



New South Wales
Council for Civil Liberties

**NSW Council for Civil Liberties
SUBMISSION**

**Productivity Commission Inquiry
into Mental Health**

**ADDRESSING THE MENTAL
HEALTH NEEDS OF AUSTRALIA'S
MOST VULNERABLE IN THE
JUSTICE AND SOCIAL SECURITY
SYSTEMS**

26 April 2019

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts; attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

NSWCCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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A. Introduction

1. The New South Wales Council for Civil Liberties (CCL) thanks the Productivity Commission for the opportunity to make a submission to this Inquiry. This submission intends to address the following parts of two matters raised by the issues paper:
 - Examine how sectors beyond health contribute to improving mental health, with our focus on the justice and social security systems;
 - Examine the effectiveness of current programs and initiatives across all jurisdictions to improve mental health.
2. It is CCL's submission that aspects of the justice and social security systems have a negative effect on the mental health of people in Australia and that there is a need for change.

B. Recommendations

Recommendation 1: The mental health of Aboriginal and Torres Strait Islander peoples should become a national priority, including with a COAG Closing the Gap target, in consultation with Aboriginal and Torres Strait Islander peoples.

Recommendation 2: Government should immediately implement the recommendations of the 1991 Report of the Royal Commission into Aboriginal Deaths in Custody.

Recommendation 3: The Productivity Commission and Government should address the over-representation of people with mental health issues in prison, and improving conditions for people with disability in prisons, including safety, over-crowding and accessibility issues.

Recommendation 4: Government should invest in adequate healthcare and mental health care for prisoners.

Recommendation 5: The income support payments and indexation rates, particularly for Newstart, Youth Allowance, and Parenting Payment should be raised, so that people receiving them can have enough income to live above the poverty line, and the punitive aspects of jobactive and ParentsNext should be removed.

Recommendation 6: Suspend the 'robo-debt' scheme until such time as there has been a review into this machine learning tool so that if it continues, it will uphold the liberty of people affected.

C. Justice system

3. Various aspects of the justice system have a detrimental effect on the mental health of Australians. This submission focusses on two areas, the mental health of Indigenous people, and the failure of prisons to provide basic care for the people in its care.

Aboriginal and Torres Strait Islander People in the Justice System

4. Indigenous people are vastly overrepresented in the criminal justice system in Australia. The latest Australian Bureau of Statistics figures show that 28 per cent of the prisoner population are Aboriginal or Torres Strait Islander people. This is despite them making up some 2 per cent of the Australian population. Their imprisonment rate increased by 2 per cent in the previous year.¹ Aboriginal and Torres Strait Islander men are 15 times more likely to be in custody than non-Indigenous men, and Aboriginal and Torres Strait Islander women are 21 times more likely to be in custody than non-Indigenous women. The rate of Indigenous incarceration has risen by 45 per cent since 2008.² CCL believes the incarceration rates of Indigenous people are unacceptable.
5. The disproportionate rate of Aboriginal imprisonment was documented in 1991 in the Royal Commission into Aboriginal Deaths in Custody. It found that Aboriginal people were 'grossly over-represented in custody.' At the time, the adult imprisonment rate for Aboriginal people was 1465 per 100 000, whilst the adult equivalent rate for non-Indigenous Australians was 97 per 100 000. The final Report advocated for reforms to the criminal justice system. However, it found that the 'more fundamental causes for the over-representation of Aboriginal people in custody' were 'disadvantage and inequality'. Indeed, the 'most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in the society-socially, economically and culturally.' This includes 'health, housing, education, employment and income'.³
6. The Report also discussed 'how the attitudes of the dominant non-Aboriginal society, racism both overt and hidden and institutional racism, adversely affect Aboriginal people. It shows how some laws bear unequally upon Aboriginal people.' The Report addresses pervasive 'institutional racism' that Aboriginal people are subjected to, and acknowledges that 'far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent.'⁴
7. This issue of institutional racism was corroborated by the Human Rights and Equal Opportunity Commission's 1991 National Inquiry into Racist Violence, which found that 'Aboriginal-police relations have reached a critical point due to the widespread involvement of police in acts of racist violence, intimidation and harassment.' That report further

¹ 'Aboriginal and Torres Strait Islander Prisoner Characteristics', 4517.0, Prisoners in Australia, 6 December 2018, Australian Bureau of Statistics. <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2018~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics%20~13>>

² Sophie Russell and Chris Cunneen, 'As Indigenous incarceration rates keep rising, justice reinvestment offers a solution', 11 December 2018, *The Conversation*, <<https://theconversation.com/as-indigenous-incarceration-rates-keep-rising-justice-reinvestment-offers-a-solution-107610>>

³ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) Vol 1 [1.3.3, 9.3.1, 1.7.1-1.7.3].

