What is Social Justice?

Fair treatment and equal benefits of society, modifying of behaviour through interaction and reciprocal stimulation and social justice /ˈsoʊʃəl ˌzaɪtɪs/.
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1. Acknowledgements

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2. Introduction: Defining the term ‘social justice’

The National Pro Bono Resource Centre is an independent, non profit organisation that aims to improve access to justice for socially disadvantaged and/or marginalised persons in Australia through the promotion, development and support of professional pro bono legal services. Pro bono comes from the latin phrase “pro bono publico” which means for the public good. In the legal context it generally means the provision of legal services on a free or significantly reduced fee basis.

The Centre works from the assumption that lawyers who do pro bono work are motivated by a desire to further social justice. However the term ‘social justice’, while being used by Australian policy makers on all sides of politics to justify all kinds of decisions, is rarely defined. If liberals and conservatives, religious fundamentalists and radical secularists all regard their causes as socially just, how can we develop a common meaning of the term? This paper seeks to provide an overview of the historical development of the concept of social justice, and identify the themes which are emphasised by different views on what social justice means.

This is an academic paper exploring the concept of social justice. It is hoped that with a greater understanding of the various views on what constitutes social justice, readers will be able to more easily identify the particular construction of social justice that is involved in developing and maintaining pro bono programs and projects, so they can see that their pro bono practice is grounded in a developed framework of social justice.

The words or at least concepts of ‘social justice’ are used in contexts where people understand social justice to be about fairness beyond individual justice. According to Craig et al, “it is often seen these days as either a relic of the 1970s, or a catch-all used by conservatives and progressives alike” Baldry argues that “we should all be clamouring for the revival of social justice, that is, ensuring systemic and structural social arrangements to improve equality, as a core political and social value.”

To put it simply, the concept of social justice involves finding the optimum balance between our joint responsibilities as a society and our responsibilities as individuals to contribute to a just society. Many different ideas exist about where that optimum balance lies.

This paper will also examine contemporary social policies in two practical example areas to illustrate how the themes arising from an examination of the concept of social justice can be identified. The two example areas (sole parents and people with a mental illness) have been chosen to highlight disadvantaged groups which currently have little visibility.
By highlighting the themes of social justice discourse and illustrating them in practical contexts, it is hoped that readers of this paper will be better equipped to:

- Evaluate whether the pro bono legal work or program in which they are involved is directed towards particular social justice outcomes;
- Better understand the construction of social justice that is represented by a particular policy or program in which they might be interested; and
- Better understand the construction of social justice that resonates best with their aspirations to contribute to a better society.

3. The relationship between social justice and human rights

The concept of human rights is as contested as the concept of social justice. Human rights are embodied not only in legal but cultural norms, however for the purpose of this paper and given the pro bono context, human rights are discussed in a more narrow legal sense.

Human rights, as enshrined in the Universal Declaration of Human Rights and subsequent covenants, have provided an internationally agreed set of principles and standards by which to assess and redress inequality. Conversely, a just society is one that understands and values human rights and the dignity of all human beings.

The international human rights system is an important way of advocating for or enforcing fairer distribution of resources in the world. However as Baldry and McCausland note, obtaining "... remedies under the human rights system requires a significant degree of understanding of that system, and the resources and skills to advocate for the rights that are breached. Ironically, it is those most in need of assistance when their human rights are breached that are often least able to access such a system."5

There is, therefore, a need for social justice to facilitate such access. For example, while indigenous people are entitled to the full protection of the individual human rights system that has existed for the past sixty years, their rights have continued to be violated and they often experience poverty and disadvantage to a greater extent than the rest of the population. The United Nations Declaration on the Rights of Indigenous Peoples recognises the difficulty in realising human rights for Indigenous people who have been disadvantaged on a systemic level by historical discrimination and dispossession over past centuries.6

Some view the human rights approach as being inadequate in ensuring that all members of the community meet mutual responsibilities and obligations, especially obligations to protect disadvantaged members of society, as rights are often stressed in preference to obligations. Others argue that a human rights vision is concerned with delivering the best society possible, as it is not concerned solely with negative rights to do as one pleases. Rather, it is concerned with positive entitlements such as rights to work, leisure, education and cultural participation, which involves a more positive outline of what a good and just society will look like.7

