension, can't afford to pay the fines and is experiencing deterioration in her condition because of the stress of the looming infringements. As it stands, Samara cannot do anything about her fines because she cannot demonstrate the nexus between her fines and her condition. Instead, she should be able to access the special circumstances regime on the basis that she has a serious mental health condition for which her prognosis is poor.

## Exercise of discretion by frontline decision-makers

In her investigation into public transport fare evasion enforcement, the Victorian Ombudsman Deborah Glass recommended that public transport Authorised Officers not write up Reports of Non-Compliance (which lead to infringements being issued by the Department of Transport) where the passenger is clearly experiencing special circumstances.<sup>1</sup> She recommended that Authorised Officers be empowered to exercise discretion in the issuing of Reports of Non-Compliance where special circumstances apply to a passenger. We believe police, PSOs and regulatory officers such as council parking inspectors should be required to make similar assessments of a person's apparent psychosocial disability to divert people from the criminal justice or fines system where it appears that they have a serious mental health condition. This would require officers to be trained in recognising possible mental health conditions and having sensitive, non-judgmental conversations not based on stereotypes with potential offenders to elicit information about their mental health. Public transport Authorised Officers have been trained in this and this could be used as a precedent.

The Special Circumstances List is a crucial element of the system to divert vulnerable people away from the conventional criminal justice system. It has operated as a therapeutic setting to deal with vulnerable people's infringements, which carefully takes into account their special circumstances including family violence, drug and alcohol addiction, homelessness and mental illness or intellectual impairment, when determining sentencing outcomes. The Special Circumstances List has functioned highly effectively for over a decade to provide fair, efficient and rehabilitative sentencing outcomes for our clients. The abolition of the List seriously undermines the rehabilitative and therapeutic approach the court has taken to people with mental ill-health and will push them into the much more punitive traditional criminal justice system.

Tom has chronic schizophrenia and has had a serious alcohol addiction for 14 years. He has suffered brain damage as a result of his alcohol abuse. He has also struggled with homelessness. Over a period of four years, Tom incurred seven fines for being drunk in a public place and two fines for being drunk and disorderly. Tom's fines were deregistered by Fines Victoria upon a special circumstances application, but Victoria Police elected to prosecute all the offences despite being aware of Tom's disability. Because the Special Circumstances List no longer sits, Tom is waiting on court dates in open court (the general list of the Magistrates' Court) where he is likely to be sentenced to a substantial fine. It is likely

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<sup>1</sup> Victorian Ombudsman, *Investigation into public transport fare evasion enforcement*, May 2016, p 61, <https://www.ombudsman.vic.gov.au/getattachment/b3ef3775-ecd3-42e5-8acd-40f43769f521/>

that Tom will face multiple hearing dates in multiple different courts for these matters, because of the 'proper venue' rules according to which offences are listed in the court closest to the offending. It is clear to everyone involved that Tom's fines stem from his alcohol addiction and mental health issues, but the system has not succeeded in diverting him away from the criminal justice system.

## **The value of therapeutic approaches to justice for people with psychosocial disability**

When vulnerable people with mental health issues are funnelled into the traditional criminal justice system, the damage can be immense. Without a therapeutic approach, vulnerable people face harsher outcomes including a greater prevalence of fines, community corrections orders and prison time; access to fewer support services to help them address the circumstances contributing to their offending; overly vigorous prosecutions by agencies focused on convictions rather than rehabilitation and prevention of crime; and increased stress and poorer wellbeing outcomes for people who are already very disadvantaged. In our view the courts should be expanding – not curtailing – access to specialist therapeutic jurisdictions such as the Neighbourhood Justice Centre, Drug Court, Assessment and Referral Court (ARC) List and the Special Circumstances List, which provide therapeutic (rather than punitive) approaches and, in the case of the Neighbourhood Justice Centre, ARC List and the Drug Court, wraparound support services to people accessing the court. To date, the Neighbourhood Justice Centre, ARC List and Drug Court sit at only a very limited number of courts – the ARC List only in Melbourne and the Drug Court only at Melbourne and Dandenong, and the NJC only in Collingwood. Our court system urgently needs an expansion of these therapeutic programs to a greater number of courts, including regional courts. The ARC List, which takes a problem solving and therapeutic approach, can only hear matters for a few hundred clients per year whereas we know that more than half of all prisoners have a mental health diagnosis. A therapeutic approach to justice for people with a mental health diagnosis would substantially reduce the damaging impact that the criminal justice system has on people with psychosocial disability, as well as contributing to a reduction in crime by addressing the root causes of offending. In addition to a general expansion of these therapeutic courts across the state, we believe a youth-specific ARC List is warranted.