⁴ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) Vol 1 (1.7.1-1.7.3), Vol 2 (12.1.26-12.1.38, 13.2.3).

observed that ‘Racist attitudes and practices (conscious and unconscious) pervade our institutions, both public and private.’⁵

8. As Aboriginal people face significant socio-economic disadvantage, significant institutionalised racism, and are significantly more likely to be incarcerated, one would expect these experiences to have a negative toll on the mental health of Aboriginal people. Studies have shown that racism has a negative effect on people’s mental health generally.⁶
9. In 2014, the National Mental Health Commission ‘propose[d] making Aboriginal and Torres Strait Islander mental health a national priority and that this should be supported by agreeing an additional COAG Closing the Gap target specifically for mental health.’ The Commission urged that ‘Further attention is required by mainstream services to the mental health needs of Aboriginal and Torres Strait Islander people in custodial care.’ Aboriginal people were reported to have higher rates of psychological distress and mental health conditions, for example, Aboriginal and Torres Strait Islander people were reported as three times as likely to identify as experiencing high or very high psychological distress levels in the 2012-2013 Australian Aboriginal and Torres Strait Islander Health Survey as the rate for non-Indigenous people.⁷

Recommendation 1: The mental health of Aboriginal and Torres Strait Islander peoples should be a national priority, including with a COAG Closing the Gap target, in consultation with Aboriginal and Torres Strait Islander peoples.

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Conditions in Prisons for People with Mental Ill-health

10. In 2006 the Senate Select Committee on Mental Health issued its report “*A national approach to mental health – from crisis to community: First Report*”.⁸ People in Australia’s prisons have a ‘comparatively high rate of mental illness’, with the contributing factors summarised as including “general disadvantage, including poverty, homelessness and unemployment, deinstitutionalisation, substance abuse, a lack of early intervention and a lack of mental health services in the community.”⁹ It also reported that people with mental illness ‘are over-represented in the criminal justice system’ giving the example that people with mental illness are often ‘arrested for a misdemeanour or a petty crime. One witness has described police officers as “the front line mental health practitioners”’.¹⁰

⁵ Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into Racist Violence in Australia* (1991) 387. See also Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (2005).

⁶ Fethi Mansouri, Louise Jenkins, Les Morgan and Mona Taouk, *The Impact of Racism Upon the Health and Wellbeing of Young Australians* (2009). Yin Paradies, Jehonathan Ben et al, ‘Racism as a determinant of health: a systematic review and metanalysis’, [2015] 10(9) *PLoS One* 1. Roberta K Timothy, ‘Racism impacts your health’, 1 March 2018, *The Conversation*, <<https://theconversation.com/racism-impacts-your-health-84112>>.

⁷ National Mental Health Commission, *Specific Challenges for Aboriginal and Torres Strait Islander People: A Summary of the National Review of Mental Health Programmes and Services* (2014) 1,6.

⁸ Senate Select Committee on Mental Health, Parliament of Australia, *A national approach to mental health – from crisis to community: First Report* (2006).

⁹ Senate Select Committee on Mental Health, Parliament of Australia, *A national approach to mental health – from crisis to community: First Report* (2006) 333-5, 340 [13.26].

¹⁰ Senate Select Committee on Mental Health, Parliament of Australia, *A national approach to mental health – from crisis to community: First Report* (2006) 333-5, 340 [13.20-13.26, 13.50].

11. The Senate Select Committee referred to a 2003 NSW study that found 48 percent of reception inmates and 38 percent of sentenced inmates had suffered a mental disorder in the previous 12 months. It referred to a Victorian study from 2003 found that 51 percent of prisoners had been assessed or treated by a psychiatrist or doctor for an emotional or mental health problem.¹¹
12. Human Rights Watch (HRW) in 2018 reported that whilst 18 per cent of Australians have a disability, about half of all prisoners have a psychosocial disability, with more than one in four taking medication for a psychosocial condition. HRW reported some 73 per cent of Aboriginal and Torres Strait Islander men in prison have a diagnosed mental health condition and 86 per cent of Aboriginal and Torres Strait Islander women have diagnosed mental health conditions.¹²
13. The over-representation of people with mental health issues in prisons, and the particular over-representation of Indigenous people with mental health issues in prisons, suggests that there may be systemic failures to address the needs of inmates and in particular Indigenous inmates.
14. CCL is concerned over any systemic use of the criminal justice system and prisons to manage people with a mental health disability, in particular Indigenous people. HRW reported that First Peoples Disability Network (Australia) ‘and other advocacy and monitoring organizations have denounced Australia’s use of prisons to manage Aboriginal and Torres Strait Islander people with disabilities.’ HRW summarised research noting that:

the police and court system end up “managing” Aboriginal and Torres Strait Islander people with psychosocial or cognitive disabilities in the absence of “coherent frameworks for holistic disability, education and human services support” but are ill-equipped to do so.¹³
15. This is a further issue because prisons do not appear to provide adequate support for people with mental health issues. It is reported that women with disabilities, particularly Aboriginal and Torres Strait Islander women with disabilities:

experience higher rates of poverty, homelessness, domestic and sexual violence, and abuse than non-indigenous peers and peers without disabilities. Being put in custody often only heightens psychosocial disabilities associated with this trauma. An estimated 70 to 90 percent of women in prison in Australia have experienced sexual or family violence.¹⁴
16. In their report on prisoners with disabilities, HRW found that ‘All prisoners face delayed or inadequate access to health care due to overcrowding.’ Overcrowding is a systemic issue due to lack of proper investment in prisons across Australia. For example, Western Australia Inspector of Custodial Services Neil Morgan reported that the state’s only secure forensic mental health facility has not expanded its 30 beds in 25 years, though the prison population has tripled. It currently covers some 6500 prisoners. This meant that ‘the daily management of people with serious mental health needs is left to custodial staff, who have limited training, few management options and poor access to information.’ HRW observed that:

Prison staff often feel overwhelmed and powerless to assist people that would require more intense forms of support. Impossibly large caseloads often limit the ability of mental health

¹¹ Senate Select Committee on Mental Health, Parliament of Australia, *A national approach to mental health – from crisis to community: First Report* (2006) 333 [13.22].