Baldry writes that social justice, which involves a consideration of both joint and individual rights and obligations, “is essential to ensure people who need to claim human rights but do not have the ability, capacity or position to do so, can; the lack of systemic social justice driving and shaping social arrangements and policy is a key reason that countries like the USA that have plenty of rights-based legislation, have large groups of people who cannot exercise or enforce rights."8

This paper considers human rights as rights that people must be able to access, exercise and enforce in a just society (see Section 7.1.3). One mechanism used by legal service providers in seeking to defend human rights and improve social justice is providing pro bono legal services.
4. Themes of social justice concept formulations: Overview

This paper identifies common themes that arise when examining different views on social justice in both historical and contemporary Australian thinking about the concept. These different approaches to social justice are summarised in the following section and reflect a combination of themes with an emphasis on:

**Joint responsibility to address systemic/structural poverty, inequality and unfairness (emphasises responsibility of system or government to provide)**

- Fair redistribution of resources
- Equal access to opportunities and rights
- Fair system of law and due process
- Ability to take up opportunities and exercise rights
- Protection of vulnerable and disadvantaged people

**Individual responsibility**

- Getting what you deserve according to:
  - Status (emphasises an individual's social position as a determinant of the share of resources an individual deserves)
  - Moral responsibility (emphasises the behaviour of those who are poor, excluded or disadvantaged)
- Workforce participation (emphasises workforce participation as the only legitimate way for an individual to contribute to society and be socially included)
- Individual capability (emphasises the personal characteristics that enable people to take advantage of opportunities)

**Recognition of human value and wellbeing (emphasises human value beyond status and economic productivity)**

These themes are discussed in more detail at Section 7. This paper does not attempt to provide an exhaustive or complex analysis of these themes, but rather to provide an accessible way of identifying the approaches to social justice that are reflected in different policies and programs. The overlaps and interconnected relationships between the various themes can be highly complex, however that is not the subject of this paper.

5. Identifying themes in the historical development of the concept ‘social justice’

5.1 Earliest ideas of social justice

The earliest recorded ideas of social justice applied solely to a particular people or nation with the intention of redressing effects of hierarchical inequalities, particularly inherited inequalities. For example the Bible contains references to the jubilee year when slaves were freed, debts and obligations were liquidated, and land was returned to original owners. This redistribution was primarily between individuals and was not applied universally.9

*This idea of social justice emphasises individual property rights and involves adjustments to ownership of property to alleviate some unfair situations.*
What is Social Justice?

Plato (380 BC) said that justice was achieved when each person received goods they deserved based on their prescribed position in the social order. Aristotle (384-322 BC) said that justice was a principle that ensured social order by regulating the distribution of benefits. However in Aristotle’s view, equality and justice applied only to individuals who occupied the same stratum of the hierarchical social order. According to these ideas of social justice, unequals in the social hierarchy are to be treated unequally. These ideas did not challenge the social structures of society, but worked within them.

This idea of social justice emphasises unequal distribution of resources based on what individuals deserve according to their social status or position in society.

5.2 Universal concepts of justice

Universal concepts of justice developed with the teachings of the world’s great religions (1500-2000 years ago), including Judaism, Christianity, Islam and Buddhism. These religions emphasised the importance of sharing, equality of treatment, not profiting at the expense of disadvantaged groups in society, the evils of greed, and rulers behaving righteously, fairly and justly towards their people. With the idea of a universal or all-powerful deity came a divine vision for humankind, and universal justice in either this life or the next.

This concept of social justice goes beyond justice according to social status and recognises universal human value.

The universal concept of justice reflected in these religions was undermined by religious institutions that failed to practice what they preached and created strict hierarchies. Proponents of different religions (which were increasingly linked to states or empires) competed with each other for recognition and resources. Patriarchy was the dominant paradigm, meaning women and lower classes were not seen as equal, and slavery was often an integral part of society.

Hierarchical religious institutions continued a social structure where there was unequal distribution based on what individuals deserved according to their social status or position in society.

