Committee Secretary
Senate Select Committee on Mental Health
Department of the Senate
Parliament House
Canberra ACT 2600
Fax: +61 2 6277 3130
Email: mental.health@aph.gov.au

12 May 2005

Dear Sir/Madam,

**Re: Senate Select Committee on Mental Health Inquiry into the Provision of Mental Health Services in Australia**

Thank you for the opportunity to make a submission to the Senate Select Committee on Mental Health Inquiry into the Provision of Mental Health Services in Australia.

Enclosed is a submission provided by the Combined Community Legal Centres (NSW) Inc. (CCLCG). CCLCG is a network of 40 generalist and specialist community legal centres (CLCs) from urban, rural, remote and regional areas of New South Wales.

We further endorse the findings and recommendations concerning domestic violence issues contained in the Newtown WDVCAS submission, coordinated by Marrickville Legal Centre (a member of CCLCG); and the findings and recommendations on additional welfare issues contained in the Welfare Rights Centre (NSW) (a member of CCLCG) submission.

Should you require further information on any aspect of this submission, please contact Helen Campbell (Coordinator, Redfern Legal Centre, Ph 02 9698 7277) or Jane Cipants (Coordinator, Illawarra Legal Centre, Ph 02 4276 2535).

Yours sincerely

Agnes Chong
Co-convenor, NSW Law Reform and Policy Sub-Committee
Combined Community Legal Centres Group (NSW) Inc.

Combined
Community
Legal Centres'
Group (NSW) Inc

Suite 3B Briad House
491-493 Elizabeth St
Surry Hills NSW 2010
Ph: 02 9318 2355
Fax: 02 9318 2863

# Combined
# Community Legal Centres'
# Group (NSW) Inc.

## Submission to the
## Senate Select Committee on Mental Health

12 May 2005

Combined Community Legal Centres Group NSW

State Office
3B Briad House
491-493 Elizabeth St
Surry Hills NSW 2010
ph 02 9318 2355
fax 02 9318 2863
web www.nswclc.org.au

Contact people for the CCLCG NSW Response:

Helen Campbell
Redfern Legal Centre
ph 02 9698 7277
email helen@rlc.org.au

Jane Cipants
Illawarra Legal Centre
ph 02 4276 2535
email jane_cipants@fcl.fl.asn.au

## 1. Executive Summary and Recommendations

This submission to the Senate Select Committee on Mental Health is provided by the Combined Community Legal Centres (NSW) Inc. (CCLCG). CCLCG is a network of 42 generalist and specialist community legal centres (CLCs) from urban, rural, remote and regional areas of New South Wales.

CLCs work for the public interest, particularly for disadvantaged and marginalised people and communities. CLCs promote human rights, social justice and access to equitable laws and legal systems, through the provision of legal services, strategic case work, community legal education and law reform.

Clients with mental health issues, being among some of the most disadvantaged and marginalised people in the community, form a significant proportion of the client base serviced by CLCs, and for some generalist centres they form the majority of the client base. This submission is based on information gathered by NSW CLCs working on a daily basis with clients with mental health problems wanting to access the legal justice system to seek redress and resolution for a range of legal problems they face. CCLCG thanks Anna Boucher, Redfern Legal Centre volunteer, for research assistance in the preparation of this submission.

The key issues this submission raises are:

1) Definition of mental health problems
2) The impact of mental health problems on delivery of legal services
3) The intersection of mental health problems with other forms of socio-economic disadvantage
4) The stigmatisation of clients with mental health problems
5) The paucity of support and referral services
6) Funding limitations for centres to deal with these problems

A critical area of socio-economic disadvantage that people with mental illnesses are vulnerable to is lack of adequate housing, the absence of which has further negative impacts on the health of the person. People with mental illnesses who are renting face problems in accessing secure and affordable rental housing. People with mentally illnesses who are temporarily incapacitated are vulnerable to being removed from public housing. The expansion of short-term leases and good behaviour agreements in both private and public rental housing has had the effect of undermining security of tenure for people with mental illnesses. Further, there is a lack of adequate support services to intervene where people are facing problems with public or private landlords to resolve problems before they are evicted. The use of residential tenancy databases to limit access to rental properties has particularly affected people with mental illnesses. The stress of having to find and move to new housing has a detrimental impact on the mental health of people suffering from mental illnesses.

There is a significant lack of mental health services, particularly in rural areas which are required to meet the complex needs of people with mental health illnesses, particularly, the aged and Indigenous Australians. This includes long waiting periods for crisis counseling services, lack of subsidized long term counseling services, and expert services for dual diagnosis clients.

Initiatives announced in the recent Federal Budget, if passed, would place further pressure on these services. The proposed tightening of Disability Support Pension eligibility criteria, and the abolition of Parenting Payment Single (sole parent pension) for single parents with school age children, will create a wider pool of people subject to job-seeking requirements. Many people with a psychiatric disability or

episodic mental illness that would be eligible for a pension (either Disability Support Pension or Parenting Payment Single) under the current rules, will find complying with job-search activities problematic. Centrelink and Job Network Providers, as well as Welfare Rights and other community agencies, will need to refer such clients to health services for assessment, treatment, support and advocacy. NSW mental health services cannot meet existing need let alone the increased need that would result from these initiatives.

