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Productivity Commission
4 National Circuit
Barton ACT 2600, Australia
By email: mental.health@pc.gov.au

The National Social Security Rights Network (NSSRN) submission to the Productivity Commission's Inquiry into Mental Health

1. The NSSRN is a peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to people experiencing issues with social security and family assistance payments. The NSSRN draws on this front line experience to develop its submissions and policy positions.
2. We welcome the opportunity to provide input to the Productivity Commission's Inquiry into Mental Health. Our submission focuses on income support payments and social services programs intended to provide support to a person living with mental illness to transition to meaningful social and economic participation.

In this submission we comment on:

- the inadequate rates of all working age payments which hinder people with mental illness from effectively managing and treating their conditions,
- the expertise required for the effective operation of the jobactive program with reference to employment service providers,
- the need to monitor the impact of the "New Employment Services Model" announced in 2019 Budget on people with mental illness, and
- policy responses to the lack of availability of medical services for diagnosis and treatment of mental health conditions, particularly in remote and regional communities.

In NSSRN's view, the Productivity Commission should consider the following recommendations, to ensure that people with mental illness in receipt of income support payments, who seek assistance from social services programs are adequately supported:

- I. ***Raise the rate of all working age payments to ensure that people with mental illness in receipt of income support payments are able to prioritise treatment and management of their conditions, including:***
 - a. an increase in the single rates of Newstart, Youth Allowance and related payments by \$75 per week,¹ and

¹ Australian Council of Social Services, Submission No 7 to House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into the Review of the Social Security Commission Bill 2018*, March 2019.

- b. indexation of payments to wages as well as the consumer price index to ensure they maintain pace with community living standards and the cost of healthcare, such as medical treatment, specialist reports, and medicines.²
- II. ***Ensure all specialist disability employment service providers offer consistent, high quality, and tailored support to people living with mental illness by:***
 - a. resourcing job providers which have the relevant expertise to understand and appropriately take into account to the needs of people living with mental illness, and
 - b. developing an effective referral pathway model enabling the Department of Human Services, Department of Jobs and Small Businesses, as well as Job Providers to connect people living with mental illness to specialist disability services.
- III. ***Recommend close monitoring and evaluation of the proposed “New Employment Services Model” commencing as a pilot in July 2019 to ensure that:***
 - a. the shift to digital automation does not result in further social isolation and operate as a barrier to the social and economic participation of people living with mental illness,
 - b. alternative support is offered to people living with mental illness who have limited digital literacy, and
 - c. savings made through the implementation of the “New Employment Services Model” are reinvested to resource support services and specialist disability programs to assist people with mental illness.
- IV. ***Recommend that Department of Human Services take measures to improve staff awareness and application of the Guide to Social Security Law 3.6.2.10 to ensure people with severe mental illness can meet medical evidence requirements for Disability Support Pension purposes.***
- V. ***Recommend urgent reform of assessment procedures for participants of the Community Development Program while it is operating in regional and remote areas by:***
 - a. broadening the range of acceptable sources of medical evidence relied on by the Department of Human Services, including evidence from nurses that support Community Development Program participants living with mental illness,
 - b. encouraging the use of existing Department of Human Services’ Capacity Assessors who are health or allied health professionals to provide a provisional diagnosis of a person’s mental health condition, and
 - c. ensuring the Department of Human Services’ staff work more closely with local health services, with the consent of the relevant Community Development Program participant.

² Ibid.