¹² Human Rights Watch, *“I Needed Help, Instead I was Punished”: Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 18, 22.

¹³ Human Rights Watch, *“I Needed Help, Instead I was Punished”: Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 23, referring to, Eileen Baldry et al., “A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System,” (University of New South Wales, 2015)

<https://www.mhdc.unsw.edu.au/sites/www.mhdc.unsw.edu.au/files/u18/pdf/a_predictable_and_preventable_path_final.pdf>.

¹⁴ Human Rights Watch, *“I Needed Help, Instead I was Punished”: Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 24-5.

professionals to provide appropriate, individually tailored services to prisoners who want them. Mental health staff often fail to discuss with prisoners the nature, purpose, risks, and benefits of different types of treatment so that the prisoner is not in a position to make informed decisions on whether or not to consent to the treatment.¹⁵

17. There is also a failure to provide basic training to staff in relation to prisoners with disabilities or mental health needs. There is no disability assessment when prisoners enter prison. Whilst prisoners needing 'urgent care' may see a mental health or medical nurse, 'they experience significant delays in seeing specialists and can wait days, weeks, or even months to see a physiotherapist or a psychiatrist.' Delays can be up weeks or sometimes months to see a psychiatrist in Western Australia and Queensland respectively. The average waiting time was over a month to see a doctor in NSW, and 42 days to see a psychiatrist. For a bed in a forensic hospital, a prisoner in NSW can wait up to 99 days on average. In WA, there are less than three full time psychiatrists dealing with over 17 adult prisons.¹⁶

18. Aside from the lack of mental health care for vulnerable populations with disproportionately high rates of mental health issues, it is worth considering the ways that prisons cause mental health issues. For example, bullying and abuse are rife in prisons, with HRW reporting cases of sexual abuse (23.5% of the prisoners and ex-prisoners they interviewed), and physical violence (30% of prisoners and ex-prisoners they interviewed). These were perpetrated by prisoners and prison staff, against male and female detainees. In 11 out of 14 prisons, they found evidence of racial abuse and behaviour, ranging from verbal abuse, racial slurs, harassment, to biased treatment and violence. There was also evidence of ableist abuse, violence and bullying, with some prisoners with disabilities who required carers were assigned inappropriate people. For example, HRW reported six out of eight carers in a Queensland prison were convicted sex offenders. HRW noted that:

many prisoners with disabilities live in constant fear of others, in and out of cells, including during showers, meals, and recreation time. In overcrowded facilities, where people are forced to 'double up' in single cells, people with disabilities are often the targets of bullying.¹⁷

19. There is also a systemic problem of the use of solitary confinement against prisoners, in particular prisoners with disability. The Office of the Chief Psychiatrist recognises it as 'traumatic and psychologically harmful'. Yet it is used for extended periods – prisoners can spend 'months and at times years in prolonged solitary confinement'. Prisoners held in solitary confinement spend 22 or more hours each day in a small cell, 'sealed with solid doors'. They 'lack opportunities for meaningful social interactions with other prisoners' – interactions with staff is 'perfunctory and may be wordless'. HRW reported that of 22 cases of Maximum Security Unit prisoners, 15 had psychosocial or cognitive disabilities and that some were held there for years, and 'punished for behaviour related to their disability'. HRW found that solitary confinement is used:

to punish, manage, protect, or ostensibly treat prisoners. Human Rights Watch found that prisoners with psychosocial or cognitive disabilities are disproportionately represented in all solitary confinement regimes... across the 14 prisons visited.¹⁸

20. HRW observed that:

¹⁵ Human Rights Watch, *"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 66, 70. Nicolas Perpetch, 'Prisoner mental health services attacked in damning Inspector of Custodial Services report', 27 November 2018, *ABC News* <<https://www.abc.net.au/news/2018-11-27/damning-report-find-inadequate-mental-health-services-wa-prisons/10559026>>.

¹⁶ Human Rights Watch, *"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 66-9.

¹⁷ Human Rights Watch, *"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 29-38.

¹⁸ Human Rights Watch, *"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 39-57.

isolation can be psychologically damaging to any prisoner causing anxiety, depression, anger, obsessive thoughts, paranoia, and psychosis. Its effects can be particularly detrimental for people with psychosocial or cognitive disabilities... [The] stress of a closed and heavily monitored environment, absence of meaningful social contact, and lack of activity can exacerbate mental health conditions and have long-term adverse effects on the mental well-being of people with psychosocial or cognitive disabilities. All too frequently, people with psychosocial or cognitive disabilities can decompensate in solitary confinement, attempting suicide or requiring emergency psychosocial support or psychiatric hospitalization.¹⁹

