Legal Advocacy for People with an Intellectual Disability/Mental Illness

... and a Proposition

Why a Lawyer?
AGENDA

• MHLC

• Law 101

• Fields of law

• Why a lawyer?

• Impediments to legal representation for persons with a disability
**Please note: Nothing in this presentation constitutes Legal advice. It is an information lecture only …**
MHLC Services

We are a Community Legal Centre

OUR MANDATE

- Involuntary patients rights
- Criminal – summary matters (Magistrates Court including START Court), traffic
- Guardianship & Administration
- Criminal Injuries Compensation
- Discrimination
- Family law (child custody) – not at present because no resources
- Civil matters
- Attend consumers: office, hostel, hospital, prison, by video

• **Education & Law Reform**
MHLC Services

Some people with a mental illness

Community

MHLC

Free holistic legal service
Human rights
Information/referral
Law reform
Mental Health Law Education

Connection
Social inclusion
Acceptance
Reduce stigma
Re-engagement with family and community
Disclaimers

Just in case you missed the small print earlier …

Nothing in this presentation should be taken as legal advice.
From necessity, there are generalisations.
It is an information lecture only…
Conventions (Treaties): Constitution, Law, Regulation, Rules: Policies & Operational Directives

LAW 101:
Conventions, Constitution, Statute and common law, regulations, rules, policies

What must I do? ?
What should I do? ?
How should I protect myself?
ASK WHERE? !
Fields of Law

Common law (judge made)
Statute (parliament made)
What trumps what?

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Criminal
Civil
Administrative
(Equality)
What are burdens of proof?
Why a LAWYER?

Generally
• Background
• Nature of proceedings
• Consequences that might flow
• Vulnerability

For
• Seriousness
• Power imbalance
• Complexity in statutory interpretation
• Need for procedural fairness

Against
• No legal issue
• Fees
• Cheaper
• Quicker
Early Legal Triage

- So everyone knows their rights → minimise mistakes
- Early detection invalid exercise of power
- Early well informed conciliation and mediation
- Good documentation
Legal Support

- Articulate wishes in legal context
- Facilitate dignity and respect for client
Procedural Fairness

Preserving fairness is essential.

Procedural fairness...is a rubbery creature shaped by the facts and circumstances of each case...”
Statutory Interpretation is core business of lawyers
Tailoring
In context of United States welfare litigation,
The Court by declaring an oral hearing, even without legal representation, is enough to make the ... process minimally fair, [and] the Court denies how power differences distort both the fairness and reliability of testimonial rituals.”

The power to tailor [proceedings] must shift to those that tailoring seeks to help. Those who have been diagnosed as disabled, must assume the power to describe their own circumstances, discover their own capacities and define their own needs.”
Common Good: CLC practice

By mediating between broad principles and specific situations – ratcheting back and forth to reach a reflective equilibrium between justice, fairness, equality, allocative efficiency, and the particular conflict at hand – ...[they] think not only about the result in a particular case, but also about the public trail they leave behind for resolution of future situations. When [they] ratchet back and forth between broad principles and specific situations, they necessarily have one eye on the common good and the interest of society that transcend a particular situation.
Law and Policy Reform
Specialist lawyers working in field understand how the law actually works at the coal face and can make effective submissions on behalf of their client base.
MH Act 1996 and 2014 – right to counsel for MHRB

MH Act 2014 – right to lawyer generally

CLMIA Act – no express right to lawyer > a problem > discussion paper.

Legal Profession Act 2008
Legal Profession Conduct Rules 2010 (WA)

Specialist legal help for carers/guardians?
Guardian
• Execute documents
• Obtain warrant to enter
• next friend (commence conduct settle litigation—*not estate*)
• Guardian ad litem (defend or settle legal proceedings—*not estate*)

Administrator
• Advocate in relation to estate

What is missing?
Who deals with criminal charges?

*Criminal Law (Mentally Impaired Accused) Act 1996 (WA)*
Under what authority do we detain/secure people civilly?

Mental Health Act 1996 and 2014 (WA)
Criminal Law (Mentally Impaired Accused) Act 1996 (WA)

Common law: Courts/ Tribunals interpreting legislation > EG Duty of care

Austlii > http://www.austlii.edu.au/

Rights
and/or
Supported Decision Making?

See our website for AGM powerpoint >

Assoc. Professor and Associate Dean of UWA Law School, Prof Meredith Blake
Thankyou

QUESTIONS?