There are also serious issues arising in the context of domestic violence, which are dealt with separately in the Submission from Newtown WDVCAS, which was coordinated by Marrickville Legal Centre (member of CCLCG), which we endorse.

We also endorse findings and recommendations on additional welfare issues contained in the submission by the Welfare Rights Centre (NSW) (a member of CCLCG).

These issues are located in a human rights framework, which requires they are addressed consistently with Australia's obligations under the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, to which Australia is a party. It is important to note that the right to health includes an entitlement to a system of health protection, including health care and the underlying determinants of health, which provides equality of opportunity, including health services, goods and facilities, that shall be available, accessible, acceptable and of good quality.[1]

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in his 2005 report (E/CN.4/2005/51) focused on the right to health of persons with mental disabilities. He notes that 'one in every four persons will suffer from a mental disorder at some stage in his or her life', yet, 'persons with intellectual disability are among the most neglected - the most "invisible" in our communities'.[2]

These issues are discussed in response to the following Terms of Reference: B, E, F and J.

**Recommendations**

Term of Reference B

- Recommendation 1: Funding for mental health support services should be increased to enhance access to timely and appropriate services by people with a mental illness.

- Recommendation 2: The Commonwealth should ensure that services such as Lifeline are adequately funded to provide accountable, supportive and some specialist services for people with mental health problems.

- Recommendation 3: Community legal centres should be given increased funding to allow them to better meet the needs of clients with a mental illness.

Term of Reference E

- Recommendation 4: The Commonwealth should call on state and territory governments to amend Tenancy Acts to provide tenants with security of tenure and to place limitations on rent increases.

- Recommendation 5: The Commonwealth should ensure that it is a term of its funding agreements with state governments for the provision of public housing that strategies are implemented to secure the premises for the temporarily incapacitated tenants, including exercising discretion to limit or waive the rent obligation of tenants who are incapacitated.

- Recommendation 6: The Commonwealth should ensure that it is a term of its funding agreements

[1] CESCR, general comment No. 14.

[2] U.N.Doc. E/CN.4/2005/51

with state governments for the provision of public housing that the conditions of good behaviour agreements should be amended to accommodate the specific needs of people with mental illnesses, and be applied accordingly.

- Recommendation 7: The Commonwealth should introduce a national system for the regulation of residential tenancy databases, e.g. through the Privacy Act, to alleviate abuses and misuses of database systems and thereby reduce homelessness.

- Recommendation 8: The Commonwealth should provide funding to Community Justice Centres to provide intensive, out-of-business-hours support services for tenants living with mental illness.

- Recommendation 9: The Commonwealth should increase funding for the provision of subsidized long term counselling services, particularly in rural areas.

- Recommendation 10: Government debt recovery authorities should develop mechanisms for accommodating the particular needs of people with a mental illness, such as direct debit facilities.

- Recommendation 11: The Commonwealth should call on state and territory governments to ensure that Offices of the Protective Commissioner are adequately resourced to service clients with cyclical capacity.

Term of Reference F

- Recommendation 12: The Commonwealth should call on state and territory governments to amend tenancy laws to provide for more severe penalties to apply to landlords who seriously and persistently abuse their power in the landlord and tenant relationship.

Term of Reference J

- Recommendation 13: The Commonwealth should increase funding to provide for more comprehensive referral services and support networks for people with mental illness so that mental health problems can be addressed before they lead to legal problems, including 24 hour counselling, support and referral services such as Lifeline.

- Recommendation 14: That the Commonwealth Government provide sufficient funding that each community legal centre can have social worker with expertise in mental health on staff.

- Recommendation 15: Develop services to identify and provide treatment for people with a mental illness in custody, including appropriate rehabilitation programs.

- Recommendation 16: Provide training for prison staff about appropriate responses to prisoners with a mental illness.

**2. Term of Reference B: The adequacy of various modes of care for people with a mental illness, in particular, prevention, early intervention, acute care, community care, after hours crisis services and respite care.**

For the purposes of the submission, we adopt the definition of a mental illness employed in the *New South Wales Mental Health* Act (1990), Schedule 1(3) as:

> "a condition which seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by a presence in the person of any one or more of the following symptoms: (a) delusions (b) hallucinations (c) serious disorder of thought form (d) a severe disturbance of mood (e) sustained or repeated irrational behaviour indicating the presence of any one or more the symptoms referred to in paragraphs (a) – (d)."

This illness in turn, impacts upon a client's capacity to:

i) explain their situation;
ii) comprehend their solicitor's or advocate's advice; and
iii) carry through that advice.

Further, the mental health problem can interact with other forms of disadvantage such as drug and alcohol dependency, poverty, homelessness, being of Non-English-Speaking Background or the legacy of dispossession suffered by Indigenous and Torres Strait Islanders.