Inadequacy of income support payments for people living with mental illness

3. Our members across Australia routinely provide assistance to people with severe mental illnesses who are in receipt of Newstart Allowance. NSSRN's members report that people living with mental illness are unable to afford essential medication, seek appropriate treatment, or obtain reports from specialists such as clinical psychologists or psychiatrists.
4. Members report that they often see similarities between the circumstances of a person with mental illness in receipt of Newstart Allowance and a person with mental illness in receipt of Disability Support Pension payment. Both people have high medical costs associated with managing and treating their mental health conditions. However, the person in receipt of Newstart Allowance is at a significant disadvantage as they are receiving \$39 a day³ compared to \$61 a day paid to a person in receipt of Disability Support Pension.
5. It is common for members to provide assistance to clients with mental illness who are treated by community health services, counsellors or social workers. However, to be eligible for Disability Support Pension, specialist evidence is required from either a clinical psychologist or psychiatrist. This legislative requirement operates as a barrier for people living with mental illness to access Disability Support Pension due to the high costs associated with obtaining specialist assistance and clinical reports.
6. By June 2017 the share of the working age population receiving Disability Support Pension for mental illness had declined due to tightening of the mechanism for assessing work capacity in 2012.⁴ Since the 2012 changes, our members frequently provide advice to people living with severe mental illnesses who have been subject to a payment review of their Disability Support Pension.
7. For example, our member in Victoria, Barwon Community Legal Centre, assisted a 35-year-old woman to appeal a payment cancellation following a Disability Support Pension review. She was living with severe mental and physical disabilities and had been diagnosed with depression, anxiety, memory loss, post-traumatic stress disorder and severe migraines. She was a survivor of domestic violence and was grieving the loss of her unborn child who was murdered by the violent ex-partner. When she contacted our member centre, she was struggling to make ends meet, and manage and treat her disabilities, while living on Newstart Allowance and trying to comply with its activity requirements. When she was hospitalised, the job provider did not provide her with an exemption. This resulted in her payment being suspended, placing her under further stress and financial strain. Her appeal to the General Division of the Administrative Appeals Tribunal was successful. However, the process had taken over a year and had come at the cost of her ability to sustain a livelihood, her worsened mental health, and significant resources wasted in the appeals process.
8. Our member centre in New South Wales advised a 41-year-old man in receipt of Newstart Allowance with severe mental illnesses and experiencing suicidal thoughts. He had to decide whether to pay for either his medication or electricity, as he could not afford both, and chose

³ For a single person over 22 years of age with no children and on Newstart Allowance will receive \$550.20 per fortnight. Refer to *Guide to Social Security Law* 5.1.8.20, accessed 8 March 2019 <<http://guides.dss.gov.au/guide-social-security-law/5/1/8/20>>.

⁴ Commonwealth, Disability Support Pension: Historical and Projected Trends, *National Report* (2018) 01,2018.

electricity. As he did not have money left to pay for specialist medical reports, he was not able to obtain the necessary evidence to qualify for Disability Support Pension. He is still in receipt of Newstart Allowance which is inadequate to meet the cost of his medical expenses, causing him further stress.

9. Similarly, our member centre in Victoria assisted a middle-aged man with severe mental health conditions and physical impairments in receipt of Newstart Allowance. He was unable to afford medication and had to request an early release of his superannuation. He is also behind on his mortgage repayments and has limited employment prospects due to his medical conditions.
10. The inadequacy of Newstart Allowance prevents people living with mental illness from seeking early intervention, prioritising treatment, and obtaining support. This social isolation has a further negative impact on their mental health and inevitably creates additional barriers to economic participation.
11. We endorse Australian Council of Social Services' recommendation⁵ to increase the inadequate rate of all social security working age payments. This increase would mean that people living with mental illnesses who are already struggling will not fall further into destitution and poverty. The current impoverishment of people with mental illness in Australia, due to the inadequate rate of income support payments available to them, arguably breaches Australia's obligations as a signatory to the Convention on the Rights of Persons with Disabilities (CRPD).⁶ Article 28 of CRPD requires that State Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions.⁷ In NSSRN's view, the increase in payment rate is an appropriate step to safeguard and promote the realisation of this right.

Jobactive program and Disability Employment Service Providers

12. In NSSRN's view, access to genuinely tailored and adequately resourced social services programs for people living with mental illness is critical to ensuring their meaningful economic and social participation.
13. Job providers can assist people to actively engage and participate in the labour workforce. However, to do this effectively in the case of people living with mental illness, it is critical that the job provider have the expertise and capacity to understand their particular needs.
14. In our members' experience, job providers which are not specialist Disability Employment Service Providers often do not have this capacity or expertise and are therefore unable to provide adequate support. For example, it is common for job providers to offer a person living with mental illness

⁵Australian Council of Social Services, above n 1.

⁶ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 30 March 2007, United Nations, Treaty Series, available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> [accessed 5 April 2019].

⁷ Ibid.

employment that is incompatible with their condition and negatively impacts on their mental health.