21. In most cases HRW reviewed, people with disabilities often found their psychological conditions 'deteriorated after spending time' in solitary confinement. An Oxford specialist observed that solitary confinement inflicts 'psychological trauma and in some cases deprive inmates of sanity itself.' Solitary confinement is also used to manage self-harming prisoners, due to the lack of other facilities to provide care for them. One man was sent for 'safety' to solitary confinement after he was raped in prison. The prolonged solitary confinement led him to self-harm. He saw the 'psych twice in four months and it wasn't meaningful'.²⁰
22. There are also a range of other structural issues that affect the mental health of vulnerable prisoners in prisons. The most important is overcrowding. Western Australia's prisons function at 150 percent of capacity. Queensland's facilities held 8,477 in 2017, when their capacity was up to 5,600. Prison cells built for one person sometimes were 'often' filled with two, and sometimes three prisoners. This also provides circumstances for greater friction and bullying among prisoner, and also officers who are overworked by having to supervise greater numbers of prisoners. It affects privacy, hygiene, and the quality of care.²¹
23. There are systemic failures to provide for the physical needs of prisoners with disabilities. In 9 out of 14 prisons, HRW reported there were not accessible toilets, showers, kitchens or bathrooms. This meant that prisoners with physical or sensory disabilities either could not use these facilities, or their experiences became 'painful and humiliating'. In one prison, there was only one accessible toilet and shower for 1,000 prisoners, which was in the infirmary. This meant that prisoners required staff permission, which was not available during lockdowns. This meant that prisoners often had to wait, sometimes for hours. They had to 'wear nappies or urinate in bottles in their cells at night.' One man was left 'lying in my own shit' with diarrhoea because the staff refused to help a man in a wheelchair. There was also no provision for deaf prisoners to communicate with their families in 11 of 14 prisons visited.²²
24. The degrading treatment that people with disability are reported to receive in Australian prisons needs to be addressed. The failure to provide safe and accessible conditions and appropriate healthcare means that already vulnerable people are further traumatised by their experiences in prisons.

Recommendation 3: The Productivity Commission and Government should address the over-representation of people with mental health issues in prison, and improving conditions for people with disability in prisons, including safety, overcrowding and accessibility issues.

¹⁹ Human Rights Watch, *"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 50-1.

²⁰ Human Rights Watch, *"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 39-56.

²¹ Human Rights Watch, *"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 58-60.

²² Human Rights Watch, *"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia* (2018) 61-65.

Recommendation 4: Government should invest in adequate healthcare and mental health care for prisoners.

D. Poverty, Social Security and Mental Health

25. CCL is concerned that current policy settings in the social security system exacerbate rather than assist in resolving people's mental health issues.
26. In the 2018 study on poverty in Australia by the Australian Council of Social Services (ACOSS) and the University of New South Wales (UNSW), a poverty line of 50 percent of median household disposable income was used. Before housing costs, this was reported as \$433 a week for single adults living alone in 2015-6, and \$909 for a couple with two children. At this rate, and after housing costs ACOSS/UNSW reported that some 13.2 percent of Australians lived below the poverty line, amounting to 3.05 million people, including 739 000 children.²³ The study noted that some types of households have higher rates of poverty, including "People in households whose reference person is unemployed (68%)", households whose reference person lives on Youth Allowance (64%), Newstart (55%) or Parenting Payment (52%), and public housing tenants (49%).²⁴
27. The poverty rate in Australia 'fluctuated within a band between' 11.5 per cent and 14.4 per cent, from 1999-2016. Poverty declined to 11.5 percent in 2003, then rose to 14.4 per cent just before the Global Financial Crisis (GFC) in 2007. Then, after the GFC, the poverty rate declined to 12.6 percent in 2009, and has generally plateaued since then. This suggests that economic growth alone does not account for poverty, as poverty 'rose sharply' in the 'boom years' leading up to the GFC, and fell after the GFC. One of the reasons given by the ACOSS/UNSW report for the decline in poverty from 2007-2009 was an increase in, and indexation of, social security payments:
One reason for the decline in the overall poverty rate between 2007 and 2009 was a '\$32 a week increase in the single rate of pension in 2009. Buttressed by the ongoing indexation of pensions to wage movements, this reduced poverty among pension recipients.'²⁵
28. As the ACOSS and UNSW study notes:
Most major income support payments are below the poverty line, so to escape poverty, people need to supplement their social security payments with private income or move out of the social security system altogether (if able to do so).²⁶
29. The World Health Organisation (WHO) wrote that "Mental ill-health and poverty are closely linked and interact in a complex negative cycle. Studies over the last 20 years indicate a close interaction between factors associated with poverty and mental ill-health'. They state that 'Common mental health disorders are about twice as frequent among the poor as among the rich. For example, evidence indicates that depression is 1.5 to 2 times more prevalent among the low-income groups of a population.' Mental disorders are also more likely among those with lower levels of education, and the unemployed.²⁷
30. Other studies have similarly found that there is a connection between poverty and mental health. They can interact in complex ways, but the evidence suggests both that mental health issues can lead to poverty, and also that poverty can lead to mental health issues.

²³ Peter Davidson, Peter Saunders, Bruce Bradbury, Melissa Wong, *Poverty in Australia, 2018* (2018) ACOSS/UNSW Poverty and inequality Partnership Report No. 2, 12.

²⁴ Peter Davidson, Peter Saunders, Bruce Bradbury, Melissa Wong, *Poverty in Australia, 2018* (2018) ACOSS/UNSW Poverty and inequality Partnership Report No. 2, 23.

²⁵ Peter Davidson, Peter Saunders, Bruce Bradbury, Melissa Wong, *Poverty in Australia, 2018* (2018) ACOSS/UNSW Poverty and inequality Partnership Report No. 2, 13.

²⁶ Peter Davidson, Peter Saunders, Bruce Bradbury, Melissa Wong, *Poverty in Australia, 2018* (2018) ACOSS/UNSW Poverty and inequality Partnership Report No. 2, 12.

²⁷ World Health Organisation, *Breaking the vicious cycle between mental ill-health and poverty* (2007) <https://www.who.int/mental_health/policy/development/1_Breakingviciouscycle_Infosheet.pdf?ua=1>.