In preparation for this submission, four centres (Redfern Marrickville, Illawarra and Welfare Rights) were consulted about their experiences of dealing with clients with mental illness. Information for this submission was also made available by Kingsford Legal Centre. The consultation indicated a pervasiveness of a range of mental health problems among the client base at all four of the Centres. The following mental health problems were identified:

- Various types of depression, from reactive to clinical;
- Bipolar disorder;
- Various types of psychotic conditions including schizophrenia;
- Anxiety disorders;
- Phobias;
- Personality disorders;
- Drug-induced psychosis and other drug and alcohol related problems;
- Mental problems stemming from pain management issues;
- Behavioural problems stemming from mild psychiatric disabilities combined with an acquired brain injury;
- Post-traumatic stress disorder; and
- Diogenes syndrome.

While not strictly a mental health problem, many clients also suffered from extreme grief.

The number of clients with mental health problems differed from centre to centre and from service to service within each centre. The following offers an approximation on the prevalence of mental health problems at the centres:

- Redfern, legal advice: Over 50 per cent of clients;
- Redfern, tenancy: Between 25 to 33 per cent of clients;
- Illawarra, child support programme: 80 per cent of clients;
- Illawarra, tenancy: 60 per cent of clients;
- Illawarra, legal: 40-50 per cent of clients; and
- Welfare Rights: at least 30 per cent of clients.

2.1 Lack of mental health support services

Community legal centres are an important source of advice and referral for many disadvantaged members of the community, including people with a mental illness. People with a mental illness often approach community legal centres with problems that are not legal in nature, or with a mixture of legal and non-legal problems. For example, clients may experience paranoia or anxiety which give rise to conflict with neighbours or police or which lead them to distrust the advice of doctors or social workers. In many cases, community legal centres are not appropriate to deal with these problems, which may be more appropriately addressed by other mental health support services.

This reliance on community legal centres as sources of general assistance for people with a mental illness may be an indication that many mentally ill clients do not have adequate access to appropriate early intervention and support services.

Support and referral services within the local community tend to be lacking and where they do exist, under resourced to deal with the exceptional demand. A particular problem with this paucity of support services is that clients with mental health problems often require “global” assistance. Most of the clients not only need legal advice but also assistance with developing lifestyle skills and access to counselling services and affordable psychiatric services. Often when there are not adequate services in the community, workers at the community legal centres are required to provide services that are beyond the training and job description of solicitors and advocates.

> *Case Study 1:*
> An Aboriginal woman who had suffered childhood abuse was on the edge of the criminal justice system and facing the removal of her child. She was required to undergo a psychological assessment to meet her probation conditions. Her solicitor was concerned that she would miss the assessment and sent a volunteer to accompany her to the assessment. While the Centre felt compelled to ensure that the client went to her meeting, it was not a legal task and would not have been required were better support services available within the community.

All community legal centres emphasize their policy of servicing clients with mental health problems. However, the intense needs of these clients meant that centres are pressed for resources and limited in how many clients they can assist at any given time. Workers in community legal centres often feel frustrated about to the short-term nature of the assistance they are able to offer. Often a legal problem is addressed, but the client will return with a new and similar legal problem because the underlying mental health issue had not been adequately addressed through referral services. Were better support services available, some of the legal problems arising partly out of clients’ mental health problems, might be avoidable.

Funding poses limitations on all of the Centres in serving clients with mental health problems. Community Legal Centres would benefit greatly from an in-house social worker to which clients could be referred to discuss their non-legal problems. Telephone services are problematic for clients with mental health problems however, are a necessity due to financial restrictions. Lack of resources also restricts the scope of services that can be offered. CLC tenancy services, for example, do not always have the resources to give the level of service needed by all clients – such as always attending Consumer, Trader & Tenancy Tribunal or meetings with Department of Housing; or assisting with matters such as filling out application forms for housing.

***Recommendation 1: Funding for mental health support services should be increased to enhance access to timely and appropriate services by people with a mental illness.***

2.2 Lack of crisis counselling services

A large majority of clients serviced by generalist centres such as Illawarra Legal Centre (ILC), have been diagnosed with some sort of trauma-related mental illness (eg. PTSD), or suffer some sort of disorder such as bipolar disorder, "personality disorder", or depression. They often contact legal centres while in

crisis, at which point it becomes necessary to refer them to a counselling service. In assisting clients to access necessary counselling and other support services, we have found that there is an extreme shortage of such services.

> *Case Study 2*
> A client with schizophrenia presented himself to ILC requesting that we get him admitted to a hospital psychiatric ward. ILC offered to pay for a taxi for him, but he wanted police to come and get him. Police refused to attend unless he became violent. The client became highly distressed.

Many of the clients cannot afford a private counsellor; nor are they able to access counsellors through community health centres or places like Anglicare, due to the long waiting lists, some of which are several weeks long. The inability to access a counsellor while in crisis, further prevents clients from being able to adequately engage with the legal system to address their legal issues.