15. The role of a Disability Employment Service Provider is to support a person living with mental illness by developing a job plan that caters to their needs and enables them to transition to and maintain paid work. Members find that Disability Employment Service Providers are generally better equipped to understand the nature of mental illness and make more relevant referrals to support services that will assist their clients to engage in the economic market. For this reason, our members routinely advise people with mental illnesses to connect with a Disability Employment Service Provider.
16. Our members routinely assist clients who apply for Disability Support Pension and are not engaging with a Disability Employment Service Provider. In such cases members have expressed the following concerns:
 - a. a person with severe mental illness whose conditions fluctuate will struggle to comply with jobactive requirements,
 - b. where a person's conditions fluctuate and Department of Human Services has assessed their work capacity to be less than 15 hours, it is arguable that the person will be unable to meet Disability Support Pension program of support requirements,
 - c. where a person has been granted an exemption to participate in their jobactive requirements this may affect their ability to satisfy Disability Support Pension program of support requirements,
 - d. where a person fails to satisfy jobactive requirements it is likely the person will be penalised with a payment suspension or cancellation,
 - e. where a person with mental illness is not connected with a Disability Employment Service Provider, the person faces further obstacles in securing employment as they are not adequately supported to transition and maintain paid work, and
 - f. the level and quality of assistance offered by job providers is variable.
17. Many people with mental illness who apply for Disability Support Pension are unable to meet the stringent eligibility criteria. In NSSRN's view, if a person with mental illness is unable to qualify for Disability Support Pension, when their claim is rejected the person should be assessed for referral to a Disability Employment Service Provider. This assessment should be made by a decision-maker with the expertise required to examine the person's job capacity in light of their condition.
18. The above concerns are illustrated by the following case example from our member in New South Wales. The client is a middle-aged male in receipt of Newstart Allowance living with severe depression and anxiety. He was not engaging with a Disability Employment Service Provider when he contacted our member. He was referred to employment from the job provider. The job provider had not considered relevant medical evidence from his psychiatrist that he would require support to obtain and maintain employment. As a result of declining the inappropriate job offer, his Newstart Allowance was cancelled. Following our member's advice to engage with a Disability Employment Service Provider the client has been offered specialist support and has now obtained employment.

19. Similarly, our member in Victoria assisted a person with severe mental illnesses and physical disabilities who was offered employment which consisted of manual labour, such as standing for long periods of time, moving relatively heavy objects and requiring excessive physical exertion. He persisted with this work to ensure his payment would not be cancelled and to actively engage in program of support requirements to satisfy Disability Support Pension requirements, but collapsed doing this inappropriate work and was hospitalised for two weeks.
20. These case studies illustrate the need to adequately resource specialist Disability Employment Service Providers to provide the tailored support required to assist people with mental illness to meaningfully participate in employment.

Automation and proposed New Employment Services Model — pilot and transitional arrangements

21. Announced in the 2019 Budget, the Government’s proposed “New Employment Services Model” will operate as a digital program commencing in trial regions⁸ from July 2019. This will involve approximately 95,000 jobseekers, providing digital employment servicing with associated training for those who are deemed job-ready and enhanced services for those identified as disadvantaged. The “New Employment Services Model” will be implemented in phases with enhancements to the digital system progressively rolled out throughout the trial.⁹
22. The “New Employment Services Model” is to replace the existing jobactive program by June 2022.¹⁰ The model is intended to be digitally delivered to enable flexibility and tailored support to the needs of a person searching for a job.
23. Based on the experience of our member centres, who frequently advise clients who are digitally illiterate, we suggest that the Productivity Commission recommend the close monitoring of the “New Employment Services Model” in the trial regions. This is to ensure that the new model does not prevent people with mental illness from being socially isolated.
24. We also recognise that the measure provides net efficiencies of \$59.4 million over five years from 2018-19 due to reduction in expenditure for face-to-face servicing arrangements under jobactive.¹¹ The savings from the shift to digital servicing which the Minister for Jobs and Industrial Relations has announced will be reinvested in the employment services system.¹² This should be monitored to ensure reinvested funds are genuinely contributing to the development of a more intensive, targeted and tailored service for those who need additional support to overcome barriers to participation.

⁸ The trial regions are located in Adelaide South, South Australia and Mid North Coast, and New South Wales. *Refer to: Commonwealth, Budget Paper No:2 Budget Measures*, 2 April 2019, (the Honourable Josh Frydenberg, Treasurer of the Commonwealth of Australia) 150.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Minister of Jobs and Industrial Relations, ‘Budget 2019 — Significant reforms to boost Australian jobs’ (Media Release 2 April 2019) <<https://ministers.jobs.gov.au/odwyer/budget-2019-significant-reforms-boost-australian-jobs>>.

