



stated they had no income or were low income earners. 27% of clients advised that the main language spoken at home was not English, with many speaking little English.

The case studies in this submission are based on clients we have advised. Identified to maintain confidentiality.

Our submission

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The 2007 National Survey of Mental Health and Wellbeing found that 45% of Australians aged 16-85 years had experienced a mental disorder at some point in their life. The prevalence of mental disorders is higher in younger age groups (16-24 years) and lower in older age groups (65+ years). The prevalence of mental disorders is also higher in males than females.

1. The right to non-discrimination and equality –Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide the right to non-discrimination and equality
2. The right to health –Article 12 of ICESCR establishes the right of individuals to the highest attainable standard of physical and mental health.
3. Rights of people with disability-Under the Convention on the Rights of Persons with Disabilities (CRPD), Australia has obligations to ensure and promote the full realization of all human rights for all people with disability without discrimination<sup>6</sup>
4. Rights to protection from other forms of discrimination-Rights to be free from all forms of discrimination are also enshrined in other international instruments such as the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention relating to the Status of Refugees.

Many people experiencing mental ill health may also face discrimination and marginalisation due to the intersection of disability discrimination with other forms of discrimination on the basis of gender, race, or sexual orientation and gender identity. A human rights based approach recognises the intersecting barriers facing people experiencing mental ill health and emphasises their autonomy and agency. Such an approach would also ensure that laws and policies are created with the principles of non-discrimination and equality firmly in mind and that the process is inclusive of those who are most vulnerable.

#### Recommendations

KLC recommends that

1. The Productivity Commission incorporate a human rights based approach into

our discrimination advice work. Much of this advice is provided to people with a psychological or mental health disability.

In our view, there is an urgent need for more support for people with mental health who are interacting with the legal system. The current lack of legal and other services impacts on the rights of people to equal treatment and a fair trial. It also leads to increased costs for courts and correctional services as individual judges and magistrates try and manage complex cases taking considerable additional time and court resources.

#### Case study- Jessica

Jessica contacted KLC after being charged with criminal offences which she did not understand. She lives with psychological disability and receives the disability support pension. She does not have a caseworker who can help her with documents and appointments. Jessica was facing potential fines and imprisonment.

Jessica attended mentions at court with the as

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## Criminalisation and incarceration

People who experience mental health illness are more likely to be criminalised and incarcerated than people who do not experience mental health illness.

People with mental illness and cognitive disability are also more likely to be charged and more likely to be imprisoned than others.<sup>13</sup> The 2007 National Survey of Mental Health and

Wellbeing found a strong association between incarceration and mental illness.

People who have been incarcerated experience longer-term mental illness at 41%, more than twice the rate of people who have never been incarcerated (19%).<sup>14</sup>

Those with cognitive and psychosocial disability spend longer in custody, are less likely to be charged, and are less likely to be released on bail.

- x Article 10 of the ICCPR, which states that all people deprived of their liberty have the right to be treated with humanity and respect.

At a minimum, laws that result in indefinite detention should be repealed. There is also a need for legal and other support for people engaging with the criminal justice system. Holistic, integrated support for people with mental health would improve outcomes and also reduce the costs related to complex court processes and incarceration. Given the disparate impact of criminalisation and incarceration on women and Aboriginal and Torres Strait Islander people, Baldry et al have recommended that five principles should underpin policy review and implementation: self-determination, person-centred support, holistic and flexible approach, integrated services and culture, disability and gender-informed practice.<sup>20</sup>

#### Recommendations

KLC recommends:

1. Federal and state governments repeal laws that result in all forms of indefinite or arbitrary detention;
2. Federal and state government ensure that people in detention receive adequate health care to the same standard as people in the community; and
3. Funding is provided for implementation of community-based strategies for holistic integrated support of people with mental illness in contact with the criminal justice system.

