

Mental Health Legal Centre Inc
Submission to Human Rights and Equal Opportunity Commission and Australian Law Reform
Commission Inquiry - "Speaking for Ourselves - Children and the Legal Process"

Submission summary - Recommendations in response to issues raised

The Mental Health Legal Centre is an organisation committed to realisation by people with mental illness of their rights through legal advice, advocacy, education, research, policy and law reform. To date, we have done very little work directly with or on behalf of children with mental illness, and so are unable to provide detailed experience based input, though the failings in this area are undeniable as the Burdekin Inquiry into Human Rights of People with Mental Illness has shown.

We have had considerable experience with parents with mental illness dealt with by the legal system in a discriminatory way, and such that obligations under the Convention on the Rights of the Child to assist in maintaining parent-child relationships are not met.

In this context, we submit the following:

- a) Specific concerns and recommendations based on our direct experience with adult clients who have been let down by the child protection and family law systems in terms of relationships with their children, and those children let down in turn; and
- b) more general concerns and recommendations in relation to children with mental illness and the legal system.

CARE AND PROTECTION and FAMILY LAW - CHAPTERS 6 AND 7

General Recommendations:

The community and those responsible for making family law and care and protection decisions must be educated not to assume and discriminate, but to see beyond the fact that someone has a mental illness to their parenting abilities and the way in which they can enrich their children's lives.

There must be effective recognition of the need for, and provision of, the support and resources required by some parents with mental illness to assist with parenting.

CARE AND PROTECTION - CHAPTER 7

Q7.1 - National definition of abuse and neglect

- * There should be a nationally consistent definition of abuse and neglect which places onus on those deciding whether the definition is met to consider what support or resources can be provided to parents to remove the potential for abuse

and neglect.

Q 7.12 - Processes for Supervision of Children at Home

- * Orders under which children remain with their parents should include provisions that specified agencies will provide, where appropriate, support and resources to assist parents with mental illness with parenting, including support accommodation where required.

Q 7.13 - Adequacy of provisions providing children in care with parental and sibling contact

- * The responsible department or agency should be required, when a placement order is made, or a parent agrees to place a child in care, to justify the nature and location of the placement, including in relation to accessibility for parents and siblings.
- * Placement orders and agreements should include provisions that specified agencies will provide appropriate support and resources to assist parents with mental illness to maintain regular contact with children in care, and facilitate contact between siblings, including supported accommodation and transport where required.

Q 7.68 - Other Issues

- * Decision makers and people working with involved departments and agencies need to be educated, and required, not to discriminate against our clients, but rather to understand and look beyond a parent's mental illness to parenting ability.
- * Peer support groups, catering specifically for individuals' different interests and needs, should be provided for all parents with mental illness and children who have parents with mental illness, where this mode of support is sought.

FAMILY LAW - CHAPTER 6

Q 6.16 Best interests principle -

- * A factor should be added to those listed under the Family Law Reform Act to be considered when determining best interests along the lines of:
 - “Support, treatment or resources which may be required, or adjustments which can be made, to assist parents in their role”.
- * We also suggest the explicit insertion into the best interests considerations of a principle that assessment of best interests should be free from any discriminatory

ADAPTATION OF THE LEGAL SYSTEM - CHAPTER 2

Q 2.1 How should the legal process adapt to accommodate children with mental illness

- * The Commissions should consider the introduction of staff into the legal system at each level who are able to assess all children who encounter the law, at that first encounter, and divert them to beneficial services. Such staff should work with the police, the Children's Court, the Family Court - any legal forum or agency to which children are exposed.
- * The training and placement of such professionals working within the legal system, and mental health advocates, should be auspiced by a Children's Commissioner. We see the creation of such a Commissioner role as essential if the serious and extensive obligations under the Convention on the Rights of the Child are to be met.

CHILDREN AS CONSUMERS OF MENTAL HEALTH SERVICES - CHAPTER 4

Point 4.51 - Other areas of child consumerism

- * Investigations should be conducted to establish at what points children are accessing the mental health system, and to what extent, if any, they are being accorded rights.
- * The Commissions should seriously consider the introduction of a children's mental health advocacy scheme, under which specially trained advocates assist children in realising their rights as service consumers.

CHILDREN AND SENTENCING - CHAPTER 9

9.57 Other issues re sentencing and treatment of young offenders needing to be addressed:

- * All children exposed to the sentencing process should be assessed for any underlying condition or illness, though in the least intrusive, compulsive manner possible. Where they are found, support and treatment, not incarceration, should be the basis of sentencing.
- * Once the child has been placed, whether on a non-custodial program, in a correctional centre or a care and protection residential set-up, there should be ongoing assessment and treatment. Again, this should not be conducted on an ad hoc basis, but in a way that ensures problems are identified, and treated, in as many cases and at early and constructive a stage as possible.
- * As suggested above, permanent, trained staff should be employed by the courts and institutions which have responsibility for children post-sentence to provide assessment, support and treatment to all children encountering the system, irrespective of their means or level of legal representation.

assumptions, given our experience that such discrimination may be entrenched and unconscious.

Q 6.19 - Family Reports -

- * It should be part of the role of the Family Report to assess the resource, and support needs of parents with mental illness.

6.24 - Parenting Plans

- * It should be an optional clause of parenting plans that a particular support agency will provide specific services to a parent with mental illness as part of the plan. To that extent the agency would be a party to the plan, but would be unaware of its terms other than those related to its support role. A parent seeking support, should be entitled to have such a clause inserted at their own initiative. A parent seeking support should also be entitled during the life of a plan to have it reviewed on the basis that inadequate or inappropriate support is being provided, and such a clause inserted.

Q's 6.48 to 6.54 - Child Support and Maintenance

- * In relation to child support the legislative formula should include consideration of the additional resources which may be required by a parent with mental illness, and a parent should be able to apply for the amount to be increased due to new resources required due to the illness. The formula for calculating sole parent benefits should make similar provision, such that additional resources are contributed to by the state and supporting parent.
- * In relation to children not under the Child Support Scheme, the need for support and resources of parents with mental illness should be one of the factors which the Family Court must consider in determining maintenance.

6.67 - Other Issues which need to be addressed:

- * Any Orders determining placement or responsibility for care of children made by the Family Court should include provisions, where appropriate, that specified agencies will provide support and resources to assist parents with mental illness with parenting, including support accommodation where required.
- * Judges, counsellors and all Family Court staff need to be educated, as to how mental illness may impact on parenting such that they do not discriminate against our clients, but understand and look beyond a parent's mental illness to parenting ability.
- * Peer support groups should be provided for all parents with mental illness and children who have parents with mental illness.