Undiagnosed mental conditions due to limited availability of services for assessment and treatment

25. Many people with mental illness have undiagnosed conditions due to limited accessibility of medical services and the high cost of obtaining expert treatment. People in these circumstances are unable to obtain relevant medical evidence to support their claim for Disability Support Pension.
26. The Department of Social Services policy, the Guide to Social Security Law 3.6.2.10,¹³ recognises that there are vulnerable people living with mental illness whose conditions may be undiagnosed. This may be the case because the person is disengaged from the health system or does not acknowledge the impacts of their condition on their capacity to work or comply with requirements. In these circumstances, the policy allows for a referral to be made to a Department of Human Services' psychologist who can make a provisional diagnosis on the persons' mental health conditions. The provisional diagnosis can be used to satisfy the medical evidence requirements for Disability Support Pension.
27. However, our members are seeing cases where, if the Department of Human Services applied its policy¹⁴ and undertook a provisional diagnosis by a Department of Human Services' psychologist, their clients would likely be granted Disability Support Pension. This experience suggests there is either:
- a lack of awareness from Department of Human Services' staff that this policy exists, or
 - a reluctance from Department of Human Services' staff to rely on the policy to make a provisional diagnosis of the person's mental health conditions for Disability Support Pension purposes.
28. The result of the failure to apply the policy means that people who are living with severe mental illnesses may not be receiving any income support at all. In addition to being unable to successfully claim Disability Support Pension, they may not be in receipt of Newstart Allowance either. Their undiagnosed and untreated mental illness may prevent them from meeting activity requirements, and their disengagement with the health system means they do not have the necessary medical evidence to be exempted from their activity requirements.

Impact of lack of available mental health services in regional and remote areas

29. This problem of undiagnosed mental health conditions is particularly acute in remote and regional communities where there are few specialist services available to identify and treat mental illnesses.
30. Our members warn that immediate reform is required to support people living with mental illness in regional and remote communities, particularly while the Community Development Program operates to penalise participants who do not comply with activity requirements.

¹³ In these circumstances the provisional diagnosis of a mental health condition can be made by a Department of Human Services psychologist and this assessment may be considered sufficient medical evidence for Disability Support Pension purposes. Refer to *Guide to Social Security Law* 3.6.2.10, accessed 3 April 2019 < <http://guides.dss.gov.au/guide-social-security-law/3/6/2/10>>.

¹⁴ Ibid.

31. Clients living with mental illness in regional and remote communities have very limited access to mental health services and are likely to face greater barriers to accessing specialist treatment from clinical psychologists or psychiatrists. The difficulty in accessing these services means that the Department of Human Services is not able to accurately assess our members' clients' capacity to engage in work.
32. In particular, the Department of Human Services informs its decisions regarding payments and allowances by relying on Employment Services Assessment (ESATs) referrals to determine the person's level of participation.¹⁵ This includes mutual obligation assessments for people living with mental illnesses in remote and regional communities. It is inappropriate for mutual obligation requirements to be imposed while mental illnesses are not adequately identified and addressed. The ESATs referral process does not take account of the limited medical services in remote and regional communities which hinders the Department of Human Services from accurately assessing a person living with mental illness' work capacity.
33. In light of the limited access to health services, we recommend that the Department of Human Services broadens the range of acceptable sources of medical evidence including relying on evidence from nurses. A more effective way to support people living with mental illness may be to make greater use of Department of Human Services' Capacity Assessors who are health or allied health professionals.
34. While the Community Development Program operates, our members suggest it would be more effective for the Department of Human Services' staff to work more closely with local health services. For example, it would be more effective for the Department of Human Services to assist people living with mental illnesses at the assessment process. With the person's informed consent, Department of Human Services can proactively take steps to contact a person's treating nurses and doctors.
35. This view is supported by the Commonwealth Ombudsman¹⁶ recommending that Department of Human Services consult more broadly with other key stakeholders, such as rural and Indigenous health peak bodies, when developing and distributing information to medical practitioners.¹⁷

¹⁵ The ESAT sets the number of hours that a person has the capacity to work which is to be included in their job plan. Refer to *Guide to Social Security Law* 1.1.E.104, accessed 3 April 2019 < <http://guides.dss.gov.au/guide-social-security-law/1/1/e/104>>.

¹⁶ Commonwealth Ombudsman, *Department Of Human Services: Accessibility Of Disability Support Pension For Remote Indigenous Australians*, (2006) 20.

¹⁷ Ibid.

Contacts for this submission

The NSSRN would welcome the opportunity to provide further feedback to the Committee on our submission.

Amrita Saluja
Law Reform, Policy and Communication Officer
National Social Security Rights Network

Leanne Ho
Executive Officer
National Social Security Rights Network