> *Case Study 3*
> A client on phone advice started talking about suicide. After a long discussion the client agreed that they would like to talk to a counsellor, but would like the counsellor to ring them. Placed the client on hold and attempted to ring Lifeline several times, but they were engaged with other calls. Eventually rang Anglicare and was able to get a counsellor to agree to ring the client back due to the exceptional circumstances.

***Recommendation 2: The Commonwealth should ensure that services such as Lifeline are adequately funded to provide accountable, supportive and some specialist services for people with mental health problems***.

2.3 Lack of funding for community legal centres to meet mental health clients' needs

Assisting clients with a mental illness is often very resource intensive for community legal centres. Clients' legal problems are often closely intertwined with non-legal issues which community legal centres may not be well resourced to address. A multi-disciplinary approach is often necessary in order to deal effectively with the needs of clients with a mental illness. This will require a substantial increase in funding and resources targeted at meeting the needs of people with a mental illness in the legal sector.

***Recommendation 3: Community legal centres should be given increased funding to allow them to better meet the needs of clients with a mental illness.***

**3. Term of Reference E. The extent to which unmet need in supported accommodation, employment, family and social support services, is a barrier to better mental health outcomes**.

Mental health problems often intersect with other forms of disadvantage. Financial and housing precariousness not only converge with mental health problems but also exacerbate or even trigger such problems. CLC tenancy services report a strong correlation between mental health problems and homelessness. This situation could be further exacerbated by drug and alcohol dependency. Often the three interact in compounding ways. For instance, a client in public housing might be evicted on grounds of public nuisance where this behaviour was partly a product of drug and alcohol dependence. The eviction, in turn, can lead to a mental health problem and homelessness. The raising of debts and refusal or cancellation of Social Security payments can also precipitate mental illness.

CLC tenancy services that have worked with tenants suffering a mental illness have found that the lack of security of tenure, fear of being listed on tenant databases and fear of homelessness, break down in relationships with neighbours, are some of a range of specific factors that exacerbate existing mental health conditions and/or contribute to stress related mental illness for renters. This finding is affirmed by the UN Special Rapporteur on the right to health who recently found that even in developed countries there was a 'lack of accessible community-based services and social housing, which leaves persons with mental disabilities homeless, deepening their marginalisation'.[3]

The World Health Organization recommends that mental health services, including support services, be based in the community and integrated as far as possible into general health services, including primary health care, in accordance with the vital principle of the least restrictive environment.[4]

3.1 Lack of security of tenure in public and private rental

In both the private and public housing systems, lack of security of tenure is an issue for tenants. In the public housing system tenants are currently rated as to their 'satisfactory' status and placed on short-term leases to facilitate terminations. The expansion of short-term leases and "good behaviour" agreements has undermined the security of tenure for departmental tenants living with a mental illness.

The private rental market can leave some families moving every six months during a few year period, often related to sales of the property, breaches of the agreement by the landlord or tenant and high rent increases forcing tenants to look for affordable alternatives.

The high cost and stress of moving, particularly with children, has seriously exacerbated mental health problems for tenants forced to move. Many landlords fail to inform tenants of their intentions to regain the property in six or twelve months. This way they limit their financial loss from a sale for example, but cause great financial loss to the tenant for relocation costs, as well as reconnection of utilities and similar costs.

Persons with mental illnesses who are temporarily incapacitated during times of crisis are especially vulnerable to being denied access to secure housing, which can further negatively impacts on their illness.

> *Case Study 4*
> The tenant is a woman in her early thirties. She has lived in a two-bedroom Department of Housing flat for 3 years. She is separated from her partner and has her children stay on weekends. She had a psychiatric episode that resulted in hospitalisation. The initial medical assessment suggested she could be in hospital for two to three months. The departmental workers wanted the woman to relinquish her government housing and be placed on a priority list

[3] U.N.Doc. E/CN.4/2005/51, p6.
[4] World Health Report 2001, pp. 89-91

for housing after being discharged. They would also provide bond and rent assistance so she could take up a private rental premises until priority housing was available.

The tenant's father unsuccessfully sought to act on his daughter's behalf and prevent her from giving up her flat. The tenant's father was hindered in his efforts by the Department of Housing, who believed they could act in the tenant's best interest. However, a hospital social worker facilitated the signing over of the flat to the Department believing it would be in the tenant's interest.

The above case study highlights the following issues:

1. Tenants living with a debilitating illness that takes them temporarily away from their home should not lose their home or be at risk of losing their home.
2. It is unreasonable to expect a person recovering from a serious illness to endure the stress of seeking and relocating into private rental accommodation. Collaboration between relevant departments should work to ensure the tenant remains in stable, affordable accommodation. This should include support in their home by relevant workers and agencies.
3. There is limited if any chance of success for applicants seeking private rental if they have recently been discharged from a psychiatric unit. Discrimination against these citizens is high in the private rental market.
4. Patients in a hospital should not be asked to make important life decisions at such a vulnerable time and when they may not have the capacity for such decision making. The Department of Housing has the capacity to limit or waive the rent obligation of tenants who are incapacitated and should implement a strategy that seeks to secure the premises for the tenant.
5. Good intentioned but ill informed workers such as the hospital social worker in the above scenario, may work against the tenant's interest by persuading the patient/tenant to relinquish their housing. This is regularly the result of pressure by the Department of Housing workers to repossess the dwelling. There is an urgent and ongoing need for training about tenants rights to housing and the need for support to maintain their premises.
6. It is vital that a parent or other close family member be included in discussions around protecting the rights of a person with a mental illness who may be at risk of losing their home.

