

Out of Reach

***Women living with mental health issues in the ACT:
What hinders their access to legal support?***

Kate Judd and Leigh Hale
June 2010



Out of Reach

Women living with mental health issues in the ACT: What hinders their access to legal support?

Publication/Copyright Information

ISBN 978-0-95862-7-9

© 2010 Women's Centre for Health Matters Inc.

Published by Women's Centre for Health Matters Inc.

This publication is protected by copyright. Apart from any use permitted under the *Copyright Act 1968*, no part may be reproduced without acknowledgement.

About Women's Centre for Health Matters Inc.

The Women's Centre for Health Matters Inc. (WCHM) is a community based organisation which works in the ACT and surrounding region to improve women's health and wellbeing. WCHM believes that the environment and life circumstances which each woman experiences affects her health outcomes. WCHM focuses on areas of possible disadvantage and uses research, community development and health promotion to provide information and skills that empower women to enhance their own health and wellbeing. WCHM undertakes research and advocacy to influence systems' change with the aim to improve women's health and wellbeing outcomes.

WCHM is funded by ACT Health. The findings and recommendations of this report are those of WCHM and not necessarily those of ACT Health.

About the ACT Women and Mental Health Working Group

The ACT Women and Mental Health Working Group (WMHWG) has been meeting since August 2007, and was formed to provide a regular forum in which service providers and women living with mental health issues could work together on matters impacting on women in order to provide improved outcomes for them, and to develop and maintain a full range of women friendly services.

Executive Summary

The past twenty years have seen a significant body of research in the mental health field that highlights the difficulties experienced by people living with mental health issues. They constitute one of the most vulnerable, disadvantaged and marginalised groups in contemporary Australian society.

For women living with mental health issues, this disadvantage can be twofold. The usual difficulties associated with being a woman—lower socio-economic status than men; higher incidences of violence against women; under-representation of women in positions of power; lower rates of labour force participation;¹ and the gender pay equity gap²—are compounded by the presence of a mental illness.³

This report, commissioned by the Women’s Centre for Health Matters (WCHM) and the ACT Women and Mental Health Working Group (WMHWG), aims to identify and document the ‘lived experience’ of women with mental health issues accessing legal advice, support, representation, and advocacy in the ACT. The report captures the personal stories of women living with mental health issues in the ACT, and the feedback from legal and non-legal services providers and community based organisations that provide support to, or advocate on their behalf. It documents the personal barriers for the women, and the barriers within the service system in the ACT.

In commissioning this research, WCHM and the WMHWG sought to develop a better understanding of the service system’s response to women living with mental health issues and to encourage discussion about the need for services to respond to their needs as women. This was achieved by a literature review, as well as through consultations.

The findings of this report highlight both the personal and systemic barriers experienced by these women in accessing legal services and navigating the legal system. For example, they reported that the *cognitive impairment* associated with their mental illness impaired their ability to *communicate* effectively and to be properly *aware of services* available. This caused

¹ Labour force participation rate for women was 58 per cent in January 2008.

(DFAT, <http://www.dfat.gov.au/facts/women.html>)

² The gender pay gap for full-time adult ordinary time female employees was 16.7 per cent in August 2008.

(FAHCSIA, <http://www.facs.gov.au/sa/women/progserv/economic/Pages/payequity.aspx>)

³ According to WCHM research, there are approximately 23,000 women living with diagnosed mental or behavioural conditions in the ACT, with 23.5 per cent of these women reporting only poor to fair health status. Fourteen thousand women in the ACT are experiencing economic disadvantage. Women with diagnosed mental or behavioural conditions are over-represented in the lowest income quintile (approximately 7,300 women). Unpartnered women with children in receipt of income support payments are more than twice as likely to have a mental disorder than the general population (AFFIRM, 2005), and the labour force participation rate for people living with mental illness stands at just 28.2 per cent (ABS, 2004).

considerable frustration, *stress* and *feelings of isolation*, which in turn exacerbated the original issue of *cognitive impairment*. Moreover, the difficulties faced within the 'systems' (i.e. *the mental healthcare system* and *the police*) are often compounded by one another. Under resourcing of acute psychiatric services or crisis assessment and treatment teams can result in the police becoming involved in mental health crisis situations without appropriate supports or facilities. Instead of being directed into the mental health service system, women with mental health issues sometimes end up in a police watch house, or embroiled in criminal justice proceedings.

This report highlights areas where improvements can be made to the current system for women living with mental health issues. WCHM and the WMHWG understand that the complexity and interconnectedness of the issues presented in this report makes the task of addressing them more difficult. However we believe that this report has brought to the fore areas where the Government, legal service providers, non-legal service providers, health services and other interested parties can improve the *availability, accessibility, affordability* and *appropriateness* of legal information, support, representation, and advocacy in the current system. WCHM regards these 'four As' as the core principles of gender sensitive service delivery.

WCHM further defines gender sensitive services for women living with mental health issues as services which:

- Take into account the way that women's personal circumstances and socio-economic status affects their mental health. For example, a woman's child and/or other caring responsibilities, her relationships, housing status, income, age, sexuality, ethnicity, religion and cultural and linguistic background, all have the potential to negatively impact upon a her mental health and wellbeing.
- Give women time to talk and listen to what they have to say.
- Train staff to understand the impact of gender and mental health/well-being.
- Understand that mental health issues and life events may affect men and women differently.
- Employ a holistic, individual approach that recognises that women often have a multitude of concurrent challenges, which then often leads into a cycle of difficulties.

Focus groups with women and input from service providers, as part of this research, has reinforced WCHM's definition of gender sensitive service delivery and demonstrated that changes are needed to ensure mainstream legal services better meet the needs of women living with mental health issues, for example:

- There is a preference for women only services in the whole range of mental health services, from early intervention to crisis/hospital treatment and care. Many women with

mental health issues are dealing with the results of abuse and/or violence from male perpetrators; it is not appropriate for these women to be receiving care and/or treatment in the same place as men.

- There needs to be a greater awareness of the holistic needs of women (for example homelessness, poverty). While there is greater acknowledgement by the service system: there is still much progress to be made in the support offered to women.
- Women need and want continuity of care and support.
- Greater resources need to be devoted to early intervention. Women need support when they first express the need, rather than when they are in crisis.
- Women with children have additional stresses that need to be addressed. In particular during crisis times when they may be separated from their children—including hospitalisation, remand, detox and/or children being removed.
- Advocacy services play an important and holistic support role, taking into account the social and legal needs of women and the interaction between the two. However, systemic advocacy is needed to change the culture of the providers in the legal system and to raise awareness of the needs of women living with mental illness.

Recommendations

- WCHM to convene a forum of relevant Government and community-based legal and non-legal service providers to discuss the issues identified in the report. The forum will look at strategies to help service providers become more sensitive to gender and mental health issues. A key outcome of the forum should be a preliminary document outlining potential solutions to the issues raised within the report.
- WCHM to work with the ACT mental health peak organisations to develop and implement training packages for ACT community-based legal service staff. This will focus on developing their understanding and capacity to support women living with mental health issues.
- WCHM in partnership with the WMHWG, to advocate and consult with government and non-government sectors on the importance of the following points as a means of improving outcomes for women living with mental health issues:
 - Enhance and support current advocacy and other non-legal service providers to effectively engage with and navigate ACT community-based legal and advocacy services.
 - The provision of appropriate and targeted information about the legal support and advocacy resources that are available in the ACT, and how to access them.
 - The need for more time with legal representatives where legal matters are in some way connected to mental health.
 - The importance of outreach efforts to increase awareness and connect women living with mental health issues to available legal and advocacy services.

Introduction

The ACT Women and Mental Health Working Group (WMHWG) has been meeting since August 2007. It provides a regular forum for service providers and women living with mental health issues to work together on matters impacting on women in order to provide improved outcomes for them, and to develop and maintain a full range of women friendly services.

The WMHWG's Terms of Reference are to:

- Provide a regular forum for ACT women living with mental health issues in which they can discuss issues relevant to them and develop strategic actions in response to those issues.
- Work with ACT Health in developing and maintaining a full range of women friendly services.
- Identify and document specific issues and stories for women with mental health issues in the ACT.
- Develop collaborative processes and strategies in the women's sector.
- Assist women living with mental health issues to voice their issues and facilitate their participation in decision-making on health policy.
- To ensure that women's concerns are raised in existing networks, organisations and current and future government processes.

In 2008, one of the key priorities of the WMHWG was to improve the treatment of women living with mental health issues in the legal system, and to remove the barriers they faced in seeking legal advice, representation, support and advocacy. While some literature exists, research on the needs of these women is limited.