## **The need for targeted services**

Housing, debt, fines and financial hardship are huge issues for many people with psychiatric disabilities. We know that poor outcomes around these basic needs exacerbate mental ill-health by contributing to stress, deterioration in wellbeing and unstable housing or homelessness. We know that these clients do not access mainstream services for their problems in many cases, even though there are often clear solutions to prevent an escalation of their legal problem. For example, many evictions can be prevented by representing a client at the Victorian Civil and Administrative Tribunal (VCAT) or negotiating with a landlord. However, mainstream services are often not accessible or culturally safe for people with complex mental health issues. For this reason, targeted place-based specialist services are urgently needed.

For example, housing and homelessness are huge issues for patients of Mercy Mental Health (who runs the Clare Moore Building and Ursula Frayne Centre inpatient units). Recently, twelve out of the sixteen patients at the Ursula Frayne Centre were homeless on a

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given day in 2018. Hospital social workers struggle to link patients in to limited homelessness services in the western suburbs. Often patients remain in locked inpatient wards longer than medically required to avoid discharging them into homelessness. One woman has been living in the Ursula Frayne Centre for the past two years because there is no specialist housing for her (she also has an intellectual disability).

Most people with complex mental health issues facing eviction or other serious housing legal issues do not seek legal assistance from mainstream community legal or housing services. WEstjustice is currently in discussions with Consumer Affairs Victoria and Mercy Mental Health in relation to setting up a specialist tenancy legal service that visits the two Mercy inpatient units to provide legal advice, assistance and representation to patients facing eviction and other tenancy problems that may threaten their ability to remain in their property. We believe this kind of outreach model is vital to servicing this very disadvantaged client cohort. We call on the state government to make specialist funding available to establish targeted outreach services for people with psychosocial disabilities who need assistance with tenancy problems, debts, financial hardship and fines.

In our view, no money should be spent on new prisons and instead this funding should be invested into prevention, targeted services, restorative and therapeutic approaches to justice including justice reinvestment.

## **WEstjustice's innovative health-justice partnerships for people with a mental health diagnosis**

In 2016, WEstjustice, together with the Werribee Mercy Hospital psychiatric inpatient unit (Clare Moore Building), established Victoria's first health-justice partnership focusing on people with psychosocial disability. This service provides tailored and holistic legal services to inpatients of the mental health unit, with a focus on fines and debts as these financial legal issues have been shown to cause significant stress and deterioration in wellbeing. Social workers identify people with fines, debts and other legal issues and refer them to the project lawyer who sees clients in the hospital while they are inpatients. The clinic has achieved great success in resolving debts for clients and, to a lesser extent because of barriers in the system, also infringements.

In 2019, this approach to mental health health-justice partnerships was expanded with the introduction of the StreamlineFines project, coordinated by Victoria Legal Aid and funded by the Department of Premier and Cabinet. This project established health-justice partnerships for fines in a further two mental health facilities, one a Prevention and Recovery Centre (PARC) and one inpatient setting. We hope that the success of this project will see it expanded to all inpatient units across the state.

We attach a table of current clients of WEstjustice being serviced through our health-justice partnership with the Werribee Mercy Hospital psychiatric inpatient unit (Clare Moore Building) (Appendix 1). This table shows the complexity of the circumstances faced by people receiving inpatient psychiatric treatment for serious mental health conditions who have fines. Without therapeutic approaches to justice for this group, they will end up in mainstream courts with poorer outcomes and no access to the services they need.

In 2017, WEstjustice and Mind Australia established 'Justice in Mind' (*JiM*), a health-justice partnership seeking to address structural injustices and patterns of inequality and

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disadvantage experienced by individuals living with the impact of mental ill-health in Victoria. *JiM* combines an early intervention model of directly accessible legal advice and representation at multiple community mental health settings in Victoria, with a program of systemic rights-based advocacy, coalition building, policy development, and legal education across the community sector.

A pilot version of *JiM* has operated within Mind's Community Services Program in Williamstown since May 2017 providing generalist legal advice, casework and representation to the Mind community.

Many individuals have sought and received advice and legal assistance in relation to debt issues and infringements; routine secondary consultations have revealed a diverse range of other legal matters of varying complexity (including family violence matters, employment concerns, child custody matters, access to Centrelink benefits, tenancy issues and mortgage stress).

Unambiguous feedback from Mind's service users, frontline staff, and from *JiM*'s project lawyer demonstrates the efficacy of the model that has been established. Objective casework data demonstrates routine successful client outcomes, including most commonly the regular and routine waiving of debts and infringements.

