

Productivity Commission

The Social and Economic Benefits of Improving Mental Health

Northern Community Legal Centre - Submission

We thank the Productivity Commission for the opportunity to contribute to the enquiry into *The Social and Economic Benefits of Improving Mental Health*. Northern Community Legal Centre (NCLC) is funded to provide legal services under the National Partnership Agreement (NPA), Attorney Generals Department. We are not funded to give mental health or psychosocial support; however, we focus our limited resources on the most vulnerable in our community, which includes people with mental health issues. Many of the clients we assist across a range of legal areas have a mental health illness as a backdrop to their legal problems.

About Northern Community Legal Centre

Northern Community Legal Centre's purpose is to ensure equal access to justice for all in Melbourne's North West and we do this by the provision of legal services, community legal education and law reform to meet the needs of the most vulnerable and disadvantaged people in Melbourne's North West.

Northern Community Legal Centre (NCLC) operates in one of the fastest growing and disadvantaged areas of Melbourne, and has a significant catchment including the Hume City Council, Moreland City Council and Mitchell Shire Council. NCLC operates from a central office located in Broadmeadows, with outreach services to other service areas, including Broadmeadows, Brunswick, Coburg, Craigieburn, Dallas, Fawkner, Glenroy, Sunbury and Wallan

We have prioritised responding to the legal needs of people with Mental Health issues and have aligned our services to ensure greater accessibility. We have successfully expanded our targeting of people with mental health issues.¹ We have worked with Mind Australia to extend our work into Moreland with increasing referrals from their residential services. These clients frequently have multiple legal issues that have impeded their progress. The untangling of all the legal issues takes time and trust but has significant impact. In addition, we have assisted many people suffering mental illness to have their fines revoked. We have partnered with other services who also provide services for people with mental health issues including; Northern Mental Health, Headspace Craigieburn and Merri Health in Coburg. We collocate with our partners to provide wrap around services. We also prioritise services to newly arrived and refugee peoples, young people and victims/survivors of family violence. These cohorts also present with high levels of mental health issues. Many asylum seekers and refugees are 'traumatised due to their significant exposure to potentially traumatic incidents, including gross human rights violations, persecution, conflict, forced displacement and family separation, and consequently suffer from mental health conditions.'²

¹ In the last financial year 291 of our clients had a disability/and or mental illness, which is 44% more than the previous year.

² *The Justice Project Final Report*, Law Council of Victoria, (2018), 34.

We know that approximately a third of our family violence clients present with mental health issues such as PTSD, depression and anxiety.³ However, because of the limitations the national data collection system⁴ that we are required to use, there is limited capacity to accurately cross tabulate for these indicators. There is an established understanding that victims of family violence will suffer from mental illness because of the family violence. A submission to the Royal Commission into family violence noted

the most profound and long-lasting effects of FV are those related to mental ill health. Chronic stress such as that seen in FV leads to neuro-biological impacts which in turn produce mental illness and physical illness.⁵

Response to the Terms of Reference

Within our expertise, we seek to respond to;

3. *Contributing components to improving mental health and wellbeing* regarding the topic of Justice and the Justice system

4. *Framework to enhance mental health and improve participation and workforce contribution, and the topic of care and a fully integrated system and funding arrangements.*

Justice and the Justice system

With respect, we see the understanding of Justice and the Justice system as outlined in the issues paper as far too narrow. It is limited to only seeking understanding of criminal and child protection issues.

We know that people with mental health illness have broader legal needs than those in relation to criminal law. It has been noted that if these broader legal needs are left unmet, the impact on the person's mental health and recovery are severely impacted. Oftentimes this creates further vulnerabilities by accelerating their pathways into the criminal justice system.

*On the Edge of Justice: The Legal Needs of People with a Mental Illness in NSW*⁶ examines the legal needs more broadly of people with mental health issues. It found a 'considerable number of Australians experience mental illness, and this is often associated with other social and economic disadvantage.'⁷ Stakeholders and participants indicated that 'while people with a mental illness experience a number of legal issues with potentially serious personal and financial consequences, they can also face many barriers in having these legal issues addressed.'⁸ The legal issues identified were:

- legal issues relating to mental illness specifically, such as those falling under the *Mental Health Act 1990* (NSW) and adult guardianship issues
- discrimination in relation to employment, education and insurance

³ We saw 800 victims/survivors of family violence in the last year.

⁴ We use the Community Legal Assistance Service System (CLASS) to triage clients and gather information.

⁵ *Victorian Branch of the Royal Australian and New Zealand College of Psychiatrists*, (2015), 38.