To this day, the 1993 Human Rights and Equal Opportunity Commission's (HREOC) *Report of the National Inquiry into the Human rights of People with Mental Illness*⁴ (the 'Burdekin Report') remains one of the most extensive investigations into the systemic discrimination experienced by people with mental health issues. The report highlighted a range of legal and human rights issues relating to housing; healthcare and treatment; the criminal justice system; education and training; and employment. The Burdekin Report acknowledges that women bear a double disadvantage in accessing severely underfunded, inadequate services.

⁴ HREOC, *Report of the National Inquiry into the Human rights of People with Mental Illness* (1993)

Another extensive investigation on this topic was more recently conducted by The Law and Justice Foundation of NSW. The 2006 report *On the Edge of Justice*⁵ documents the particular legal needs of economically and socially disadvantaged people in NSW, particularly those with mental health issues. It was informed by two half-day roundtable discussions involving 16 stakeholder representatives, with a further 50 plus stakeholders interviewed (including academics; legal service providers; non-legal service providers; and government representatives). The report detailed difficulties experienced by people living with mental health issues in accessing legal services and support. It included the difficulties associated with poor financial circumstance, a perceived lack of credibility, cognitive and communication impairment and the nature of the mental illness itself.

The findings of this report, *Out of Reach*, suggest that much is still the same. In commissioning this research, WCHM and the WMHWG hope to encourage greater consideration, development and implementation of measures that will address these issues in the ACT.

⁵ M. Karras, E. McCarron, A. Gray and S. Ardasinski, "On the Edge of Justice: The Legal needs of people with a mental illness in NSW" (Law and Justice Foundation of New South Wales: NSW, 2006)

Methodology

The purpose of this report is to provide insight into the broad range of legal issues experienced by ACT women living with mental health issues and their difficulties in accessing legal services and information. Qualitative research methods were chosen in order to understand the nature and range of personal experiences and unmet need. In line with the broader strategic direction of WCHM research, significant emphasis has been placed on recording the personal stories and 'lived experience' of interview participants, so as to best represent their needs and experiences.

Methods

Interviews/consultation with women living with mental health issues

Participants responded voluntarily to an invitation to 'share their story' which was circulated amongst relevant service providers and networks across the ACT. Twelve semi-structured interviews were conducted with women experiencing mental health issues who self-identified as having experienced, or were currently experiencing, difficulties with legal services and/or the judicial system. The questions posed during the interview were flexible and open-ended to accommodate personal interests and experiences of the participants. Data relating to demographics; legal problems; housing situation; employment and income; education; dealings with the police; family and the mental health system were also collected.

Consultation with service providers

Service providers were selected based on their work relating to people with mental health issues and, more specifically, on their ability to provide informed comment and information relating to the barriers experienced by women living with mental health issues. Both legal and non-legal services providers were consulted, in addition to community-based organisations that provide support and/or advocacy to people experiencing mental health issues.

Ten face-to-face interviews were conducted. However, the focus of these interviews differed slightly from those with the women, in that they were asked to comment on and make suggestions for tackling the challenges raised in this report.

Ethical issues

The researcher adhered to ethical guidelines and standards documented by the WCHM and the WMHWG. These included proper briefing of participants on the purpose of the research prior to interview and debriefing at the conclusion of the interview. The emotional vulnerability of research participants was taken into consideration throughout the project, with particular attention paid to the protection of participant rights, and health and wellbeing.

Each participant met privately with the interviewer, who reiterated the purpose of the research project and answered any questions.. The interviewer clarified that the participant was free to stop the interview at anytime. They could choose not to answer questions and all information would remain anonymous, confidential and secure, until transcribed and erased. All participants agreed to have their interviews taped and consent forms were signed by both parties.

Findings

An analysis of the interviews highlighted two main themes in relation to the barriers experienced by women in accessing legal services— personal and ‘systemic’. A variety of sub-themes were identified under these themes:

Personal Barriers

- Communication skills
- Financial and educational circumstance
- Stigmatisation and discrimination
- Social isolation
- Stress
- Cognitive impairment
- Lack of awareness.

Barriers within the ‘system’ (‘systemic’)

- The mental healthcare system
- The police
- The legal system
- The role of legal service providers
- The role of non-legal service providers.

In line with the rest of the work undertaken by WCHM and WMHWG, these themes are discussed in the context of the social determinants model of health and wellbeing. Social determinants such as gender; socio-economic status; employment; educational achievement; access to transport; secure housing; caring responsibilities; and relationships all have the power to support or impede a woman’s ability to assert her legal rights. It is essential to consider these principles when assessing the personal and ‘systemic’ barriers as identified by research participants.

Communication Skills

Good communications skills—the ability to effectively express oneself and to comprehend information are essential when accessing legal services and receiving good quality, appropriate legal support.

Many of the women interviewed indicated that they lacked the capacity to communicate effectively with legal service providers. Some of the reasons cited were; the additional stress associated with the legal issue and the proceedings; effects of their medication; a lack of education; and/or an inability to access appropriate information.

Communication problems can also hinder a legal service provider in assisting their client effectively, if they do not understand what the client's problem is or what their instructions are.

Research suggests that women experience a gendered disadvantaged in relation to communicating within a legal setting. For example, recent changes in family law legislation require separating parents to negotiate joint access and shared parenting plans. All these arrangements are negotiated in a civil, polite manner through the compulsory mechanisms of mediation or conflict resolution⁶. Unfortunately, family and relationship breakdowns are not always amicable or civil; there can be great hurt and instability for all parties involved. Ex-partners may not easily and happily negotiate shared access of children and the separation of assets. Proponents of these changes argue that the non-legal, lawyer-free⁷ and informal nature of mediation and conflict resolution benefits women as it minimises financial costs and is conducted in a non-threatening, non-adversarial environment. However, other research suggests that this is not the case, for example:

- Mediation and conflict resolution operate under the shadow of the legal system. Knowledge of general legal principles and the ability to coherently order and present your case is a necessity.^{8,9} The exclusion of legal representatives⁹ compels the individual to fulfil this task, which many women find intimidating or difficult.
- Women are more likely to be emotionally expressive in a mediation setting. While mediation supports the inclusion of narratives, stories and emotions, individuals unable to present their argument in a coherent way will appear irrational and lacking credibility.¹⁰

⁶ M. Lawrie and B. Smyth, "Family Relationship Centres in Australia" in *Family Matters*, Vol. 64 (2004)

⁷ *Ibid*

⁸ R. Field and J. Crowe, "The construction of rationality in Australian Family Dispute Resolution: A Feminist Analysis" in *The Australian Feminist Law Journal*, Vol. 27 (2007)

⁹ D. Cooper and B. Mieke, "How can Family Lawyers Effectively Represent Their Clients in Mediation and Conciliation Processes?" in *Australian Journal of Family Law*, Vol. 21 (2007)

¹⁰ R. Field and J. Crowe (2007), *op cit*.

- Gender differences in negotiation process, style, language usage and argument structure^{11 12 13 14} disadvantage women in a pseudo-legalistic setting. Men tend to use impersonal, directional language that conforms to legalistic norms of rationality and logic. A man's bargaining position tends to "...have more to do with customary rules, rights and reason."¹⁵ In contrast, women often have difficulty asserting themselves. They use more qualifiers and flexible language and "bring to the bargaining table... notions of responsibility and care in the context of marriage."¹⁶ These gender differences in communication style may be a liability for women in formal negotiation settings.
- Mediation can disadvantage women in relationships where there are pre-existing power imbalances in favour of the man. Victims of (unreported) domestic violence, for example, "...will compromise to reach what they consider to be an unfair agreement on the basis that they can then 'finish their association' with the perpetrator."¹⁷

These issues were further substantiated through WCHM's consultation process. One woman suggested that because of her own poor communication skills and the failure of the system to adequately assist her, she was unable to defend herself properly in court and as a result lost custody of her children:

My words kept coming out all wrong. I felt scared and alone, so I just agreed with what ever the DOCS lawyer said and they took me kids.

Many of the service providers highlighted that communication difficulties were also barriers for them. Communication problems hinder their ability to gather relevant information from clients and subsequently are unable to assist them effectively. One consumer advocacy service identified that many clients were unable to understand the information given to them by legal professionals, and were often left unaware of their rights and pending legal proceedings:

Many lawyers lack the ability to translate information into simple, laymen's terms.

Many solicitors are not sensitive to the needs of the mentally ill and do not realize that these clients are already confused as a result of their mental illness. Their legal jargon then amplifies the problem and unfortunately many of them do not have the time or inclination to simplify it.

¹¹ A. Pines, H. Gat and Y. Tal, "Gender Differences in Content and Style of Argument Between Couples During Divorce Mediation", in *Conflict Resolution Quarterly*, Vol. 20, No. 1 (Fall, 2002)

¹² D. Tannen, "You Just Don't Understand" (Ballantine: NY, 1990)

¹³ R.T. Lakoff, "Talking Power: The Politics of Language in Our Lives: (Basic Books: NY, 1990)

¹⁴ R. Wodak (ed), "Gender and Discourse" (Sage: CA, 1997)

¹⁵ J.M. Gottman and R.W. Levenson, "Assessing the Role of Emotion in Marriage" in *Behavioural Assessment*, Vol. 8 (1986)

¹⁶ Ibid.