WEstjustice's family violence health-justice partnership with the Werribee Mercy Hospital also assists a significant number of patients in the mental health unit with issues relating to family violence and family law, including applying for intervention orders. Family violence appears to be a prevalent issue for women with mental health issues.

We would welcome the opportunity to discuss this submission further. Please contact Shifrah Blustein, Policy and Projects Lawyer at [shifrah@westjustice.org.au](mailto:shifrah@westjustice.org.au) if we can be of further assistance.

Yours sincerely,



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Chief Executive Officer  
WEstjustice

## Appendix 1: List of open files from WEstjustice's fines health-justice partnership with Werribee Mercy Hospital mental health unit (Clare Moore Building)

Client	Date seen	Diagnosis	Other special circumstances	Income
Client 1	6/9/2017	Drug induced psychosis	Alcohol and/or drug addiction	Newstart
Client 2	13/9/2017	Depression, anxiety	n/a	Newstart
Client 3	4/10/2017	Schizophrenia	Alcohol and/or drug addiction	Newstart
Client 4	11/10/2017	Schizophrenia	Alcohol and/or drug addiction	Employment
Client 5	18/10/2017	Depression, anxiety	n/a	Newstart
Client 6	18/10/2017	Psychosis	Alcohol and/or drug addiction	Disability Support Pension
Client 7	25/10/2017	Schizophrenia	n/a	Newstart
Client 8	8/11/2017	Depression, gambling addiction	Alcohol and/or drug addiction	Employment
Client 9	15/11/2017	Adjustment disorder	Alcohol and/or drug addiction	Employment
Client 10	13/12/2017	Schizophrenia	Alcohol and/or drug addiction	Newstart
Client 11	13/12/2017	Schizophrenia	n/a	None
Client 12	13/12/2017	Schizoaffective disorder	Alcohol and/or drug addiction	Carer's payment
Client 13	10/1/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 14	10/1/2018	Post-Traumatic Stress Disorder, depression, anxiety	Homelessness, alcohol and/or drug addiction	Disability Support Pension
Client 15	24/1/2018	Schizophrenia	n/a	Disability Support Pension
Client 16	31/1/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 17	21/2/2018	Depression, anxiety	n/a	None
Client 18	7/3/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 19	16/3/2018	Psychosis	Homelessness, alcohol and/or drug addiction	Newstart
Client 20	21/3/2018	Schizophrenia	Homelessness, alcohol and/or drug addiction	Newstart
Client 21	28/3/2018	Bipolar disorder	Homelessness, family violence	Disability Support Pension
Client 22	28/3/2018	Psychosis	n/a	Newstart
Client 23	16/5/2018	Major depressive disorder	Alcohol and/or drug addiction	None
Client 24	30/5/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 25	13/6/2018	Major depressive disorder	Family violence	Parenting payment

Client	Date seen	Diagnosis	Other special circumstances	Income
Client 26	20/6/2018	Schizophrenia	n/a	Disability Support Pension
Client 27	20/6/2018	Bipolar disorder	n/a	Newstart
Client 28	27/6/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 29	4/7/2018	Post-Traumatic Stress Disorder, bipolar disorder	n/a	Newstart
Client 30	4/7/2018	Depression, anxiety	Family violence	Newstart
Client 31	22/8/2018	Schizophrenia	Alcohol and/or drug addiction	Newstart
Client 32	27/8/2018	Bipolar disorder	Alcohol and/or drug addiction	Carer's payment
Client 33	5/9/2018	Schizophrenia	n/a	Newstart
Client 34	5/9/2018	Major depressive disorder	n/a	Employment
Client 35	21/11/2018	Bipolar disorder, borderline personality disorder	Homelessness	Newstart
Client 36	5/12/2018	Schizophrenia	n/a	Employment
Client 37	10/1/2019	Depression, anxiety	Homelessness	Employment
Client 38	16/1/2019	Schizoaffective disorder	Homelessness, alcohol and/or drug addiction	None
Client 39	6/2/2019	Depression, Post-Traumatic Stress Disorder, borderline personality disorder	Family violence	Disability Support Pension
Client 40	13/2/2019	Drug induced psychosis	Alcohol and/or drug addiction	Newstart
Client 41	27/2/2019	Depression	Alcohol and/or drug addiction	Employment
Client 42	16/4/2019	Psychotic depression	n/a	Employment
Client 43	7/5/2019	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 44	28/5/2019	Bipolar disorder	Family violence	Disability Support Pension