People who access our services report that discrimination causes them serious hurt, embarrassment and humiliation and worsens their mental health. These reports align with international research showing a clear relationship between discrimination and increased risk of mental ill health

The following section outlines the experiences of KLC clients in a number of areas of life where the current operation of the law has failed to adequately protect people with disability. At the end of this section, we recommend amendments to law and policy to achieve improved protection of people's rights to be treated equally and live free from discrimination. Our recommendations in section 4 are also relevant to improving the experience of people with mental health as they interact with education providers, employers, shops and other public service providers.

#### x Education

From KLC's work, we know that people experiencing mental ill health and mental health issues are at a higher risk of being discriminated against in the workplace, education and other public services.



have been denied work or forced to leave their jobs due to discrimination by employers. In some cases our clients struggle so hard to find work that they drop out of the workforce altogether.

There is economic evidence that broadly reflects our experience. Recent reports have estimated that impact of mental ill health on the Australian economy is close to \$60 billion per year<sup>22</sup> 2018 modelling shows that investing in mental health reform would generate significant short and long term savings as interventions that improve mental health have lifelong impacts. Flow on benefits include reducing absenteeism and presenteeism which increases the productivity of the labour force.

#### Case study Oliver

Oliver applied for a new job in the industry he had worked in for many years. Throughout the application process, the company was positive about Oliver's chances of getting the job. The interviewer told him that he was a good fit for the role. As part of a general disclosure form, Oliver told the interviewer that he had a mental health illness. The interviewer then told him that he could not have the job. Oliver was not given a chance to explain why his disability would not impact his ability to do the job well.

#### Case study Bo

Bo was starting their first job out of university. Bo is from a migrant background and was entering an industry that is a

### Case study Wei

Wei was a long-term social housing resident with significant psychiatric illness. He lived alone with assistance from community-based mental health services. During his tenancy he was hospitalised for a period of almost 6 months. The social housing provider sent Wei an eviction notice for not occupying his premises in breach of their "allowable absences" policy. This was despite the hospital nursing staff telling the housing provider that more time was required, and that eviction would have a very serious negative impact on Wei's health.

The eviction notice was not withdrawn until Kingsford Legal Centre assisted Wei to make a discrimination complaint, which was eventually resolved through conciliation.

#### x Goods and services

KLC receives many complaints about discrimination in the provision of goods and services. One key area of discrimination that has arisen in recent years is discrimination against people with psychiatric assistance animals. Despite psychiatric assistance animals being covered by Commonwealth anti-discrimination law, they are often not recognised by accommodation providers, airlines and public transport.

## Recommendations

KLC recommends that:

1. Employers and service providers be provided with education and training on the rights of people with mental health illness and obligations to provide reasonable adjustments and
2. Funding be provided for community legal education for mental health support services to enable them to identify legal problems and link people with legal services as needed.

## Current legal protections

Effective anti-discrimination legislation is essential to combating systemic discrimination and achieving substantive equality. Strengthening existing laws to protect people who have experiences like those in the case study above is of strategic importance in shifting attitudes and prejudices against people experiencing mental health illness, which will support higher rates of participation in the workforces.

Discrimination occurs in many aspects of the lives of people experiencing/who have experienced mental health illness but is only unlawful under NSW and Commonwealth law in the following areas:

- x Education<sup>24</sup>
- x Employment<sup>25</sup>
- x Access to goods and services<sup>26</sup>
- x Accommodation<sup>27</sup>

### Recommendations

KLC recommends that a comprehensive Equality Act be enacted that addresses all the prohibited grounds of discrimination, promotes substantive equality and provides effective remedies, including against systemic and intersectional discrimination.

## Recommendation

KLC recommends that

1. The NSW government repeals section 49PA of the Anti-Discrimination Act 1977 (NSW) and
2. The federal government adopt the recommendations made in submissions PIAC and Mental Health Australia in relation to insurance provision, including:
  - a. Amendments to the Disability Discrimination Act 1992 (Cth) to require insurers to provide written reasons and access to statistical and actuarial data when they reject insurance applications or claims and
  - b. As discussed below, the AHRC be given the power to conduct own motion investigations and take enforcement action in relation to insurance and superannuation discrimination.