***Recommendation 4: The Commonwealth should call on state and territory governments to amend Tenancy Acts to provide tenants with security of tenure and to place limitations on rent increases.***

***Recommendation 5: The Commonwealth should ensure that it is a term of its funding agreements with state governments for the provision of public housing that strategies are implemented to secure the premises for the temporarily incapacitated tenants, including exercising discretion to limit or waive the rent obligation of tenants who are incapacitated.***

## 3.2 Mental illness and ‘acceptable behaviour’ requirements

People with mental illness are especially vulnerable to eviction from public housing on the grounds of behaviour triggered by their mental health problem. This is made possible under s35A of the *Residential Tenancies* Act (1987) (NSW) which allows for eviction due to “unacceptable behaviour.”

*Case Study 5*

A tenant who suffered delusional behaviour was hoarding a small amount of drugs and stolen goods at her public housing premises. She believed that she was working as an undercover police officer. Her public housing lease was terminated on the grounds that she held stolen goods and was supplying and possessing drugs. The matter was dismissed by the District Court under the Mental Health Act (NSW) however, the Department of Housing, aware of the tenant’s mental

health problems nonetheless proceeded with the complaint to the Consumer, Trader and Tenancy Tribunal where the Member found that the Department's behaviour was "outrageous."

***Recommendation 6: The Commonwealth should ensure that it is a term of its funding agreements with state governments for the provision of public housing that the conditions of good behaviour agreements should be amended to accommodate the specific needs of people with mental illnesses, and be applied accordingly.***

3.2 Residential tenancy databases

Tenants living with mental illness are regularly placed in unsuitable accommodation that 'underscores' aspects of their mental illness. Crowded medium to high density housing generally has significant problems with noise, common area disputes, excessive visitors and high numbers of tenants living with mental illness and other complex social problems, and with few social supports.

In this environment vulnerable tenants are conspicuous and regularly targeted for abuse, bullying or exploited and in some cases ejected from their own premises by squatters. In this scenario, tenants lose all contact with departmental support or other community based services who can refer or assist if their condition deteriorates.

*Case Study 6*
A family of five live in a three-bedroom property they rent through a real estate agent. The three children go to the local school. The father was retrenched from his job after an industrial accident. He suffers bouts of depression as a result of severe back pain. After several months of lateness with paying the rent the agent threatened to take them to the Tribunal. The relationship between the parties deteriorated and the agent sought termination. The agent placed the tenant's name on a data base which lists tenants who have defaulted on rent payments or breached their rental agreement. This listing was prior to the new legislation of September 2004, therefore, even with the debt paid, will remain on the database as a listing for some years.

After 4 years at the property the family decided to move and as all rent was up to date and the premises immaculate they were shocked to find they were repeatedly unsuccessful in securing new accommodation. The tenant data base listing reached every real estate agency who declined to rent to the family. The only option available was private landlords who generally do not subscribe to the tenant databank.

The long search for suitable accommodation, worry about renting directly with a landlord, the long -term consequences of being listed for a long time on a data base, resulted in a significant deterioration of the fathers mental health.

The above case highlights the following issues that are commonly experienced:

- While some regulation of residential tenancy databases has been useful, significant improvement could be made to protect the rights of tenants and prevent unfair listings. Tenants living with mental health problems are very vulnerable to tenant databases as they may not be aware of the processes to remove their name or correct their listing or have the capacity to meet the various time limitations for action that could remove their name from the database.

- There is an urgent need for additional advocacy and intensive support services who can assist at the early stages of a dispute thereby preventing further serious problems that can and often do lead to homelessness.

- Families and single people listed on tenants databases prior to the new regulations are often forced into caravan and residential parks, boarding houses, hostels and cramped arrangements

with family and friends. There is no tenancy protection for boarding house residents under the tenancy legislation and residential parks have limited tenancy legislation protection. These types of low rental housing tenures are not always suitable for those vulnerable while living with mental illness. The relationships are often complex, involving limited legal protections, live-in caretakers and managers and the accompanying rules and regulations, and crowded conditions with poor amenities.

***Recommendation 7: The Commonwealth should introduce a national system for the regulation of residential tenancy databases, e.g. through the Privacy Act, to alleviate abuses and misuses of database systems and thereby reduce homelessness.***

3.3 Lack of support services to resolve neighbourhood disputes

Immediate intervention when neighbourhood disputes arise, equipped with solutions rather than punitive responses can serve to keep tenants living with a mental illness in their home and living independently.