That is, as one review of a collection of studies observed, ‘living in poverty can significantly harm people’s mental health.’²⁸ Academic specialists have reached similar findings in Australia: poverty leads to a range of poorer health outcomes, including mental health. The richest 20 per cent of Australians can expect to live about six years longer than the poorest 20 per cent. There is also a correlation between social class and mental health issues, such as anxiety and depression.²⁹

31. Thus, social security policy settings should be seen through the lens not just of poverty alleviation or economics, but also understood to be linked to mental health outcomes.

Newstart and Parenting Payments

32. Approximately 727,500 people receive Newstart. Around 67 per cent of recipients have been on the payment for 12 months or more, and about 70 per cent have been unemployed for 12 months or more.³⁰ Newstart Allowance typically takes place with jobactive. Jobactive replaced Job Services Australia in July 2015. Jobactive is the government’s outsourced generalist employment service, and is the largest program for delivery of employment services in Australia. There are approximately 631,000 jobactive participants across Australia with its objectives to help people find and keep jobs, and help unemployed workers meet their mutual obligations.³¹
33. In December 2018, there were some 670,900 unemployed people in the workforce, and it was reported that there were another estimated 1.1 million underemployed people in the workforce, with an unemployment rate of 5 per cent, and an underemployment rate of 8.8

²⁸ Viyani Murali and Femi Oyebo, ‘Poverty, social inequality and mental health’ (2004) 10(3) *Advances in Psychiatric Treatment* 216. Crick Lund, Mary De Silva et al, ‘Poverty and mental disorders: breaking the cycle in low-income and middle-income countries’ (2011) 378 (9801) *Global Mental Health* 1502. Jaime Delgado, ‘Worlds apart: social inequalities and psychological care’ (2018) 18(2) *Counselling and Psychotherapy Research* 111; Jaime Delgado, Amy Farnfield, and Alice North, ‘Social inequalities in the demand, supply and utilisation of psychological treatment’ (2018) 18(2) *Counselling and Psychotherapy Research* 114; Sandy Berzins, Robbie Babins-Wagner, Kathleen Hyland, ‘Relationship of employment status and socio-economic factors with distress levels and counselling outcomes during a recession’ (2018) 18(2) *Counselling and Psychotherapy Research* 122; Alison Trott and Andrew Reeves, ‘Social class and the therapeutic relationship: The perspective of therapists as clients. A qualitative study using a questionnaire survey’ (2018) 18(2) *Counselling and Psychotherapy Research* 166; University of Sheffield, ‘Money can’t buy happiness, but poverty harms mental health’, 27 April 2018 <<https://medicalxpress.com/news/2018-04-money-happiness-poverty-mental-health.html>>.

²⁹ Sharon Friel, ‘Social determinants – how class and wealth affect our health’, 1 September 2016, *The Conversation*, <<https://theconversation.com/social-determinants-how-class-and-wealth-affect-our-health-64442>>; Sharon Friel, ‘How social class affects health’, 11 March 2014, *The Conversation*, <<https://theconversation.com/how-social-class-affects-health-23366>>. Vic Health, ‘Access to economic resources as a determinant of mental health and wellbeing’ (January 2005) <https://www.vichealth.vic.gov.au/-/media/ProgramsandProjects/Publications/Attachments/Access_to_economic_Final_Fact_sheet.pdf?la=en&hash=04CA4FCE6DAB6FB71FBF81AA5877F4443DEA332F>. Michael Dulaney, ‘Mental illness and poverty: how class gets “under our skin and into our brain”’, 13 April 2018, *ABC News*, <<https://www.abc.net.au/news/2018-04-13/is-your-class-status-making-you-depressed-mental-health/9598170>>.

³⁰ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) 35-6.

³¹ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) xix, 32-5.

per cent.³² ACOSS reported that growth in jobs from 2008 to 2017 was almost ‘stagnant’, and many new jobs were part-time.³³

34. The ACOSS and UNSW report notes that ‘The lowest income support payments are Youth Allowance... and Newstart Allowance’. This is particularly so due to the failure to increase the Newstart Allowance in real terms since 1994, which has led to an increase in the poverty rate for those on Newstart:

The freezing of Newstart Allowance (after inflation) since 1994 is contributing to a progressive deepening of poverty for people in households relying mainly on that payment. Their poverty rate rose from 61% in 1999 to 78% in 2015, while the average poverty gap (for those below the poverty line) rose from \$81 per week to \$136 per week over the same period (compared with a rise from \$70 to \$96 for all income support households).³⁴

35. Journalist Greg Jericho usefully demonstrates the growing gap between the increasing poverty line, which has increased with inflation, and the stagnating Newstart Allowance, which has not increased since 1994.³⁵ Unemployed Australians who depend on Newstart to survive, have to do so on payments increasingly further below the poverty line. This has predictable effects on a person’s wellbeing, as they are likely making increasingly tougher decisions to meet their needs with the remaining money.
36. The Senate inquiry into jobactive recommended that the government ‘undertake a review of the adequacy of the rate of Newstart, with respect to keeping people out of poverty and getting people back into work as soon as possible’.³⁶ In addition, it is important to acknowledge that poverty and mental health issues are entwined, and mutually enforcing, and so there can be an economic case for the Productivity Commission to look into as to whether it is prudent to increase income support payments not just to prevent people living in poverty but also to reduce mental illness.
37. CCL believes that Newstart and other payments need to be raised and indexed so that people on security payments can live above the poverty line.