¹⁷ D. Bagshaw, D. Chung, M. Couch, S.G. Lilburn, B. Wadham, "Reshaping Responses to Domestic Violence: Executive Summary and Final Report" (Partnerships Against Domestic Violence and SA Dept. Human Services: Adelaide, 1999)

From broader consultations by WCHM, it is clear that women prefer services that are sensitive to their communication needs as women. For example, gender sensitive approaches that allow more time during appointments and an awareness of them as individuals with different circumstances. Women want to be treated as whole individuals, rather than just an illness, diagnosis or legal issue.

Having a mental illness requires similar needs to be addressed during the legal process. As highlighted in the NSW Law and Justice Foundation's report *On the Edge of Justice*,¹⁸ "they might need more time to communicate; breaks in proceedings in order to address anxiety and stress; and clarification of the process itself."

Time constraints in meeting with legal professionals were highlighted as a communication issue in this research. This is a particularly important point, as service providers who neglect to accommodate the additional support and time needed to assist women with a mental illness can complicate communication barriers:

Neither private or community based legal services are set up to work with clients that are not mainstream, and there are currently no provisions in place for clients with mental health issues.

Solicitors and lawyers, particularly in legal aid and community legal services are already stretched for time and resources.^{19 20 21} They are consequently often unaware that their client is experiencing mental health issues and/or other significant issues.

Other literature²² supports the findings of this report that communication difficulties can be a significant barrier in adequately accessing legal advice and representation for women with mental health issues. For women from culturally and linguistically diverse (CALD) backgrounds these difficulties are further compounded.²³ CALD women frequently experience additional difficulties in relation to accessing translating and interpreting services. Cultural heritage and beliefs often create difficulties in disclosing information to a third person, causing additional stress and fear of stigma²⁴.

¹⁸ M. Karras, E. McCarron, A. Gray and S. Ardasinski, "On the Edge of Justice: The Legal needs of people with a mental illness in NSW"

¹⁹ M. Karras, et al. (2006), op cit.

²⁰ Senate Legal and Constitutional References Committee, "Inquiry into Legal Aid and Access to Justice, final Report", (LSCRC: Canberra, 2004)

²¹ Council of Social Service of NSW (NCOSS), "Submission to the Review of NSW Community Legal Service Funding Program" (NCOSS: Sydney, 2004)

²² M. Karras, et al. (2006), op cit.

²³ R. Brewer, "Culturally and Linguistically Diverse Women in the Australian Capital Territory: Enablers and barriers to achieving social connectedness" (*Women Centre for Health Matters: Canberra, 2009*)

²⁴ M. Karras, et al. (2006), op cit.

Financial & Educational Circumstance

A woman's financial and educational circumstances have a significant impact upon her mental health and her ability to access and engage with legal services. Despite the fact that ACT women are considered affluent in comparison to the rest of the Australian population, there are a significant number who are marginalised and isolated from their community and its wider standard of living. This is at a great cost to their mental health and wellbeing, as poor mental health is significantly more common amongst the socially and economically disadvantaged.

The findings of the WCHM commissioned report *Social Determinants of Women's Health and Wellbeing in the Australian Capital Territory*, revealed an over-representation of women in the lower income quintile. They reported high or very high levels of psychological distress, and diagnosed mental and behavioural health conditions. In 2004, employment participation levels amongst people living with mental health issues were 28.2 per cent compared to 80.6 per cent of the Australian population. The unemployment rate of people with mental health issues was nearly four times that of the Australian population.²⁵

Ten out of the twelve research participants were unemployed, living on welfare and in government supported accommodation. Many of the women reported that financial difficulties prevented them accessing legal services. They were under the impression that if unable to access Legal Aid, the only other option was a private solicitor. This option was only viable for one of the participants. This participant unnecessarily spent two weeks in the Belconnen Remand Centre (BRC) because Legal Aid consistently did not attend her appointments, nor did they assist in having her moved to the Psychiatric Services Unit (PSU) while she waited for her court date. She explained that after this time, in which her mental health deteriorated further, her parents employed a private solicitor. She was then released from BRC and in time all charges against her were dropped:

Legal Aid didn't have the resources' to take my case on and so they just didn't show up to support me.....It was too hard for them.....God knows what would have happened to me if my parents hadn't have helped. I'd probably still be in lock up.

Service providers confirmed the difficulties for clients with limited finances:

Private solicitors are too expensive and unattainable for the majority of people, let alone women with mental health issues, many of whom wouldn't even be able to afford a bus fare to make the appointment, much less pay solicitors fees.

²⁵ ABS, *Disability, Ageing and Carers: Summary of Findings, 2004*

The majority of the women felt they were poorly educated and identified that this factor, combined with their mental illness, contributed to their feelings of social isolation and difficulties in communicating problems to the appropriate people. Both participants and service providers reported that poor education coupled with mental health issues could make it difficult to properly communicate legal issues to the appropriate people. The majority of service providers felt that a lack of education prevented many women from fully completing necessary paperwork and from understanding legal terminology. This contributed to greater fear and anxiety, which would often lead to women giving up on their legal action.

Stigmatisation & Discrimination

Throughout the consultation period it became increasingly apparent that stigmatisation and discrimination were very real issues for women living with mental health issues. Previous studies have examined the consequences of stigmatisation and discrimination for marginalised groups in our society. The Burdekin Report²⁶ highlights the prevalence of systemic discrimination experienced by people with mental health issues and raises concerns about their ability to effectively participate within the legal system. The Public Advisory Committee to the Legal Services Agency report²⁷ further supported these findings.

All the women interviewed as part of this study, identified the fear of stigma, being judged and perceived as having limited credibility, as major deterrents to accessing legal advice and representation. This caused women to either not disclose their mental health issue, or not seek legal assistance. Of the twelve women interviewed only eight of them sought assistance. Six of the eight women reported their complaints were not taken seriously. They felt that as soon as it was identified there were mental health issues involved, they were unfairly judged and considered less credible:

When it was mentioned to the lawyer and judge that there were mental health issues they seemed to stop treating me like a human being that can think for themselves. I became invisible and I felt like I didn't exist anymore.

I didn't feel safe enough to tell them that I had a mental illness.

Consultations with service providers indicated that for people with mental health issues and women in particular, discrimination and stigmatisation still exists. The consequences of this were increased social isolation; marginalisation; distrust; and an inability to access services. Several of the service providers revealed that staff in the sector often unconsciously considered people with mental health issues unreliable, and believed their complaints delusional representations of reality.

One service provider argued that for CALD women these issues were exacerbated as a direct result of cultural beliefs, isolation and differing views on mental health, which deterred disclosure and access to assistance outside of their cultural context.

²⁶ HREOC (1993), op cit.

²⁷ Public Advisory Committee to the Legal Services Agency, "Sharing ideas for overcoming barriers to access", Community Legal Service (2007)

Social Isolation

The very real social isolation experienced by women with mental health issues manifests itself in increased feelings of loneliness, stress and anxiety. They often have difficulty establishing and maintaining support networks and family relationships²⁸, are less likely to have stable partnerships than women without mental health issues,²⁹ and experience high rates of divorce³⁰.

Mothers living with mental health issues are overrepresented in child protective care proceedings³¹, and are likely to lose custody of their children when appropriate support networks are not in place.^{32 33 34} There is significant pressure for mothers under the watch of child protection services to function at a very high standard.^{35 36} And despite the fact there is no legal presumption that people without mental health issues are better parents than those with mental health issues³⁷, community myths and stereotypes (i.e. they're dangerous; unstable; incapable of work; parenting etc.), have made it necessary for women with mental health issues to prove themselves to be 'good mothers', not just 'good enough'.^{38 39} This is a difficult task when mental illness symptoms, medication side effects or the cognitive impairment associated with their mental illness prevents these women from engaging constructively and confidently within the broader community:

I've got a friend who lost custody of her child because she went to hospital... he [the son] went into foster care, he had a terrible time, he had two or three foster carers, he ended up in a youth hostel... he's back with her now because he is 18... He was about 16 or 15 at the time... maybe if she had made an advanced agreement things might've been

²⁸ L.J. Miller, "Sexuality, reproduction, and family planning in women with schizophrenia" in *Schizophrenia Bulletin*, Vol. 23 (1997)

²⁹ L.J. Miller and M. Finnerty, "Sexuality, pregnancy and childrearing among women with schizophrenia-spectrum disorders" in *Psychiatric Services*, Vol. 45 (1996)