5.3 Secular humanism and rationalism in the 17th and 18th centuries

In the early modern period of the 17th and 18th centuries, social justice was used to rationalise consolidation of state power under the authority of absolute monarchs. For example, Thomas Hobbes (1588-1679) saw the construction of an external authority (state or leviathan) was essential to the maintenance of a just society. The state would create and enforce laws and social norms to preserve peace and restrain humans from harming each other in the pursuit of self-interest. This concept of a just society was consistent with the emergence of commercial and industrialised capitalism.

This concept of social justice emphasises collective/state responsibility to create a system of laws to stop people from harming each other.

Rousseau (1712-1778) and others who followed him in the ‘age of revolution’ shaped the formation of modern institutions in the west with the view that the pursuit and realisation of social justice was linked to the preservation of individual liberty or freedom, achievement of equality (of rights, opportunities and outcomes) and establishment of common bonds of all humanity.

This concept of social justice emphasises individual liberties and equality of opportunity, rights and outcomes.
The American and French revolutions linked their social justice goals to the pursuit or perfection of happiness, and strived for the creation of societies that would maximise both individual and collective well-being.\textsuperscript{20}

\textit{This concept of social justice emphasises value of human wellbeing.}

\textbf{5.4 Inequality and injustice in the 19th and 20th centuries}

The gap between ideals of social justice that developed in the preceding centuries, and the realities of persistent inequality and injustice, became more apparent in the 19th and 20th centuries. In reality, it was difficult to reconcile social equality with the preservation of individual liberties. The elites who dominated emerging nation states withheld political rights from the majority of the population (especially from women and people of colour) and ignored social/economic rights.\textsuperscript{21}

Karl Marx (1818-1883) argued that humans did not have a fixed innate nature, but were instead defined by their social relationships, which in turn, were dependent on the economic structure of society and the classes it produced. He rejected Hobbes’ idea that injustice was caused by human competition, selfishness and aggression. Marx argued that the roots of injustice lie in political-economic structures based on subjugation, discrimination, exploitation and privilege. Justice would prevail when individuals received what they needed on the basis of their humanity and not on what they deserved because of their social class origin or productivity.\textsuperscript{22}

\textit{This idea of social justice emphasises redistribution on the basis of human need and value, as opposed to what an individual deserves on the basis of social status or productivity.}

The idea of a social contract between individuals and their governments, to abide by common rules and accept corresponding duties, emerged as a way of balancing mutual rights and obligations. Liberals emphasised preservation of individual liberty (including property rights) and Marxists emphasised the attainment of social equality.

\textbf{5.5 Western concept of social justice in 20th century: fair distribution}

There has been broad agreement in the west that social justice must incorporate various means of achieving fair distribution of societal goods. However, there have been different ideas about what constitutes a fair distribution.

\textbf{5.5.1 Utilitarianism}

Utilitarians like John Stuart Mill argued that the distribution of societal goods should be for the ‘greatest net balance of satisfaction’ for society. Mill said that utilitarianism was actually a ‘standard of morality’ which used happiness of the greater number of people as its ultimate goal.\textsuperscript{23} In principle, although utilitarianism advocates for the greatest good for the greatest number of people in a society, Reamer explains that “processes and decision making grounded on the logic of utilitarianism may result in the unfair treatment of vulnerable populations.”\textsuperscript{24} An example of the application of this view was the institutionalisation of mentally ill people for the greater good of society.

\textit{In practice, this view reflected an unequal distribution on the basis of status as it was often the disadvantaged whose rights were sacrificed for the good of the privileged classes of society.}

\textbf{5.5.2 Rawls}

Rawls’ concept of social justice is probably the most influential. Rawls criticised utilitarianism as being able to be used to justify concentration of goods benefiting privileged classes of society on the basis that it was for the greater good. Rawls’ conception of distributive justice provided that “all social values... are to be distributed equally unless an unequal distribution of any or all of these values is to everyone’s advantage.”\textsuperscript{25} As explained by Baldry, “Rawls asked what particular set of rules or laws would members of a society agree to obey if they made as their goal a fair social order – one in which no one is exploited or taken unfair advantage of.”\textsuperscript{26}
The two fundamental principles of Rawls’ original theory of social justice are:

1. Each person has equal right to the most extensive system of personal liberty compatible with a system of total liberty for all
2. Social and economic inequality are to be arranged so that they are both
   a. To the greatest benefit to the least advantaged in society (so that the least well off people are made as well off as possible, which could mean giving an unequal/greater amount to the people least well off)
   b. Attached to positions open to all under conditions of fair equality of opportunity (so that everyone in society has a reasonable chance of obtaining the positions in society that make decisions about inequalities)

Rawls paid particular attention to those who were disadvantaged at birth with undeserved inequalities. His ‘principles of redress’ provided that those with fewer native assets should be compensated.