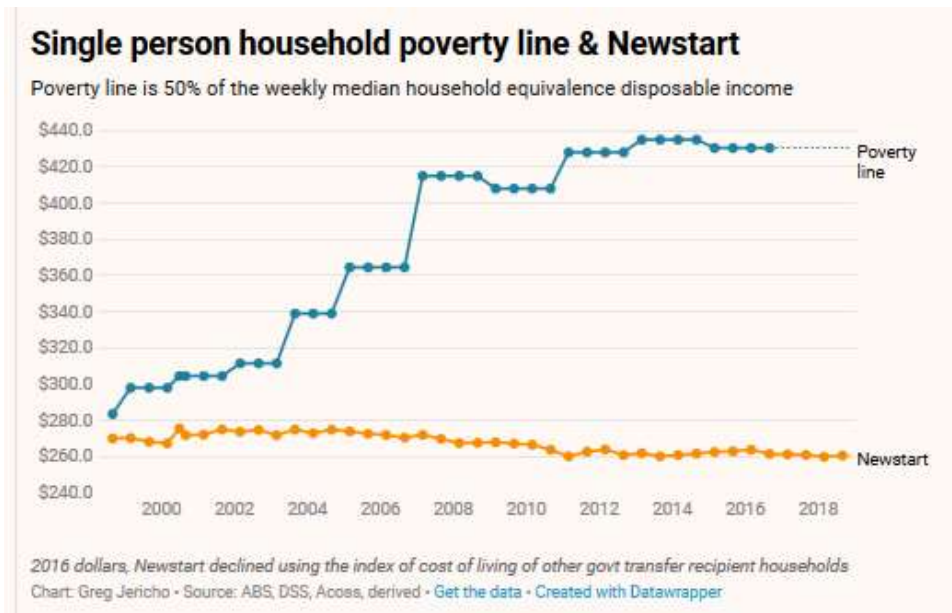
³² Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) xix, 6, 14.

³³ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) xix, 6, 14-7.

³⁴ Peter Davidson, Peter Saunders, Bruce Bradbury, Melissa Wong, *Poverty in Australia, 2018* (2018) ACOSS/UNSW Poverty and inequality Partnership Report No. 2, 6, 22, 25, 12, 13.

³⁵ Greg Jericho, ‘Australian poverty in graphs: it’s a desperate state of affairs’, 16 April 2019, *The Guardian* <https://www.theguardian.com/australia-news/2019/apr/15/australian-poverty-in-graphs-its-a-desperate-state-of-affairs?CMP=share_btn_tw>.

³⁶ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) ix.



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38. Parenting Payment is an income support payment for the main carer of a young child. For those with a child who is six years old or older, the recipient has to meet mutual obligation requirements, and agree to a job plan. Those with children younger than six must agree to a participation plan, engage in prescribed activities, and take part in ParentsNext. Single parents can receive Parenting Payments of up to \$776.10 per fortnight.³⁸ This payment, whilst higher than Newstart, is also below the poverty line of \$433 per week.
39. The ACOSS and UNSW report on poverty found that ‘Among different family types, sole parent families have the highest poverty rates at 32%. Children in sole parent families’ have ‘a poverty rate of 39%’, which is more than three times as high as the rate of poverty for children in couple families. This rate of poverty is at least in part a result of government policy. The ACOSS and UNSW report notes that ‘following the transfer of many sole parents to Newstart Allowance, the rate of poverty among unemployed sole parents rose from 35% in 2013 to 59% two years later (compared with a rise in poverty from 35% to 38% for all unemployed people).’³⁹ That is, poverty increased substantially among single parents, due to a series of Government decisions to transfer people from the higher paying Parenting Payment, to the lower paying Newstart payment.⁴⁰

Punitive Aspects to Mutual Obligations Requirements

³⁷ Greg Jericho, ‘Australian poverty in graphs: it’s a desperate state of affairs’, 16 April 2019, *The Guardian* <https://www.theguardian.com/australia-news/2019/apr/15/australian-poverty-in-graphs-its-a-desperate-state-of-affairs?CMP=share_btn_tw>.

³⁸ Australian Government Department of Home Services, ‘Parenting Payment’ (30 October 2018), <<https://www.humanservices.gov.au/individuals/services/centrelink/parenting-payment>>. Australian Government Department of Home Services, ‘Who can get it’ (8 November 2018) <<https://www.humanservices.gov.au/individuals/services/centrelink/parenting-payment/who-can-get-it>>. Australian Government Department of Home Services, ‘ParentsNext’ (15 April 2019) <<https://www.humanservices.gov.au/individuals/services/centrelink/parentsnext>>. Australian Government Department of Home Services, ‘How much you can get’ (20 March 2019) <<https://www.humanservices.gov.au/individuals/services/centrelink/parenting-payment/how-much-you-can-get>>.

³⁹ Peter Davidson, Peter Saunders, Bruce Bradbury, Melissa Wong, *Poverty in Australia, 2018* (2018) ACOSS/UNSW Poverty and inequality Partnership Report No. 2, 13.

⁴⁰ Department of Parliamentary Services (Cth), *Bills Digest* no. 164 of 2011-2, 31 May 2012, 4-7, 13.