³⁰ *Ibid*

³¹ G. Llewellyn, D. McConnell, L. Ferronato, "Prevalence and outcomes for parents with disabilities and their children in an Australian court sample" in *Child Abuse and Neglect*, Vol. 27 (2003)

³² B. Ackerson, "Coping with dual demands of severe mental illness and parenting: The parent's perspective" in *Families in Society*, Vol. 84 (2003) Reupert and Maybery 2007

³³ L. Howard, N. Shah, M. Salmon and L. Appleby, "Predictors of social service supervision of babies of mothers with mental illness after admission to a psychiatric mother and baby unit" in *Social Psychiatry and Psychiatric Epidemiology*, Vol. 38 (2003)

³⁴ A. Reupert and D. Maybery, "Families affected by parental mental illness: A multiperspective account of issues and interventions" *American Journal of Orthopsychiatry*, Vol. 77

³⁵ A. Diaz-Caneja and S. Johnson, "The views and experiences of severely mentally ill mothers – A qualitative study" in *Social Psychiatry and Psychiatric Epidemiology*, Vol. 39 (2004)

³⁶ D. McConnell and G. Llewellyn, "Stereotypes, parents with intellectual disability and child protection" in *Journal of Social Welfare and Family Law*, Vol. 24 (2002)

³⁷ J. Ryan, "Mental Health and Family Law – A Question of Degree", 6th Annual Family Law Intensive in Sydney on 11 February 2006

³⁸ D. Winnicott, "The maturational processes and the facilitating environment: Studies in the theory of emotional development" in *The International Psycho-Analytical Library*, Vol. 64 (1965)

³⁹ J. Nicholson, E.M. Sweeny and J.L. Geller, "Focus on women: Mothers with mental illness: I. The competing demands of parenting and living with mental illness" in *Psychiatric Services*, Vol. 49 (1998a)

different. The boy could've gone to the grandmother's. They wouldn't have just come along and said this, this boy's got nowhere to go and take him.

Among the women interviewed, social isolation was highlighted as a pertinent personal barrier in accessing legal support and information. It contributed to their overall lack of awareness of legal services within the ACT. Ten of the twelve women interviewed identified as feeling isolated and 'shut off' from society. They stated there were limited provisions available for successful integration into the wider community, and even fewer service providers that understood and accommodated their needs:

It is not easy to live in a society where you are perceived as different.

It would be easier to live with AIDS these days than with a mental illness, as there is more community acceptance.

These findings are consistent with anecdotal and statistical evidence that suggest social isolation and mental health issues often go hand in hand. Again, the Burdekin Report⁴⁰ was the first to highlight these risk factors. WCHM commissioned research also highlighted the linkages between social isolation; poor health and wellbeing; an inability to access appropriate health care; and other support services. These factors are exacerbated for women with mental health issues as a result of the vulnerability they feel, and the additional disadvantage and discrimination they are often subjected to.

⁴⁰ HREOC (1993), op cit.

Research suggests that the nature of the legal system acts as a major stressor for people with a mental health issue. This is particularly so for women who have experienced sexual abuse and domestic violence. The role that stress plays in preventing these people from effectively participating in legal processes was highlighted in all the literature. Women who already experience significant stress in their lives, may find that the stress involved in a legal process compounds their existing stressors:

- The stress associated with acts of violence and the requirement to face the perpetrator in court, can create insurmountable hurdles for these women in their bid to seek justice.⁴¹
- In a submission to the Productivity Commission's Review of the Disability Discrimination Act, the HREOC highlighted the risk of illness relapse and less favourable legal outcomes for people experiencing mental health issues as a result of lengthy legal proceedings.⁴²
- In a family law context, mothers with mental health issues often experience additional stress when the social supports available to them are intrusive⁴³—as is often the case with child protection services. The pressure to 'appear to be well' also had its impact on family law proceedings.

Consultations highlighted the consequences of stress associated with legal proceedings. All of the women interviewed indicated that the stress associated with living with mental health issues was severe enough, without the stress of going through legal proceedings. Ten of the twelve women interviewed indicated that the mere thought of their legal problems provoked anxiety, and one of the women felt that the process had made her unwell again:

Legal Aid wouldn't believe me. Talking to them made me anxious - I became unwell again.

Of the eight women who had tried to obtain legal assistance, only two of them proceeded past the initial consultation. The other women indicated that the process had been so stressful they gave up. The women who continued on with legal proceedings stated that their mental health had suffered as a result:

It was all too stressful – I just wanted it over. I had no one to represent me in court, so I had to do it myself. It was all too much so I let my husband have everything.

⁴¹ M. Karras, et al. (2006), op cit.

⁴² Productivity Commission, "Review of the Disability Discrimination Act 1992"

⁴³ J. Nicholson et al. (1998a), op cit.

Living with a mental illness is stressful enough – I didn't need any more stress by trying to sue the police for brutality. No one would have believed me anyway.

Consultations revealed that stress is both a barrier to initially seeking out legal advice and a deterrent to going through with legal proceedings. All the service providers emphasised the need for an integrated approach to include more advocacy and support services to help deal with additional stressors:

We aren't funded to provide courtroom representation which results in many of our clients having to defend themselves with no support and knowledge of legal proceedings. This only adds to their stress and is a direct result of a lack of available supports in this area.

Cognitive Impairment

Cognitive impairment refers to a limitation in a person's ability to think, perceive, reason or remember. Cognitive impairment is not necessarily a symptom of mental illness; however, some people with a mental illness, particularly those illnesses with psychotic features, may experience a degree of memory loss, and problems with concentrating or planning.⁴⁴ ⁴⁵ The medications used to treat some mental illness can also affect cognitive impairment. This can lead to problems with keeping appointments and understanding legal proceedings and documents.

Research suggests that cognitive impairment affects people's ability to access and/or benefit from support services, particularly those whose vulnerabilities also include mental health issues or substance abuse.⁴⁶ A result of such impairment is that many people, especially those with mental health issues, reject support services because they are unable to process what they are being asked and may have inaccurate ideas about the service. If there are additional factors such as substance abuse it creates an increased inability to regulate their own behaviour and effectively participate in service systems.⁴⁷ Cognitive impairment can also make it difficult for women who experience schizophrenia or psychotic disorders to acquire parenting skills.⁴⁸ ⁴⁹ ⁵⁰ ⁵¹

Throughout the interview process cognitive impairment was identified as a barrier for women to effectively engage and participate in the legal system. All of the women interviewed suggested that as a result of their mental health issue and medication, they experienced varying levels of cognitive impairment. One of the women interviewed described feeling 'not present' while in court because she was unwell at the time. The stress associated with going to court exacerbated her symptoms:

The medication makes me unmotivated and lazy.... I find it hard to concentrate..... When I was in court I couldn't get what was going on and they just took me kids and I still don't know why.

⁴⁴ R Pollard, "Poor Planning and Problem-Solving Skills Linked to Schizophrenia", Sydney Morning Herald, 18 February 2005

⁴⁵ Schizophrenia Fellowship of NSW Inc. <

<http://www.sfnsw.org.au/ArticleDocuments/226/Understanding%20Psychosis.pdf.aspx> > Accessed May 11, 2010).

⁴⁶ T. Backer, & E. Howard, "Cognitive Impairments and the Prevention of Homelessness: Research and practise review" in *Journal of Primary Prevention*, Vol. 28 (2007)

⁴⁷ A. Price, "The intersection of developmental disabilities, substance abuse and parenthood: Challenge and response", in *The Source*, Vol. 14, (2005).

⁴⁸ D. Fitzgerald, S. Lucas, A. Redoblado-Hodge, et al., "Cognitive functioning in young people with first episode psychosis: Relationship to diagnosis and clinical characteristics" in *Australian and New Zealand Journal of Psychiatry*, Vol. 38 (2004)

⁴⁹ M. Green, "What are the functional consequences of neurocognitive deficits in schizophrenia?" in *American Journal of Psychiatry*, Vol. 153 (1996)

⁵⁰ L.J. Miller and M. Finnerty (1996), op cit.

⁵¹ R. Heinrichs and K. Zakzanis, "Neurocognitive deficit in schizophrenia: A quantitative review of the evidence" in *Neuropsychology*, Vol. 12 (1998)

Similarly to Karras et al. (2006) and their research findings⁵², four out of the twelve women participants indicated that the symptoms of their mental illness and/or their medication caused them to disengage from life. Subsequently they lost the capacity to approach legal services in a logical manner. These women explained that they felt lazy and unmotivated, and that their ability to communicate with service providers to obtain legal representation was impaired.

Eight of the twelve women interviewed admitted to self-medicating with recreational drugs and alcohol, which they all said added to their feelings of cognitive disassociation and decreased motivation:

I smoke lots of drugs too which makes me unmotivated.... I want to get help because I know the drugs make me worse but it's just too hard.....I forgot what day I had to go to court so my ex got everything....who cares though.... It's just all too hard.