This view of social justice relates to justice in a systemic form, applied to society as a whole rather than individuals. It emphasises unequal distribution on the basis of an individual’s needs or requirements with a particular focus on the needs of the disadvantaged, and equality of opportunity.

5.5.3 Nozick

In opposition to Rawls’ theory of justice, Robert Nozick has formulated the idea of social justice as entitlement. He regards any distribution of resources as just, as long as it came about in accordance with three principles:

1. Justice in acquisition – the appropriation of ‘unowned’ things, as long as enough is left over for others;
2. Justice in transfer – the acquisition of a holding from someone who is entitled to that holding; and
3. Rectification – any unjust transfers are to be rectified by compensation.27

According to Nozick, individuals have a right to own property and of self-ownership, which gives them the freedom to determine what to do with what is theirs. The role of the state is that of a night-watchman, to protect individual property rights. Nozick regards any attempt by the State to (re)distribute resources, e.g. through taxation, as unjust. Nozick sees no role for the state to help individuals who were unluckily born with few resources (those who are poor, weak, sick etc),28 and argues that it is for individuals to decide whether to help such people by giving their resources as a gift.29 For Nozick, goods and resources are either created by individuals or pre-owned, not ‘manna from heaven’ that can be taken by the State and redistributed.30 Nozick does not accept Rawls’ assumption that there are greater benefits to be gained through social cooperation, rather than no cooperation or limited cooperation.31

This view of social justice emphasises distribution according to the existing system of individual property ownership and does not support any kind of redistribution.

5.5.4 Miller

Miller’s approach to social justice rests on the idea that the market is capable of giving individuals what they deserve. This theory treats individuals as responsible for their own actions and proportionately rewards (or punishes) them in accordance with their actions and efforts, insofar as the actions/efforts are the result of their individual choices.32 In Miller’s view, those that are more talented and hardworking deserve more than talentless and lazy people.

This view of social justice emphasises unequal distribution according to what an individual deserves based on their moral responsibility or behaviour.
5.5.5 Sen

Sen’s comparative approach to social justice aims to make society less unjust, rather than aiming to make society perfectly just, which is how Sen views Rawls’ theory. Sen’s comparative approach explores social alternatives, ranking them based on the values and priorities of the community. The focus is on ‘what actually happens in the world’, instead of on the justness of underlying institutions. He assesses the effectiveness of actions and institutions according to which are more effective at reducing injustice.

According to Sen, the effectiveness of government action to improve social justice is judged according to an individual’s capability to do things he or she values and the freedom of individuals to choose between different ways of leading their lives. Sen’s approach to social justice focuses on assuring individual capacities to gain optimal wellbeing in their circumstances. He defines poverty as the deprivation of these basic ‘capabilities’ (such as being literate, being active in the community).

Sen acknowledges that social arrangements have to make it possible for individuals to build their capabilities. For example, a right to education concerns not simply an individual’s access to appropriate educational material but the responsibility of government to provide stable presence of certain institutions and institutional frameworks.

This idea of social justice emphasises developing individual capabilities.

5.5.6 Australia

It is widely accepted in Australia that an ethos of egalitarianism and the belief in ‘a fair go’ are part of Australia’s culture. However, there is evidence to suggest that Australia has been moving towards the high end of social inequality amongst comparable wealthy countries. According to research conducted by Wilkinson and Pickett, who measured by the gap between the richest 20% and the poorest 20% in each country, Australia sits with the UK, Singapore, New Zealand and the USA at the most unequal end of the scale of affluent countries.