## Discrimination complaints processes

KLC supports people who have been discriminated against because of a mental illness to take their complaint through the formal complaint resolution mechanisms available. The main external complaint mechanisms are:

1. the Australian Human Rights Commission;
2. in NSW, the Anti-Discrimination Board; and
3. for matters involving employment, general protections complaints to the Fair Work Commission.

All of these processes feature alternative dispute resolution practices aimed at finalising a complaint before it progresses to a hearing in court.

In KLC's view, there are numerous problems with the current complaints mechanisms which

We have listed below a selection of key recommendations that would strengthen people's rights to equality and freedom from discrimination. For a comprehensive review of discrimination complaints processes and detailed recommendations to improve the experience of vulnerable people engaging with those processes, please see KLC's 2018 report "Having my voice heard: Fair practices in discrimination conciliation."<sup>89</sup>

#### Recommendations

KLC recommends that:

1. Federal and State governments should provide additional resourcing to anti-discrimination bodies including the AHRC, ADB and FWC to allow them to perform their functions and provide efficient conciliation processes with appropriate flexibility and support for people experiencing mental health illness
2. Funding for free legal assistance services to assist applicants in discrimination matters should be increased
3. The AHRC Discrimination Commissioners, ADB President (and equivalent positions in states other than NSW) and Fair Work Ombudsman should be given powers to investigate and initiate court proceedings in relation to discriminatory conduct that appears unlawful without an individual complaint. The FWC President should refer matters to the FWC where appropriate;
4. The role and powers of AHRC Discrimination Commissioners, ADB President and FWO should be expanded to increase the role of these bodies in addressing systemic discrimination. These powers should include monitoring of duty holders, commencing complaints, intervening in matters, and reporting annually to Commonwealth Parliament/State Parliament, and to the public, on discrimination matters

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<sup>39</sup> Kingsford Legal Centre,

5. The Australian Human Rights Commission Act 1986 be amended to  
reinststate the 12

We hold grave concerns that some of these services are struggling to continue operating following funding changes under the NDIS. While some people are able to access funding for psychosocial support under the NDIS, many were never intended to be covered by the NDIS scheme.<sup>42</sup> The NDIS is designed to cover approximately 64,000 people with psychosocial disability. It is not designed to cover the estimated 690,000 Australians who live with severe mental health problems.<sup>43</sup>

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otherwise struggle to deal with the appointments, paperwork and processes in legal matters.

We have worked with PI in matters including discrimination complaints, social housing applications, Centrelink and debt and know how much their involvement helps people who come to us for legal assistance.

### Housing support

There is a well established link between mental ill health and homelessness. Despite this, there is still a significant lack of social housing available for those who are experiencing homelessness. Nationally there were approximately 200,000 people on the waitlist for social housing in 2016, resulting in wait times of two years or more. There is a general shortage of social housing as well as a particular shortage of specific supported housing for people experiencing mental ill health. This is an unacceptable position when we know the harm that homelessness causes to health, and the benefits that can flow from housing stability.

#### Case study Philippa

Philippa was homeless and had been living in her car for around 2 years when she first came to KLC. Her mental health illnesses made it impossible for her to access shared accommodation such as shelters or boarding houses. Philippa did not have any casework or other social support. Philippa came to KLC for assistance with a number of unfair fines that she had been issued as a result of her homelessness, including a fine for failing to advise a government body of a change of address and fines relating to parking the car she was living out of.

KLC was concerned that Philippa's long term homelessness was causing her mental and physical health to deteriorate. We were able to support Philippa's application for housing support through a social housing provider. After 2-3 months of advocacy work, Philippa was able to move into affordable social housing. Philippa told us that she was doing much better since moving into her new home.

### Income support

Another key issue for people ( i)/TT1 1 Tf -6.2935-0.8 (cacy)-1.7 ( w)5.5 (o)-bshbsrl5 c379.92(ng)]T



mental ill health, including the changes recommended by the National Security Resource Network's 2018 DSP Project.

7. The federal government urgently raise the rate of Newstart payments.