Several service providers suggested that cognitive impairment acted as a barrier to accessing legal information and understanding what was happening during legal proceedings. Many service providers indicated that there were strong links between mental health issues, cognitive impairment and a lack of education. This makes it difficult for some women to know what legal services are out there and how to access them. At a rudimentary level, many women had difficulties filling in legal forms and understanding the advice given to them. One advocacy and support worker highlighted how these difficulties were exacerbated when lawyers did not allow support workers to accompany clients into legal meetings:

Often I am not allowed to accompany my client into legal meetings and as a result I am unable to address many of their concerns and answer their questions, because they didn't understand the lawyer and I wasn't in attendance to accurately know or relay to them what went on.

Consultations with service providers found that cognitive impairment in these women made it difficult for them to understand what was going on during legal proceedings. They often found themselves in court by default, as a direct consequence of their mental health issue:

A lot of the legal issues many of these women face are linked to cognitive impairment as a result of their mental illness. Many are homeless, prostituting themselves to pay for their drugs and some sort of accommodation. They are manipulated and taken advantage of and wind up in court just for trying to survive. It's a vicious cycle that most have neither the capacity nor motivation to try and get out of.

⁵² M. Karras, et al. (2006), op cit.

Lack of Awareness

Consultations with women affected by mental health issues revealed an overwhelming lack of awareness about their legal rights and the availability of legal services within the ACT. Ten of the twelve women interviewed reported they were unaware of any community based legal services (apart from Legal Aid) that could offer them legal information and advice. Six of these women reported being unaware of their rights at a time when they required legal assistance. Subsequently most of the women interviewed had not directly accessed legal support but had indirectly found it through other channels, such as non legal service providers, women's support services, friends and case workers.

Several of the service providers interviewed were of the opinion that the ACT lacked the appropriate infrastructure and support services necessary to adequately inform and support the women throughout the legal process. The majority of service providers believed that many people with a mental health issue lacked the knowledge and awareness to seek out legal information and support. As a result their legal needs remained unmet:

People who are well don't want to have anything to do with that information [information on local services]... when they become unwell, they're no longer capable of grasping, [information] for the period that they are unwell.

...there's a huge, um, sort of gap in knowledge in the community and when I was at the mental health stall at the Multicultural Festival, no-one knew where to get any services.

They suggested that legal representatives exacerbated these problems as they were often unaware of the additional needs and disadvantages many women with mental health issues faced. Also, the majority of service providers revealed that of the few community based legal services within the ACT, none of them had the funding or resources to assist 'high needs' clients like people with mental health issues. This was also found in the Disability Council of NSW's report, *A Question of Justice*⁵³ and the Law and Justice Foundation's report, *On the Edge of Justice*⁵⁴.

⁵³ Disability Council of NSW, "A Question of Justice: Access and participation for people with disabilities in contact with the justice system" (2003) <<http://www.disabilitycouncil.nsw.gov.au/archive/03/justice.pdf>>

⁵⁴ M. Karras, et al. (2006), op cit.

The Mental Healthcare System

During this research a consistent theme emerged amongst participants in relation to their treatment by the ACT mental health system, and/or related services. Although not directly related to accessing legal services, their experiences in the mental health system have perhaps indirectly exacerbated their mental health symptoms, and their distrust of service providers and 'the systems'.

Interview results, for instance, revealed that all women participants had felt betrayed and/or let down by the mental health system. In particular by the Crisis Assessment and Treatment Team (CATT), mental health case workers and the Psychiatric Services Unit (PSU):

They [the mental health system] just have so much control... I don't know how that's happened.

Ten of the twelve women reported difficulty contacting the CATT team when 'in crisis', or had found them to be rude and unresponsive to their needs. Several of these women were told by CATT to call the police, evoking feelings of fear and apprehension:

They treat you like you have done something wrong in calling them.

They seem burnt out and under staffed.

Many of the women reported similar encounters within the PSU. Eight of the twelve women interviewed had spent time in PSU, the majority of those women reporting the environment to be unsupportive and mentally detrimental to their health and wellbeing:

I would rather be dead than spend time in PSU again.

Similar comments were made in relation to ACT mental health care workers. Several women reported that case workers were unsupportive and ill informed about the unique issues and barriers experienced by women living with mental health issues:

It's just a job and a pay check for most of them... they don't care about the individual.

I have always had great support from my GP and psychologist but I refuse to meet with my case worker who treats me like I'm a second class citizen.

I felt like I was being treated unfairly, which created more stress because I felt like I had no one to turn to....I didn't know what support was out there and who else could help.

Interview participants' consistently highlighted the fact that the ACT mental health system lacked the necessary resources for appropriate care and protection of women living with mental health issues. There also appeared to be an overall lack of synergy across other aspects of the ACT healthcare system. For example one woman interviewed described how child protection services had removed her children.. She had been offered no help, and because she had been so unwell at the time, was not aware that her children were going to be removed on a permanent basis until she appeared in court without legal representation. A lack of early intervention to support her health and functionality meant that she wound up in court ill informed, unrepresented and vulnerable.

The Police

Consultations identified that inadequate funding and resourcing of community mental health, non-government organisations, legal services and acute care facilities have created a situation where police are expected 'to act' and 'crisis manage'. Women living with mental health issues often find themselves arrested and left in a legal system that does not adequately support and assist them with their mental health crisis.

Ten of the twelve women interviewed reported having negative dealings with the police—nine of those were a result of their mental illness. On all of these occasions the women described themselves as being 'mentally distressed', and rather than CATT being called in, the police were called and they were subsequently locked up:

I was locked up and treated like an animal, not a person who was unwell due to my mental illness. I couldn't help it. I should have been taken straight to hospital, but instead I was thrown in a cell and left.

All of the women felt their treatment by the police was far from humane: that they were discriminated against and treated like criminals because of their mental illness:

They box and label you and assume you are on drugs rather than having a mental illness.

They next day, after I'd calmed down; I was released and dumped onto the streets. I was so fearful and still so unwell. I couldn't move for ages.... the police should have taken me to PSU... they should have been able to see I was having a psychotic episode and that I wasn't just a druggie, tripping on ICE.

"I had petrol all over my body when they picked me up. They threw me in a cell and I wasn't even allowed to wash the petrol off until I went to BRC (Belconnen Remand Centre).....the petrol burnt into my skin.

Many of the service providers interviewed agreed with these findings, reiterating the need for improved collaboration between the mental health services, the police and PSU:

Unfortunately a lot of the police seem to lack any insight into the issues that mental health consumers face. They are used as the gate keepers of mental illness, due to an inadequate mental healthcare system.

One service provider noted that women's shelters could be an appropriate alternative to leaving women in lock up for extended periods.

The Legal System

There is an overrepresentation of people living with mental health issues in the legal system. Consultations revealed that the structure of the legal system prevents women with mental health issues accessing legal assistance.

Feminist scholars argue that gender disadvantage in the legal system is perpetuated by the masculine, 'patriarchal' nature of the legal system. The legal system was founded by men, created originally for men, with values that are typically understood to be masculine characteristics of rationality, objectivity and logic.⁵⁵ The legal system favours professional discourse (i.e. legal and medical) as a means of communicating and reaching truth. For example, a 'battered' woman's experiences are often presented to the courts through the lens of psychiatry. Instead of a woman communicating her own experiences to the court, "...they are interpreted by medical professionals ('psychiatrised'), and relayed to the courts through their 'expert assessment' of her consistency with the 'syndrome' ('battered woman syndrome')."⁵⁶ In this situation, a woman's own voice and narrative is silenced.

WCHM consultations revealed stories about deficiencies in relation to court room setup. Lack of childcare facilities, lack of separate waiting rooms for victims of sexual assault and domestic violence, as well as limited interpreters for CALD women, created additional difficulty and stress for women attempting to engage the legal system.

In a family law context, domestic violence also complicates family law proceedings and creates additional difficulties for women living with mental health issues.⁵⁷ For example, the "friendly parent" provision in family law legislation requires "the willingness and ability of each child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent"⁵⁸. An adverse consequence of this provision has been the non-disclosure of domestic violence by women for fear of being judged an 'unfriendly parent'⁵⁹, or being exposed to a costs order⁶⁰ if the claims go unsubstantiated.⁶¹

⁵⁵ F. Olsen, "Feminism and Critical Legal Theory: An American Perspective" in *International Journal of the Sociology of Law*, Vol. 199 (1990)

⁵⁶ E. Sheehy, J. Stubbs and J. Tolmie, "Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations" in *Criminal Law Journal*, Vol. 16 (1992)

⁵⁷ Family Law Council, "Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues" (2009)

⁵⁸ Family Law Act, s60CC(3)(c)

⁵⁹ An 'unfriendly parent' is someone who demonstrates an unwillingness or inability to facilitate and encourage a close relationship between their child and the other parent.