***Recommendation 8: The Commonwealth should provide funding to Community Justice Centres to provide intensive, out-of-business-hours support services for tenants living with mental illness.***

3.4 Department of Housing and "specialist" workers

Tenants living in Department of Housing (DoH) and suffering with mental illness are reliant on the intervention of the "specialist officers" who provide home visits, referral options and monitor the progress of tenants who are at risk of losing their housing due to breaches of their tenancy agreement. However, we have found that in some cases the specialist officers do not act to support the tenant that is suffering a mental illness.

*Case Study 7*
The tenant had multiple complex medical issues, and was being evicted by the DoH in the Consumer, Trader and Tenancy Tribunal (CTTT), the DoH specialist worker was directed to appear for the DoH against the tenant. This blatant conflict of interest undermines the tenant's right to have "independent" support and referral unrelated to punitive measures in the CTTT.

3.5 Lack of counseling services

Many victims compensation clients are unable to access ongoing counselling if they are not in the acute crisis stage that follows an assault. Once they exhaust their free counselling under the victim’s compensation scheme, there are long waiting lists for free community health centre counselling and our clients cannot afford private counselling.

*Case Study 8*
A client with bipolar disorder has severe problems managing their condition as there are no local psychiatrists who bulk-bill and she cannot afford to pay the Medicare Gap. This client has also been unable to find a treating psychiatrist who has client vacancies in the local area.

In regional areas such as Illawarra, there are few counselling services with expertise in relationship counselling. Couples can receive basic family law counselling (at a cost) from various service providers but not at the depth required to address serious psychiatric and emotional problems. This impacts on families and contributes to family break down.

***Recommendation 9: The Commonwealth should increase funding for the provision of subsidized long term counselling services, particularly in rural areas.***

3.6 Lack of appropriate financial services

People with a mental illness often find themselves facing financial difficulties, such as unpaid debts. Often these problems are a direct result of the person's mental illness; and a person's mental illness may in turn interfere with the person's ability to meet their financial obligations. Debt recovery authorities, such as the NSW State Debt Recovery Office, often lack appropriate mechanisms to accommodate the particular needs of people with a mental illness.

> *Case Study 7*
> A client suffers from schizophrenia and became non-compliant with medication. As a result of his illness he incurred three debts. The first related to driving an unregistered and uninsured vehicle and the second arose from a larceny charge. Both incidents were a direct result of a command hallucination arising from the client's mental illness. In both cases the client did not attend court and was ordered to pay court costs. The third fine arose from a failure to vote in state elections. In total, the client has accrued fines of $1500 as a result of his mental illness. The State Debt Recovery Office (SDRO) issued him with notices which he failed to pay.
>
> The client would like to pay the fines and has put in a successful time to pay application. He has been ordered to pay the fines back in fortnightly instalments. If he fails to pay one instalment the whole fine becomes due but his illness may cause problems in making this regular payment. The SDRO does not have a direct debit option or any other facilities for accommodating the particular needs of this client.

***Recommendation 10: Government debt recovery authorities should develop mechanisms for accommodating the particular needs of people with a mental illness, such as direct debit facilities.***

The Office of the Protective Commissioner does not have the resources to take on clients who experience cyclical capacity to look after their financial affairs (such as those with cyclical manic depression). This results in clients periodically getting themselves into serious financial difficulty.

***Recommendation 11: The Commonwealth should call on state and territory governments to ensure that Offices of the Protective Commissioner are adequately resourced to service clients with cyclical capacity.***

**4. Term of Reference F. The special needs of groups such as children, adolescents, the aged, Indigenous Australians, the socially and geographically isolated and of people with complex and co-morbid conditions and drug and alcohol dependence.**

Mental health problems frequently occur among victims of serious domestic violence, Indigenous and Torres Strait Islander persons, clients with literacy problems and people of Non-English-Speaking Background. Mental health problems can also be ethnically defined or ignored – in the sense that a mental health problem can be taboo within certain ethnic groups or the treatment of that condition with certain drug treatments considered inappropriate within some ethnic communities. This poses challenges for solicitors and advocates wishing to assist a client with a mental health problem.

The detrimental effect of mental health problems on the Indigenous community is exacerbated by poverty, alcohol and drug problems and long-term experiences of racial prejudice and a legacy of dispossession. The lack of transcultural mental health assessment, especially in the case of children being removed from Indigenous and Torres Strait Islander families, contributes to this problem.

4.1 Lack of services with expertise for clients with dual diagnosis

Most clients with dual diagnosis are shuttled between drug and alcohol services and mental health services. Some services (e.g. Orana House, a local rehabilitation provider in Illawarra) are able to see some clients with dual diagnosis but is not able to assist clients with very complex problems due to the expertise required.

> *Case Study 9*
> An Aboriginal client with mental illness and dug and alcohol issues and illiteracy was put in a position of significant financial detriment because a "well-meaning" yet ignorant social worker from a local charity took certain actions on her behalf without the client's authority or knowledge.

4.2 Lack of public transport limits access to services

The lack of public transport in regions such as Illawarra isolates domestic violence clients, many of whom have significant mental illness (post traumatic stress disorder, depression, anxiety), from the support structures that are available.