40. Like Jobactive, ParentsNext is a privatised service for people receiving income support to meet their mutual obligations. Unlike Jobactive, ParentsNext is a pre-employment program meant to assist parents back into work, once their children begin school.⁴¹
41. ParentsNext was first trialled in 10 local government areas from 2016 to 2018 and then expanded nationally. As at 31 December 2018, there were 75,259 participants in ParentsNext. Approximately 95 per cent are women, and approximately 68 per cent are single parents. Since July 2018, participants in ParentsNext have been subject to the Targeted Compliance Framework.⁴²
42. There are a range of mutual obligation requirements that apply to people receiving social security payments. The theory of these requirements is that people who are unemployed should demonstrate that they are making conscientious efforts to find work, that they are trying to improve their skills and employment prospects, and in some schemes, contributing to their communities. In practice, unemployed workers have described this scheme as typically onerous and not helpful to gaining employment.⁴³
43. These mutual obligations are enforced through what is now called a Targeted Compliance Framework (TCF), which began on 1 July 2018. These include a Green Zone, where job seekers automatically begin, a Warning Zone, for a failure to comply with an obligation, and then penalties may be applied for further malfeasance. Significantly, this used to be evaluated by the government's Department of Human Services, through advice from providers. Since TCF began, this process is privatised, with demerits and penalties applied by providers. Demerits can be applied for failing to attend an appointment, not applying for the required number of jobs, or behaving 'inappropriately' during an appointment or activity, which 'can be judged' as threatening a 'potential' offer of employment.⁴⁴
44. Three months into this scheme, 32.6 per cent of recipients had at least one demerit point resulting in suspension of income support payments. By 31 December 2018, 42.5 per cent of those recipients had received support payment suspension, with 4,101 participants in the penalty zone – where one can face payment cancellation, or reduction.
45. 28% of people in this scheme's penalty zone are Indigenous (and are overrepresented as they make up 13% of the scheme's participants), and almost 20% of people in the scheme's penalty zone are homeless.⁴⁵
46. The Committee's stated its view about the punitive aspects of the TCF at paragraphs 8.22-8.23:

8.22 The committee is of the view that the new TCF arrangements are unnecessarily burdensome and prioritise a punitive compliance approach over meaningful employment outcomes. This is strongly demonstrated by the evidence of the Department of Jobs and Small Business which shows that almost half of all jobactive participants have been found to be non-compliant. Additionally, the number of people in the penalty zone has gone from 665 in the first three months of the TCF to over 4000 three months later. Furthermore, the astonishingly high error rate of 50 per cent during the 2015-16 year clearly demonstrates the real risk of participants being unfairly punished. These errors have real-life consequences for jobactive participants, including the suspension of support payments.

⁴¹ Senate Community Affairs References Committee, Parliament of Australia, *ParentsNext, including its trial and subsequent broader rollout* (2019) 1.

⁴² Senate Community Affairs References Committee, Parliament of Australia, *ParentsNext, including its trial and subsequent broader rollout* (2019) 1-2.

⁴³ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) 101-138

⁴⁴ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) 139-140.

⁴⁵ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) 140-141.

8.23 Additionally, the committee considers that it is unacceptable that administrative errors by providers can result in payment suspensions with no recourse to Centrelink. The committee considers that in certain circumstances Centrelink must have discretion over penalties, including demerits. The government's punitive approach to delivering employment services does not provide value for money for taxpayers nor opportunities for decent and stable jobs for unemployed Australians.⁴⁶

47. TCF has also had a punitive approach to income support recipients in ParentsNext. Parents who fail to meet a requirement, such as meeting with a provider or recording participation in an activity, may have their payments suspended, and subject to demerit points. When five demerit points are reached, there are further penalties, including cancellation of Parenting Payment. By 31 December 2018, 967 recipients had at least one demerit point. A survey conducted by the Centrelink and Other Info Facebook Group found that 70 per cent of responding participants had payments suspended through no fault of their own. This is broadly consistent with a survey by the National Council of Single Mothers and their Children and the Council of Single Mothers and their Children Victoria found that 68 per cent of respondents had received a suspension because of an error made by Centrelink or a ParentsNext provider. Respondents have also reported difficulties in getting payments restored.⁴⁷
48. This punitive approach has also been a feature of earlier compliance regimes. Since the introduction of jobactive in July 2015, 461 771 financial penalties were imposed up to 28 November 2018. There is also a significant rate of error. During the year 2015-16, around 50 per cent of the penalties imposed were found by Centrelink to be in error. That is, penalties were falsely imposed on people who had not committed any relevant infractions. Unemployed workers have reported that there have also been difficulties in having payments restored, and removing demerit points. The Senate inquiry into Jobactive found that 'the new TCF arrangements are unnecessarily burdensome and prioritise a punitive compliance approach over meaningful employment outcomes.' It observed that the 'astonishingly high error rate of 50 percent' clearly 'demonstrates the real risk of participants being unfairly punished.' The committee 'considers that it is unacceptable that administrative errors by providers can result in payment suspensions with no recourse to Centrelink.'⁴⁸
49. These suspensions have severe impacts. According to the Chief Executive Officer of Good Shepherd Australia New Zealand, TCF was regarded as 'particularly punitive for single mothers and inhibited efforts to become self-reliant'.
50. In order to reduce the negative impact on the mental health of people receiving social security payments, CCL calls for the Productivity Commission and Government to remove the punitive aspects of income support policies.
51. We also note that social security payment suspensions and cancellations may be caused by the 'robo-debt' scheme. In July 2016, Centrelink introduced a new scheme for debt recovery. It works by 'works by automatically comparing income reported to Centrelink with information held by the Australian taxation office. Where discrepancies are detected, Centrelink gives people three weeks to prove they were entitled to receive the benefits, which can be up to 6 years old. The data-matching was previously done manually.'⁴⁹

⁴⁶ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) 144.