⁶⁰ A costs order is when a Court determines that one party, in this case the party that is not compliant with child access orders, must pay all or part of the other party's costs of preparing and/or presenting their case.

⁶¹ Family Law Council (2009), op cit.

Women are often characterised by the media as selfish, manipulative, hostile or possessive mothers⁶². A woman's claims of domestic violence or concern for the safety of her children in child access proceedings are often met with suspicion or contempt—it is thought that women use domestic violence orders as weapons in custody and legal proceedings. Instead, the onus is often on the complainant to substantiate her allegations. She is guilty (of power-play) until proven innocent as opposed to the father—the subject of the allegations being innocent until proven guilty.

A New Zealand qualitative study investigated lawyer's attitudes towards women who pursue domestic violence orders.⁶³ Despite their expertise and experience, it was found they also harboured doubts about the legitimacy of women's claims and motives:

*I'm very in support of having that sort of legislation to protect women in those situations. However... I have seen it used as a weapon on many occasions in custody battles...they're used for other reasons. Either, simply to get at the other person. Ah, to make sure that the applicant has their own way...*⁶⁴

*Um, I mean there are genuine cases... but I would think that, I, um, ah, that they are abused, and are perceived to give the party an advantage in negotiations in property or in the custody and access dispute.*⁶⁵

Women research participants felt that lawyers didn't believe them and that they "...were suspicious and/or treated them (or women more generally) as vindictive. Some women reported that the counsel for the child was more concerned with the abusive non-custodial parents unrestricted access to the child than the best interests and safety of the child."⁶⁶

In Australia, preferences for joint access to children in family law legislation have led to pre-occupation on the part of lawyers and the general population to ensure that fathers have the right to child access. Pond and Morgan found that some lawyers were of the view that men who committed domestic violence against their partners were not necessarily bad parents. And when supervised access orders were imposed, it was considered an unfair and unnecessary infringement of their rights as fathers.⁶⁷

⁶² S. Duck "Protests at proposed family law changes", *Sunday Herald Sun*, 31 January 2010; "Father's lonely hunt for children", *The Australian*, 23 July 2001; "Court out: one man's battle for his kids", *The Australian*, 24 December 1999; C. Prior, "System cuts us out, say fathers", *The Australian*, 1 October 1998;

⁶³ R. Pond and M. Morgan, "Protection, Manipulation or Interference with Relationships? Discourse Analysis of New Zealand Lawyers' Talk about Supervised Access and Partner Violence" in *Journal of Community and Applied Social Psychology*, Vol. 18 (2008)

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ R. Pond and M. Morgan, "New Zealand women's experiences of lawyers in the context of domestic violence: Criticism and commendations" in *Women's Studies Journal*, Vol. 19 (2005)

⁶⁷ R. Pond and M. Morgan (2008), *op cit.*

*Suspicion is [now] repeatedly raised about women's integrity, the validity of their claims about domestic violence and their motivation for getting a protection order... [and] it is likely to make abused women apprehensive about using the legal system and to impact on the legal response offered to these women.*⁶⁸

Women involved in the Mental Health Tribunal system experience significant systemic marginalisation. For example the legal criterion relating to an individual's capacity to parent, or consent to psychiatric treatment, involves identity based standards. In other words, child protection authorities and the courts must consider the existence of a mental health issue. This carries the risk that preconceived, and perhaps ill-conceived, ideas of people with mental health issues will influence their decisions.

A current review of the ACT Mental Health (Treatment and Care) Act 1994 is considering introducing capacity-based legislation. This would provide a less discriminating framework for supporting people with a mental health issue in the legal system. Capacity-based legislation is in line with local, national and international human rights frameworks. The United Nations' Convention on the Rights of Persons with Disabilities states:

*State Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life,*⁶⁹

And;

*States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.*⁷⁰

The United Nations' Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care states:

*The patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure of appeal. If the patient does not secure such services, a counsel shall be made available with payment by the patient to the extent that the patient lacks sufficient means to pay.*⁷¹

These statements clearly articulate the need for Governments to provide legal representation to people with mental health issues and to ensure that these people are judged on their capacity.

⁶⁸ Ibid

⁶⁹ United Nations, "The Convention on the Rights of People with Disabilities", <<http://www.un.org/disabilities/convention/conventionfull.shtml>>

⁷⁰ Ibid

⁷¹ United Nation's, "Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care", <<http://www2.ohchr.org/english/law/principles.htm>>

The Role of Legal Service Providers

Women living with mental health issues and in low socio-economic positions often have limited choice in seeking legal assistance, and may rely on Legal Aid and other community based legal services. During consultations, both service providers and women participants indicated the availability of community based legal services was limited, under resourced and unable to handle 'high needs' clients. Four of the women interviewed revealed that they were either ineligible for legal aid, or that legal aid had not shown up in court to represent them. One service provider noted that the majority of lawyers, both private and community-based, were unaware of the difficulties unique to people with mental health issues

For women in the ACT a gender inequity exists in accessing legal aid funding. This is largely due to the fact that the legal aid system is strongly biased towards criminal law.⁷² ⁷³ ⁷⁴ Legal aid grants from the Legal Aid Commission (ACT) are disproportionately provided to men engaged in criminal proceedings.⁷⁵ In 2005–2006, the Women's Legal Centre ACT reported that relationship breakdown (including child contact and residence, property settlement and family violence) accounted for 79 per cent of all problem types identified in the provision of legal advice and information,⁷⁶ yet only approximately 30 per cent of all Legal Aid ACT grants were given to women for family law related matters.⁷⁷

Matters relating to mental health were the most common form of advice sought in 2008–2009, yet the number of aid grants provided for civil matters (including mental health) accounted for only 1.98 per cent of total grants. This limited provision of legal aid for civil proceedings disadvantages women who may need to make claims for personal injury crimes; compensation; sex discrimination; and restraining orders. Legal Aid ACT provides a free duty lawyer for all mental health matters, but there is no legal requirement for people experiencing mental health issues to be represented when appearing in front of the mental health tribunal. Therefore the vast majority of these people appear unrepresented.

⁷² Office of Legal Aid and Family Services, "Gender Bias in Litigation: Legal Aid" (Attorney- General's Department: Canberra, 1994)

⁷³ Australian Law Reform Commission (ALRC), "Equality Before the Law: Women's Equality", Report No. 68, Part II (1994)

⁷⁴ R. Graycar and J. Morgan, "Disabling citizenship: civil death for women in the 1990s" in *Adelaide Law Review*, Vol. 49 (1995)

⁷⁵ Legal aid grants to men accounted for 57.87 percent of all grants provided in 2008-09, 38.95 per cent of all grants were for men's criminal proceedings. See Legal Aid Commission (ACT) Annual Report 2008-2009 for more information.

⁷⁶ Women's Legal Centre (ACT and Region) Incorporated, Tenth Annual Report 2005-2006

⁷⁷ Legal aid grants to women for family law proceedings equated 29.87 per cent of all advice. See Legal Aid Commission (ACT) Annual Report 2008-2009 for more information.

The lack of legal support and representation for people with mental health issues was highlighted in the 2005 Mental Health Council of Australia's report, *Not for Service*.⁷⁸ This report provided a comprehensive account of the day-to-day realities of people engaged in the mental health system. It paid particular attention to the experience of people living with mental health issues, their families and their carers. After extensive public and private consultations and reviewing 351 submissions, the report recommended that all Australian jurisdictions provide legal representation for people with mental health issues engaged with justice and/or detention systems. However, the report did not recommend specialised legal representation for people with mental health issues at risk of "...involuntary restriction to their autonomous rights and freedoms"⁷⁹, such as psychiatric treatment orders. Valerie Williams in her article, *The Challenge for Australian Jurisdictions to Guarantee Free Qualified Representation Before Mental Health Tribunals and Boards of Review: Learning from the Tasmanian Experience*, asserted the following:

*Representation should be a basic right for any individual deprived of their liberty by the state. To some degree this right is enshrined within the Australian criminal justice system through legal aid schemes with the guarantee of free representation for an accused if there is a possibility that the person will be deprived of their liberty. This is not the case for Australians who are mentally ill... the legislatively enshrined right to representation when it is unenforceable and offers no guarantee of actual representation, is little more than an empty right and furtherance of human rights abuses.*⁸⁰

Williams argues that representation will ensure the patient's views are heard, and the intimidating nature of tribunal process itself will also be somewhat mitigated. Also, "...having representation [will] enable the patient to be more informed; to have someone on their side; and to feel empowered within the process."⁸¹

As a mental health patient you don't get to choose what you want to do [in relation to health care].