⁶ Maria Karras, Emily McCarron, Abigail Gray & Sam Ardasinski, (2006).

⁷ Ibid

⁸ Ibid

- housing issues, including problems relating to Department of Housing, private rental and boarding house accommodation
- social security issues, including eligibility, breaching, social security debt and prosecution for fraud
- consumer issues, such as credit card debt and banking issues, mobile phone and other contractual debt
- domestic violence and victim of crime issues
- family law and care and protection issues.

The report into the legal needs of people with a mental illness highlights the limitation on the focus of criminal justice equated to justice. It is supported by the *Access to Justice Review*, which details different communities who have trouble when accessing justice. For example

Traditionally, and understandably, the highest priority in allocating legal assistance resources has usually been given to people facing criminal charges, in light of the prospect of deprivation of liberty or other serious penalties. Civil justice is treated as ‘the poor cousin’ in the legal assistance family. Increasingly though, unresolved civil legal problems, such as those related to a community member’s housing, mental health, employment or family, are recognised as having far reaching consequences for both the individuals involved and the state. For individuals, unresolved legal problems can lead to diminishing health and restrict social and economic participation.⁹

Case Study – Civil

We saw Besan at a collocation site after he was referred from one of the community mental health practitioners. The community mental health practitioners attended all the appointments with Besan and was able to assist conveying more sensitive issues with Besan’s consent. The practitioner provided a background report regarding the childhood sexual abuse suffered by Besan, which ensured that he did not have to recount this traumatic experience to the lawyer. We are now assisting him with numerous legal issues, including a \$4,000 debt with a phone company, which we have had waived; a \$27,000 debt with a finance company, which we are working towards getting waived; and a Victims of Crime Assistance Application which could see Besan receive up to \$10,000 as well as ongoing counselling and other expenses to assist his recovery.

The community mental health practitioner has assisted the client with follow up work for his legal matters and has written letters of support which have greatly assisted. This is an example of working in a truly integrated practice.

Due to no direct health justice funding we are running limited outreaches and limited involvement with the major mental health organisations in our catchment area. For example, our Mind Australia outreach is once a month. With more resources, we know that we would be able to have a dramatic impact on a larger amount of people with mental health issues, as demonstrated in the above case study. We also know that many of these clients will not seek legal assistance unless it is provided onsite.

⁹ *Access to Justice Review*, Department of Justice and Regulation (2016).

Another area of significant impact on people with mental health illness is fines. We know that fines or infringements, which are a civil penalty rather than criminal sanction, impact hugely on people with mental health issues. There have been significant reforms in Victoria to the special circumstances infringements system that allows people who incurred fines at the time of them suffering a mental illness, to have those fines dealt with more favourably. However, if those people are missed in the system, or are unable to access legal help, they are at risk of imprisonment.

Case study – Fines

Over a period of about 10 years, our client incurred many fines for driving on the tollway without a pass. She was suffering from depression and anxiety, which her doctor and psychologist stated caused her to incur the tolls and not deal with them before they escalated to become infringement warrants.

In 2014, the sheriff knocked on her door and bailed her to appear at the local court for \$18,000 of infringement warrants. She spoke to a duty lawyer at court, but when she got called into court her lawyer was busy and she appeared without a lawyer. The Magistrate didn't ask her about any of her circumstances or how she incurred so many infringements and made an order that she had to pay \$10,000 of her fines in monthly instalment of \$100. If she defaulted on just one payment the sheriff would have the power to take her directly to jail where she would stay for up to 70 days.

Our client kept up her monthly payments and had paid off just over \$3000 by the end of 2017. She attended our service, when she was struggling to keep up the \$100 a month. She told us the constant fear that falling behind on just one payment could result in her being sent to jail was a major source of stress and anxiety.

We obtained a report from her doctor and psychologist that explained how her mental illness had caused her to incur the fines. We then appeared for her in the Magistrates Court and successfully applied to a re-hearing on the basis that the way that her mental illness contributed to the infringements should have been considered at the original hearing. The Magistrate accepted that in our client's circumstance, she should not have to pay any more fines and fully waived the amount.

This case study illustrates the limitations of the court system, in identifying and responding to a person's mental health issues. The Justice Project identifies the myriad issues facing people with mental health issues in the court system:

Many people with disability who are offenders have a long history of undiagnosed or untreated impairment. Concerted efforts to support targeted prevention and early intervention initiatives for people with disability are needed. These initiatives would include better identification of disability, greater access to mental health services and rehabilitation programs, and accessible community legal education and information.