⁴⁷ Senate Community Affairs References Committee, Parliament of Australia, *ParentsNext, including its trial and subsequent broader rollout* (2019) 5-6, 13-14.

⁴⁸ Education and Employment References Committee, Senate of Australia, *Jobactive: failing those it is intended to serve* (2019) 141-144.

⁴⁹ Christopher Knaus, 'Government backs Centrelink debt system despite 'incorrect' \$24,000 demand', 29 December 2016, *The Guardian*, <<https://www.theguardian.com/australia-news/2016/dec/29/government-confident-in-centrelink-debt-compliance-system-despite-reported-errors>>.

52. Carney has written that there are learnings from the reported unlawfulness of the “robo-debt” scheme:

Machine learning decision-making systems are surely the way of the future. Properly designed and monitored, they offer a trifecta of greater accessibility, greater accuracy and responsiveness, and greater efficiency of administration. Poorly designed they risk abuse of procedural fairness, the rule of law, and accountability raising questions about how best to promote best practice, how to define fairness, and how to avoid unwarranted discrimination in their administration.

The robo-debt saga is ostensibly about the brave new world of machine learning systems jeopardising administrative and legal values in insidious and dangerous ways unknown to the human decision-making systems of administration they largely replace. But machine learning is simply the latest technological new kid on the block, no better or worse than previous technological developments. The real villain I suggest is an old one: an executive branch of government insufficiently held to account by the legislative or judicial branches.⁵⁰

53. A report in April 2017 by the Commonwealth Ombudsman issued criticisms of aspects of this scheme. For example, when it began, recipients of the initial letter about the alleged debt had 21 days to respond or request extensions. The Ombudsman said this timeframe ‘was not reasonable or fair in all circumstances’, given ‘the complexity of collecting historical employment information or the possibility that the customer may not have received the initial letter’.⁵¹ However, this time was only extended to 28 days. The Department of Human Services (DHS) could ‘use its powers to collect information directly from employers to verify the customer’s earnings.’ Instead, recipients had to collect evidence from several years ago, though they ‘do not have the same information gathering powers as DHS.’ This is particularly challenging, as debts going back six years may mean recipients of the letter had to go through data from six to seven years earlier, particularly where they were not forewarned that they would need to keep those records.⁵²
54. Data released in February 2019 suggests that 2030 people died after receiving Centrelink ‘robo-debt’ notices, from the period July 2016 to October 2018. This included 429 deaths of people under 35 years old and 663 deaths were of people who were classified as vulnerable, such as having mental illness, or being victims of domestic violence, while more than 500 of those who died were on Newstart Allowance, and 520 were on the Disability Support Pension.⁵³ CCL suggests that there may be significant mental health costs to the implementation of the robo-debt data matching scheme and that given the serious negative outcomes that are linked to this scheme, that it should be suspended to allow for a review of machine learning tools so that they will uphold the liberty of people affected.

Recommendation 5: The income support payments and indexation rates, particularly for Newstart, Youth Allowance, and Parenting Payment should be raised, so that people receiving them can have enough income to live above the poverty line, and the punitive aspects of Jobactive and ParentsNext should be removed.

⁵⁰ Terry Carney, ‘Robo-debt illegality: the seven veils of failed guarantees of the rule of law?’, 44(1) *Alternative Law Journal* (2019) 4.

⁵¹ Commonwealth Ombudsman, *Centrelink’s automated debt raising and recovery system*, Report no. 2 (April 2017) 14.

⁵² Commonwealth Ombudsman, *Centrelink’s automated debt raising and recovery system*, Report no. 2 (April 2017) 12-13

⁵³ Shalailah Medhora, ‘<https://www.abc.net.au/triplej/programs/hack/2030-people-have-died-after-receiving-centrelink-robodebt-notice/10821272>’, 18 February 2019, *ABC Hack*, <<https://www.abc.net.au/triplej/programs/hack/2030-people-have-died-after-receiving-centrelink-robodebt-notice/10821272>>.

Recommendation 6: Suspend the ‘robo-debt’ scheme until such time as there has been a review into this machine learning tool so that if it continues, it will uphold the liberty of people affected.

E. Conclusion

55. Society has an obligation to uphold the safety and mental health care of prisoners, especially as we are responsible for their care while we impinge on their liberty by detaining them. The overcrowding, and over use of solitary confinement for prisoners are just some symptoms of a prison system that needs reform.
56. Where people who experience poverty receive social security payments, these should be at a rate which does not leave them in poverty. The civil liberties of people affected by cuts to income support whether through changes to the criteria for the parenting payment, or the low level of indexation, or whether through punitive penalties or “robo-debts” need to be upheld. One of the costs of not upholding people’s liberty in these circumstances can a deterioration in mental health which can be avoided through better designed policies.
57. It is worth reiterating that Indigenous people’s mental health issues should be a national priority, and embedded in the Close the Gap indicators. There are systemic problems and prejudices that Aboriginal people face in the criminal justice system and these should be given due focus in this Inquiry, as they impact on Indigenous mental health.

This submission was prepared by Michael Brull on behalf of the New South Wales Council for Civil Liberties, with contributions by Simon Bruck.

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