4.3 Aggressive Landlords

> *Case Study 10*
> The tenant is a man in his forties, renting a two bedroom house with a private landlord. He chose the premises due to his need to have a quiet environment, few disturbances and be within walking distance of shops and services. The landlord is a private landlord with limited regard for his obligations under the Residential Tenancies Act. The landlord repeatedly visits the property to monitor its condition, do odd jobs and collect the rent. The visits increase and the tenant is badgered about minor maintenance issues. The tenant feels vulnerable to the landlord and decides to move out rather than assert his rights in the Tenancy Tribunal. Even with support from a tenancy worker, the tenant does not feel he has the stamina and well being to take formal action. He leaves incurring significant relocation costs and the stress of trying to settle into a new home. He also relinquishes his bond rather than argue with the landlord. He believes the cost to his mental well being will be too great if he has to continue facing the landlord’s aggressive manner.

The above case study is illustrative of the fact that many tenants relinquish their rights and pay money to the landlord in order to try to protect their mental well being. Further, many tenants report having little faith in the systems that adjudicate disputes and feel that their unique issues would not easily be accommodated by a Tribunal system. These issues often include communication problems, comprehension barriers, and emotional distress that hinders their ability to communicate.

In some cases, despite efforts to protect their safety and wellbeing in a Tribunal context, landlords can continue to intimidate them or exploit the dispute resolution mechanism. Tenants in such positions regularly struggle with debt arising from relocation costs and forfeit their bond. In many cases these tenants are entitled to their bond money and possibly compensation should they take their case to the CTTT.

***Recommendation 12: The Commonwealth should call on state and territory governments to amend tenancy laws to provide for more severe penalties to apply to landlords who seriously and persistently abuse their power in the landlord and tenant relationship.***

4.4 Vulnerability of aged with mental illness to eviction and homelessness

*Case Study 11*

The elderly tenant was evicted from Department of Housing for noise and nuisance and then secured private rental, probably a result of not being listed on TICA. The tenant has had some contact with mental health services who state she does not have a mental illness. However, many community based workers claim that the woman appears to have a serious and ongoing mental illness that limits her capacity to maintain a tenancy.

Like other tenants with mental illness, this tenant was not always able to provide advocates with clear instructions or maintain contact.

This case illustrates the lack of services for tenants who fall between the guidelines of various government departments and support agencies. As a woman at risk of homelessness, she is particularly vulnerable to exploitation. There appear to be no services who monitor what happens to tenants who are evicted from their home and have a mental illness.

4.5 Special needs of Indigenous Australian with mental illness

*Case Study 12*

Mr Smith is a 34 year old Aboriginal man with mental health problems. He has had a couple of stays in psychiatric hospitals but generally lives independently. He is on medication for his mental illness. He is also a chronic user of amphetamine based illicit substances.

Mr Smith has been in and out of the prison system for the past few years. His last sentence was due to him displaying aggressive behaviour and making threats to a neighbour. This behaviour also led to him being evicted from his home.

Although Mr Smith obviously has complex needs he was receiving very little support in the community. He was a client of the Community Mental Health Team but did not get any support in the home because on occasion he had displayed aggressive behaviour towards workers. His only interaction with mental health workers was when he went to their premises to collect his medication.

Over the years Mr Smith had also seen a number of Psychiatrists. Mr Smith is currently homeless, having just been released from prison with nowhere to go.

For indigenous Australians with mental illness have complex needs that cannot be met by one service. What is required is a holistic approach by mental health workers, drug counselling/support workers and the criminal justice system. Instead what Mr Smith got was a patchwork crisis service that didn't meet any of his needs.

## 5. Term of Reference J: The overrepresentation of people with a mental illness in the criminal justice system and in custody, the extent to which these environments give rise to mental illness, the adequacy of legislation and processes in protecting their human rights and the use of diversion programs for such people

5.1 Limitations on access to legal advice

The lack of adequate or appropriate services for people with mental illness results in the increased likelihood of legal problems developing. These include disputes with neighbours, family breakdown, debt, homelessness and contact with police. The nature of the illness also impedes the capacity of the client to respond to legal advice and reduce the risk of engagement with the criminal justice system.

All of the consulted centres noted that mental health problems pose a serious challenge to the provision of adequate legal advice. This was clear at all stages of the advice process from i) the point of initial advice; to ii) follow-up advice; to iii) dealing with situations where a client is threatening self-harm or harm to another.

i) The point of initial advice:
Problems at this stage include:

- The obstacles facing a client with an anxiety disorder in contacting the services in the first place. Such obstacles may include paranoia with regard to speaking with an advocate over the phone due to the belief that the phone is tapped;
- The difficulties for clients with severe mental health problems in accurately conveying their situation to their solicitor or advocate;
- The difficulties for solicitors and advocates in explaining the legal solution to their client with a mental health problem. This is especially a problem in the case of social security law where the necessary explanation of the extensive and length appeals processes can add to the anxiety a client may already be experiencing; and
- The difficulties for solicitors and advocates in identifying the mental health problem where the client does not want to recognise that they have a mental health problem. For example, this is a problem in so-called “hoarding cases” where public housing clients are evicted on grounds of their hoarding but where this hoarding is itself a mental health problem (Diogenes syndrome). The client may refuse to cease hoarding as they do not identify their behaviour as stemming from a psychological condition.
- the stigma attached to mental illness in the wider community and the problems this poses in identifying mental health problems within the context of legal advice.