People with disability face many systemic and structural barriers to accessing justice. These include physical inaccessibility, inflexible court procedures, negative attitudes and stigma towards people with disability, lack of understanding of disability by those who work in the justice system, lack of critical supports at all stages of the justice system, and an under-resourced legal assistance sector. Physical, cultural and social environments often fail to accommodate the needs of people with disability and inhibit them from participating in the justice system on an equal basis with others.¹⁰

¹⁰ *The Justice Project Final Report*, Law Council of Victoria, (2018), 20.

Recommendations

1. That the understanding of the justice system as outlined in the enquiry be broadened to include civil justice and that understandings obtained through the recent enquiries including *Access to Justice* and the *Justice Project Final Report* inform the enquiry
2. That there be specific Health Justice funding for lawyer's in mental health programs
3. That process's in courts at the state and federal level incorporate better identification of people with mental illness including; questions on all forms; requirements on judicial staff to identify if a person before the court whether in the civil or criminal jurisdiction has a mental illness and training of staff in better identifying and responding to people with a mental illness.

Care and a fully integrated system

We see the importance of wrap around services and have been working with a range of community partners outside and inside the mental health area. For example, we are part of a youth crime prevention project¹¹ based in the City of Hume which has the second highest number of youth offenders in metropolitan Melbourne. NCLC has been working with Banksia Gardens and as part of a consortium of 12 services delivering crime prevention programs, including drug and alcohol and youth mental health service Headspace. NCLC is committed to this legal/health/community alliance as a mechanism to improve accessibility and enable our service to reach young people who may be experiencing multifaceted psychosocial issues and attendant legal issues. Working within this context has allowed NCLC to address the legal needs of young people from within a supportive and youth friendly environment, with a focus on the multi-dimensional needs of the young person.

Case study of working with other services - Criminal

Jackie sought the assistance of Northern Community Legal Centre after she was charged with possessing a drug of dependence, two graffiti offences and possessing cartridge ammunition. When Jackie committed these offences, her living situation was unstable and she was disengaged from education, employment and her local community. She also reported struggling with significant anxiety. Our youth lawyer agreed to assist Jackie with her criminal matter in the Children's Court. After several months of difficult negotiations, our youth lawyer was able to persuade the Police Prosecutors to withdraw both of the graffiti charges because the evidence against Jackie was entirely circumstantial. Jackie was prepared to accept responsibility for the remaining charges.

At the court hearing, although Jackie had previously completed a Diversion Program through the Children's Court and despite significant push back from the Police Prosecutors, our youth lawyer successfully advocated for Jackie to be given the chance to complete a second Diversion Program. In deciding whether to give Jackie a second chance, the Police Prosecutors and Magistrate placed significant weight on the youth lawyer's submissions, which highlighted that Jackie had taken several positive steps towards her rehabilitation since offending. The youth lawyer explained that Jackie had engaged with a psychologist and had started a part time job. In addition, she had completed some studies at her local TAFE institute and had stayed out of trouble with the police.

Importance of wrap-around services in all funding arrangements

Whilst the National Partnership Agreement (NPA) administered through the Attorney General's Department sets priorities for identifying people with a mental illness as a priority cohort, this classification is combined with Disability. There is no incentive or resources for CLC's to respond and prioritise people with mental illness, notwithstanding the significant impact that unresolved legal issues can have on their recovery. The NPA needs to specifically address the issue of providing legal services to people with a mental illness and deliver incentives to work with mental health services.

A recent review¹² of the NPA identity, highlighting the importance of wrap around services found

Australian Capital Territory stakeholders raised the importance of delivering holistic, wraparound services in order to meet the needs of their clients. Often, a non-legal issue such as mental health needs to be addressed before (or in conjunction with) addressing a legal issue. It was suggested that consideration be given to how this approach to legal assistance services can be acknowledged within a future NPA.¹³

In Queensland, CSP is driven through the QLAF, five thematic forums and 12 Regional Legal Assistance Forums. The five thematic QLAF forums are: Community Legal Education Assistance Forum; Children and Families Legal Assistance Forum; Best Practice and Evidence Base Working Group; Aboriginal and Torres Strait Islander Service Planning Working Group; and, Mental Health Service Planning Working Group.¹⁴

We suggest that NPA's mechanisms within the funding of the legal assistance sector ensure wrap around services and to guarantee incentives within the funding of the mental health services that encourage the integration of legal services.

Recommendations

1. We recommend that funding agreements for other social services provide incentivisation to work with other services including community legal services to provide a wraparound service.
2. That the Legal Assistance sector funding through the National Partnership Agreement ensure a more specific focus on mental health and promotion of integrated service delivery with mental health services.

Yours Sincerely,



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¹³ Ibid, 22.

¹⁴ Ibid, 33.