Recently in Tasmania, legal representation and advocacy services have been implemented and, in a short time, alleviated these deficiencies. One of these programs is the Mental Health Tribunal Representation Scheme (MHTRS). The MHTRS costs \$50,000 per annum,⁸² and aims to provide patients with competent, free representation before the Mental Health Tribunal. The program reflects a therapeutic jurisprudential⁸³ approach to administrative law.⁸⁴

⁷⁸ Mental Health Council of Australia, "Not for Service: Experiences of Injustice and Despair in Mental Health Care in Australia" (2005)

⁷⁹ Mental Health Council of Australia (2005), op cit.

⁸⁰ V. Williams, "The Challenge for Australian Jurisdictions to Guarantee Free Qualified Representation before Mental Health Tribunals and Boards of Review: Learning from the Tasmanian Experience" in *Psychiatry, Psychology and Law*, Vol. 16, No. 1 (March 2009)

⁸¹ Ibid

⁸² D. Rigby, "Tasmanian Health Representation Project – A Practical Example of Therapeutic Jurisprudence", <http://www.ajia.org.au/TherapJurisp06/Papers/Rigby.pdf>, (2006)

⁸³ Therapeutic jurisprudence considers how legal processes and outcomes impact on the whole person. A person's wellbeing becomes a mainstream consideration for the legal system.

Representatives commit to eight hours of compulsory specialist training in mental health issues; mental health law; mental illness; occupational health and safety; therapeutic jurisprudence; and working with mentally ill persons to achieve better outcomes for their clients. Trained participants go on to represent clients, building experience in mental health representation and advocacy. Participants are reimbursed for their attendance and law students in the program receive study course credits.⁸⁵ This kind of representation program is sensitive to the needs of clients with mental health issues. It also understands that these clients generally require longer appointment times to compensate for cognitive impairment and communication difficulties associated with their mental health issue.

A number of ACT service provider participants and ACT mental health peak organisations felt that a specialist mental health legal service that dealt with all areas of law would help address some of these barriers. Ideally, such a service would employ solicitors with the communication skills necessary to work with people who have a mental illness. A possible model for this is the Mental Health Legal Centre in Victoria. The Centre provides legal advice and representation as well as a referral service, legal education and telephone advice. It acts on issues relating to mental health, as well as criminal (fitness to plead), family law (child protection in particular, but also resident and contact order arrangements) and debt issues.

However, in the ACT there are already a variety of community legal services that cater for the vast majority of legal issues that women living with mental health issues may encounter (i.e. Legal Aid for criminal law representation; family law from the Women's Legal Centre; the Tenants Union for legal issues associated with housing; debt and income support through Welfare Rights etc.)⁸⁶ The new Homelessness Legal Service has the capacity to provide support to homeless women at outreach locations and make appropriate connections with other services providers. While these existing legal services may be limited by their jurisdictional requirements, the practiced advice they give in their areas of expertise would be hard to replicate in another specialist service, and could duplicate what is already there.

Legal service providers expressed concern that the establishment of a new mental health legal service would result in the diminishment of existing legal services. They were also concerned that the fear of further stigmatisation as a result of having accessed a 'mental health' legal service might be a deterrent to women with mental health issues. They felt that those women that do experience this fear will still access generalist, non-'mental health' legal services, who at this stage do not have the capacity or resources to assist people living with mental health issues. It is for these reasons that the existing community legal service providers who were consulted supported an increased focus on education and awareness training to help them work

⁸⁴ D. Rigby (2006), op cit.

⁸⁵ V. Williams (2009), op cit.

⁸⁶ Legal services providers in the ACT: the Legal Aid Commission ACT, the Women's Legal Centre, the Aboriginal Legal Service NSW/ACT, ADACAS, Welfare Rights and Legal Centre, Consumer Law Centre, the Youth Law Centre ACT, Tenants Union, the Disability Discrimination Legal Service and the Homeless Persons' Legal Service.

with women living with mental health issues. They felt this would support linkages between existing community-based legal, advocacy and other support services, so that women living with mental health issues are supported in navigating the service system. It would also ensure that those women who continued to access generalist legal service providers would get the gender and mental health sensitive services they need, irrespective of which service they choose to access.

The Role of non-Legal Service Providers

Research suggests that many non-legal service providers have inadvertently become a 'one stop shop', catering for a variety of issues experienced by women with mental health issues. These issues include housing and financial assistance; domestic violence; parenting and custody; and substance abuse.

In line with this research, nine of the twelve women interviewed indicated that they had contacted non-legal service providers⁸⁷ such as key workers; mental health community workers; social workers; and specific women's services for legal information. Interview participants reported that they trusted and were accepted by the service providers, and consequently there was little fear of stigma and discrimination. Many of the women interviewed stated that because a lot of these service providers (in particular women's services) had prior knowledge of their personal history, they felt confident that they would implement a more holistic and understanding approach.

I needed someone who would go in and bat for me. Someone that understands me and my mental illness.

Non-legal service providers confirmed this phenomenon. However, they acknowledged they were unable to offer much legal advice. Instead they assisted the women to identify potential legal issues and put them in contact with appropriate legal and advocacy services. The majority of service providers were only able to offer a referral phone number due to a lack of time and resources. It is evident that these women need more assistance, access to information and advocacy support to overcome personal or systemic barriers to their legal rights:

Support agencies need to have a better knowledge base and understanding of consumer's legal rights to be able to adequately advise and support women.

Of the women whom had contacted non-legal channels, half of them reported being referred on to an appropriate service that could assist them. The remaining percentage indicated that the legal process, and the paper work involved was too hard and stressful. Consequently their mental health deteriorated and they gave up.

It is important to note that of the twelve women interviewed, four did not even attempt to seek legal advice and/or representation, as they were unaware of existing services. They were intimidated by just the thought of seeking assistance, and feared being judged and 'not believed':

⁸⁷ S. Clarke and S. Forell, "Pathways to Justice: The role of non-legal services", Justice Issues Paper 1 (2007)

I needed an advocate – someone to fight for me because I was too unwell, anxious and overwhelmed to speak. I became unwell again. I needed someone that would believe in me.

What I needed was an advocate with some legal training, not somebody who was basically paid to sit there and drink my coffee and organise maybe a trip to get my pension doled out, to pay the phone and that sort of thing. I had very real needs and they didn't listen.

These findings highlight the important role that non legal service providers play in referring, informing, advocating and supporting women living with mental health issues. The importance of having a strong advocacy and information system for these women cannot be underestimated.

Conclusion

The primary aim of this report was to investigate the barriers faced by women in the ACT living with mental health issues in accessing legal services, and how these barriers may prevent good legal outcomes.

There is a clear correlation between mental illness, gender and poor legal outcomes. The extent of disadvantage experienced by women with mental health issues goes beyond those immediately associated with having a mental illness (i.e. the symptoms). Women with mental health issues experience difficulties, discrimination and marginalisation as a result of their gender; their illness; socio-economic disadvantage; and social isolation amongst other things—their comments attest to this.

As mentioned previously, there are a range of legal services in the ACT that cater for the vast majority of matters in which women living with mental health issues require support.⁸⁸ The creation of a new Mental Health Legal Centre to address the unmet legal needs of women living with mental health issues runs the risk of creating yet another 'silo' that will not be able to cover the wide range of legal issues experienced by women (i.e. domestic violence, family law matters, housing issues including problems relating to DHCS, and Centrelink).

Therefore this report does not advocate for the creation of a new Mental Health Legal Centre, but rather recommends better support for and resourcing of existing community based legal, advocacy and other support services, and in particular, education and training for organisations and service providers that are likely to work with women living with mental health issues.

This will ensure that women do not have to navigate through the system alone. They will be better supported and referred to the appropriate service provider no matter whose door they knock on. This approach - the gender sensitive approach - is likely to produce the best outcomes for most women within the ACT.

⁸⁸ i.e. the Legal Aid Commission ACT, the Women's Legal Centre, the Aboriginal Legal Service NSW/ACT, ADACAS, Welfare Rights and Legal Centre, Consumer Law Centre, the Youth Law Centre ACT, Tenants Union, the Disability Discrimination Legal Service and the Homeless Persons' Legal Service.