ii) Follow-up advice:
Follow-up advice is a common aspect of community legal centre practice however, particular problems are posed in providing such advice to clients with mental health problems. These include:

- Getting in contact with the client after the first advice. This is a particular problem when the client is homeless – as is more frequently the case with clients with a mental health problem;
- Ensuring that the client actually follows through on the advice. Clients with mental health problems may have more immediate needs than solving their legal problems and therefore do not always follow through on solicitors’ advice.
- Where a person is so affected by depression that they lack the motivation to do even simple things like sign an authority form and post it back;
- Where a person’s paranoia is so severe that they do not even trust the Centre’s advice or may even believe that Centrelink is monitoring the phone calls with the Centre;
- Where a person who lives with fluctuating mood disorders may indicate a willingness to follow the advice during one interview, and rejects the advice at the next; and
- Where advising a person who has not accepted that they suffer from a mental illness that their mental illness is a relevant factor in the determination of whether they are eligible for a payment/eligible to have a debt waived/ eligible to have a waiting period reduced.

iii) Self-harm:
The situation where a client threatens self-harm to him or herself was identified by all the centres as very difficult. Such a situation raises issues of whether client confidentiality may be breached to protect the client and/or others. Other issues of client confidentiality also emerge when centres must disclose their client's condition to a third party – such as Centrelink or the Department of Housing. The lack of access to expert assistance in dealing with clients threatening self-harm also causes stress to the staff and volunteers in community legal centres.

***Recommendation 13: The Commonwealth should increase funding to provide for more comprehensive referral services and support networks for people with mental illness so that mental health problems can be addressed before they lead to legal problems, including 24 hour counselling, support and referral services such as Lifeline.***

***Recommendation 14: That the Commonwealth Government provide sufficient funding that each community legal centre can have social worker with expertise in mental health on staff.***

5.2 Over representation in prisons and prison environments

For a variety of reasons, people with a mental illness tend to be seriously overrepresented in prisons. These reasons include a lack of adequate diversionary options in the community, the deinstitutionalisation of the mentally ill, homelessness and drug or alcohol abuse.

The prison environment may seriously worsen the condition of people with a mental illness and may threaten the enjoyment of their human rights. Anecdotal evidence from clients who have been in prison suggests that inmates with mental illnesses are frequently subject to physical and verbal abuse by other inmates, from which they are often unable to protect themselves. Anecdotal evidence also suggests that staff at correctional facilities often appear to have little or no training in dealing with prisoners with a mental illness.

The United Nations Special Rapporteur on the right to health noted in his report that prison conditions - such as overcrowding, lack of privacy, enforced isolation and violence - tend to exacerbate mental disabilities.[5]

The correctional culture of prisons is generally inimical to the needs of people with a mental illness. In this highly regulated environment, the imposition of inflexible routines and the strict enforcement of minor rules may increase the distress of people with a mental illness. The response of prisons to people who have difficulty adjusting to the prison environment is often to place them in isolation, a punitive approach which neglects the needs of prisoners with a mental illness.

It must be recognised that while services for people with a mental illness in custody must be enhanced, the improvement of access to timely and appropriate support services is a crucial element in reducing the prevalence of people with a mental illness in the criminal justice system. The development of services for people with a mental illness in custody must form part of a broader program of enhancing support services for those with a mental illness.

> *Case Study 13:*
> "(Generalist solicitor) Obviously, people with a mental illness are grossly overrepresented in the criminal justice system. In many cases, persons with severe mental disabilities who have not committed a crime, or who have committed only a minor offence, are misdirected towards prison rather than appropriate mental health care or support services.
>
> In my days as a Legal Aid duty solicitor I did a lot of bail applications for people who were being held in the cells at Wollongong Courthouse. That environment cannot be healthy for someone

[5] U.N.Doc. E/CN.4/2005/51

> with a mental illness - underground, no natural light, hostile, hard grey surfaces, no decent food, no warm clothing if they were picked up without wearing something warm, kept overnight, no automatic priority given to having their application dealt with so if they weren't identified as having a special need then they would just sit and wait their turn."

There is a tendency within the general public, the police force and government agencies to criminalise and stigmatise clients with mental health problems. Clients with such problems experience discrimination that general members of the public do not experience. This discrimination manifested itself in daily events from random police checks in public to rejections of rental applications in the private rental market.

***Recommendation 15: Develop services to identify and provide treatment for people with a mental illness in custody, including appropriate rehabilitation programs.***

***Recommendation 16: Provide training for prison staff about appropriate responses to prisoners with a mental illness.***