References

- AFFIRM, "Women, Kids and Australia's Mental Health Crisis" (October 2005)
<<http://www.affirm.org.au/pages/images/05Release2410.pdf>> Accessed 17 March 2010.
- ABS, "Disability, Ageing and Carers: Summary of Findings" (2004)
- Ackerson, B., "Coping with dual demands of severe mental illness and parenting: The parent's perspective" in *Families in Society*, Vol. 84 (2003) Reupert and Maybery 2007
- Australian Institute of Family Studies, "Evaluation of the 2006 family law reforms" (AIFS: Canberra, 2009)
- Backer, T. & Howard, E., "Cognitive Impairments and the Prevention of Homelessness: Research and practise review" in *Journal of Primary Prevention*, Vol. 28 (2007)
- Bagshaw, D., Chung, D., Couch, M., Lilburn, S.G., Wadham, B., "Reshaping Responses to Domestic Violence: Executive Summary and Final Report" (Partnerships Against Domestic Violence and SA Dept. Human Services: Adelaide, 1999)
- Brewer, R., "Culturally and Linguistically Diverse Women in the Australian Capital Territory: Enablers and barriers to achieving social connectedness" (*Women Centre for Health Matters: Canberra, 2009*)
- Clarke, S. & Forell, S., "Pathways to Justice: The role of non-legal services", Justice Issues Paper 1 (2007)
- Cooper, D. and Mieke, B., "How can Family Lawyers Effectively Represent Their Clients in Mediation and Conciliation Processes?" in *Australian Journal of Family Law*, Vol. 21 (2007)
- Council of Social Service of NSW (NCOSS), "Submission to the Review of NSW Community Legal Service Funding Program" (NCOSS: Sydney, 2004) p6
- Dawson, J., "The changing legal status of mentally disabled people" in *Journal of Law and Medicine*, Vol. 2 (1994)
- Australian Law Reform Commission (ALRC), "Equality Before the Law: Women's Equality", Report No. 68, Part II (1994)
- Diaz-Caneja, A. and Johnson, S. "The views and experiences of severely mentally ill mothers – A qualitative study" in *Social Psychiatry and Psychiatric Epidemiology*, Vol. 39 (2004)
- Disability Council of NSW, "A Question of Justice: Access and participation for people with disabilities in contact with the justice system" (2003)
<<http://www.disabilitycouncil.nsw.gov.au/archive/03/justice.pdf>>
- Family Law Act, s60CC(3)(c)
- Family Law Council, "Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues" (2009)
- Field, R. and Crowe, J. "The construction of rationality in Australian Family Dispute Resolution: A Feminist Analysis" in *The Australian Feminist Law Journal*, Vol. 27 (2007)
- Fitzgerald, D., Lucas, S., Redoblado-Hodge, A., et al., "Cognitive functioning in young people with first episode psychosis: Relationship to diagnosis and clinical characteristics" in *Australian and New Zealand Journal of Psychiatry*, Vol. 38 (2004)
- Gottman J.M. and Levenson, R.W., "Assessing the Role of Emotion in Marriage" in *Behavioural Assessment*, Vol. 8 (1986)

- Graycar, R., "Equality Begins at Home" in *Dissenting Opinions: Feminist Explorations in Law and Society*, R. Graycar (ed.) (Allen & Unwin, 1990)
- Graycar R. and Morgan, J., "Disabling citizenship: civil death for women in the 1990s" in *Adelaide Law Review*, Vol. 49 (1995)
- Green, M., "What are the functional consequences of neurocognitive deficits in schizophrenia?" in *American Journal of Psychiatry*, Vol. 153 (1996)
- Heinrichs, R. and Zakzanis, K., "Neurocognitive deficit in schizophrenia: A quantitative review of the evidence" in *Neuropsychology*, Vol. 12 (1998)
- Duck, S. "Protests at proposed family law changes", *Sunday Herald Sun*, 31 January 2010
- Howard, L., Shah, N., M. Salmon and L. Appleby, "Predictors of social service supervision of babies of mothers with mental illness after admission to a psychiatric mother and baby unit" in *Social Psychiatry and Psychiatric Epidemiology*, Vol. 38 (2003)
- Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into the Human rights of People with Mental Illness* (1993)
- Karras, M., McCarron, E., Gray A. and Ardasinski, S., "On the Edge of Justice: The Legal needs of people with a mental illness in NSW" (Law and Justice Foundation of New South Wales: NSW, 2006)
- Lakoff, R.T., "Talking Power: The Politics of Language in Our Lives: (Basic Books: NY, 1990)
- Lawrie M. and Smyth, B., "Family Relationship Centres in Australia" in *Family Matters*, Vol. 64 (2004)
- Llewellyn, G., McConnell, D., Ferronato, L., "Prevalence and outcomes for parents with disabilities and their children in an Australian court sample" in *Child Abuse and Neglect*, Vol. 27 (2003)
- McConnell D. and Llewellyn, G., "Stereotypes, parents with intellectual disability and child protection" in *Journal of Social Welfare and Family Law*, Vol. 24 (2002)
- Melville, A. and Hunter, R., "As Everybody Knows: Countering myths of gender bias in family law" in *Griffith Law Review*, Vol. 1, No. 1 (2001)
- Mental Health Council of Australia, "Not for Service: Experiences of Injustice and Despair in Mental Health Care in Australia" (2005)Ibid
- Miller, L.J., "Sexuality, reproduction, and family planning in women with schizophrenia" in *Schizophrenia Bulletin*, Vol. 23 (1997)
- Nicholson, J., Sweeny E.M. and Geller, J.L., "Focus on women: Mothers with mental illness: The competing demands of parenting and living with mental illness" in *Psychiatric Services*, Vol. 49 (1998a)
- Nicholson, J., Sweeney E. and Geller, J., "Mothers with mental illness: 2. The competing demands of parenting and living with a mental illness" in *Psychiatric Services*, Vol. 49 (1998)
- Office of Legal Aid and Family Services, "Gender Bias in Litigation: Legal Aid" (Attorney-General's Department: Canberra, 1994)
- Olsen, F., "Feminism and Critical Legal Theory: An American Perspective" in *International Journal of the Sociology of Law*, Vol. 199 (1990) p199
- Pines, A., Gat, H. and Tal, Y., "Gender Differences in Content and Style of Argument Between Couples During Divorce Mediation", in

Conflict Resolution Quarterly, Vol. 20, No. 1 (Fall, 2002)

Price, A., "The intersection of developmental disabilities, substance abuse and parenthood: Challenge and response", in *The Source*, Vol. 14, (2005).

Pond, R. and Morgan, M., "New Zealand women's experiences of lawyers in the context of domestic violence: Criticism and commendations" in *Women's Studies Journal*, Vol. 19 (2005)

Pollard, R., "Poor Planning and Problem-Solving Skills Linked to Schizophrenia", Sydney Morning Herald, 18 February 2005

Pond, R. and Morgan, M., "Protection, Manipulation or Interference with Relationships? Discourse Analysis of New Zealand Lawyers' Talk about Supervised Access and Partner Violence" in *Journal of Community and Applied Social Psychology*, Vol. 18 (2008)

Public Advisory Committee to the Legal Services Agency, "Sharing ideas for overcoming barriers to access", Community Legal Service (2007)

Productivity Commission, "Review of the Disability Discrimination Act 1992",

Reupert, A. and Maybery, D., "Families affected by parental mental illness: A multiperspective account of issues and interventions" *American Journal of Orthopsychiatry*, Vol. 77

Rigby, D., "Tasmanian Health Representation Project – A Practical Example of Therapeutic Jurisprudence", <http://www.ajja.org.au/TherapJurisp06/Papers/Rigby.pdf>

Ryan, J., "Mental Health and Family Law – A Question of Degree", 6th Annual Family Law Intensive in Sydney on 11 February 2006

Schizophrenia Fellowship of NSW Inc. <<http://www.sfnsw.org.au/ArticleDocuments/226/Understanding%20Psychosis.pdf.aspx>> Accessed May 11, 2010).

Senate Legal and Constitutional References Committee, "Inquiry into Legal Aid and Access to Justice, final Report", (LSCRC: Canberra, 2004)

Sheehan, G. and Smyth, B., "Spousal violence and post-separation financial outcomes" in *Australian Journal of Family Law*, Vol. 102 (2000)

Sheehy, E., Stubbs, J. and Tolmie, J., "Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations" in *Criminal Law Journal*, Vol. 16 (1992)

Tannen, D., "You Just Don't Understand" (Ballantine: NY, 1990)

The Australian, "Father's lonely hunt for children", 23 July 2001

The Australian, "Court out: one man's battle for his kids", 24 December 1999

The Australian, C. Prior, "System cuts us out, say fathers", 1 October 1998

United Nation's, "Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care", <<http://www2.ohchr.org/english/law/principles.htm>>

United Nations, "The Convention on the Rights of People with Disabilities", <<http://www.un.org/disabilities/convention/conventionfull.shtml>>

Wang, A. and Goldschmidt, V., "Interviews with psychiatric inpatients about professional intervention with regard to their children" in *Acta Psychiatrica Scandinavica*, Vol. 93 (1996)

Williams, V., "The Challenge for Australian Jurisdictions to Guarantee Free Qualified Representation before Mental Health Tribunals and Boards of Review: Learning from the Tasmanian Experience" in *Psychiatry, Psychology and Law*, Vol. 16, No. 1 (March 2009)

Winnicott, D., "The maturational processes and the facilitating environment: Studies in the theory of emotional development" in *The International Psycho-Analytical Library*, Vol. 64 (1965)

Wodak, R. (ed), "Gender and Discourse" (Sage: CA, 1997)