One of the significant developments in Australian social justice was ‘wage justice’ in late 1890’s and the early 1900’s. According to Smyth, Australia’s reputation as a distinctive type of social democracy rested mainly on the way wage arbitration was used to modify market wage outcomes to ensure that workers and their families had sufficient resources to manage their own affairs. The redistributive function of taxation and the welfare state had a subordinate role. In the Harvester Case, Justice Higgins outlined what was a ‘fair and reasonable wage’: “… I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as a human being living in a civilised community.” Pusey notes that this resulted in Australia having one of the most equal distributions of wages in the Western world for at least two decades after World War II.

Baldry notes that a number of reforms implemented social justice during this period: “the entrenchment of free public education for all also in the early 20th century ensured a fairer distribution for this vital resource across Australia (except … for Indigenous children and for children with disabilities from poor families). Numerous reforms under the Whitlam government systematised things like universal basic health care, free tertiary education, more equitable distribution of resources to outer urban and regional areas, price regulation on goods and services, Aboriginal land fund, anti-discrimination in employment and provision of services, and legal aid to name but some.”

In what Smyth calls ‘the neoliberal period’, in the context of the fiscal crisis of the 1980s, the idea of social justice became less visible in Australian public life and discourse, “with all sides of politics trying to distance themselves” from what many saw as “a period of public sector profligacy.” According to Smyth, the principle of universal rights was lost in notions of ‘user pays’ and conditional welfare; the quality of public services lagged behind the private while income support became a site of stigmatisation especially for the unemployed and sole parents. Baldry also observes the changes that occurred during this period: “Tertiary education is no longer free, public school education in disadvantaged areas has not been well resourced compared with for example some wealthy private schools, wage equality for women has gone backwards… Aboriginal health and housing have barely progressed.”
In his early speeches (including his apology to the Stolen Generations), Kevin Rudd used the term social justice and committed himself and his government to a socially just society. Julia Gillard has made similar statements, but it is clear that the language of both federal and state government strategies to work towards greater fairness in Australian society has moved from the term ‘social justice’ to ‘social inclusion’. Smyth observes that even prior to the election of the Rudd Labor Government, state governments had already begun to take policy action in response to voter anger about place-based disadvantage. One by one, state and territory governments have released social inclusion strategy documents.

6. The difference between ‘social justice’ and ‘social inclusion’

Social inclusion has been a tool of government over the last decade to try to address some of the results of social injustice and disadvantage in society. Australian state and federal governments have adopted the terminology of social inclusion as the basis of a range of social policy measures, especially welfare reform.

The idea of social inclusion is that people should have sufficient financial and other resources to participate in economic, social, cultural and political life. Social exclusion involves the lack or denial of resources, rights, goods and services, and the inability to participate in the normal relationships and activities available to the majority of people in a society, whether in economic, social, cultural or political arenas. It affects both quality of life of individuals and the equity and cohesion of society as a whole.

Australian research has divided social exclusion into three domains: disengagement, service exclusion and economic exclusion. Indicators of disengagement include: no regular social contact with other people, children not participating in school outings, children having no hobby or leisure activity, and unable to attend a wedding or funeral in the past 12 months. Indicators of service exclusion include: no access to a local doctor or hospital, no access to dental treatment, no childcare for working parents, no aged care for frail older people, and no access to a bank or building society. Indicators of economic exclusion include: not having $500 in savings for use in an emergency, having to pawn or sell something in the past 12 months, not having spent $100 on a special treat in the past 12 months, and living in a jobless household. The groups with the highest risk of facing ‘deep exclusion’ are (in declining order) unemployed people, public renters, lone parents, indigenous Australians and private renters.

Proponents of the social inclusion approach see it as recognising the multi-dimensional nature of social exclusion. Smyth explains that: “It means that people have stopped thinking about poverty primarily in terms of the single dimension of money, but are rather engaged in a wholesale reconsideration of the ways in which our labour market and social service either enhance or constrain the life chances of Australians.”

Those who are wary about the social inclusion approach are concerned about its focus on the individual person’s responsibility for their inclusion or exclusion, particularly workforce participation, rather than the structural context that affects a person’s chances of being included or excluded. Levitas argues that the inherent dichotomy implied in the term places the poor and disadvantaged outside society and focuses on moving the excluded to being included, rather than addressing inequality or poverty at a structural level. Levitas has identified several social inclusion discourses: one focused on the behavioural delinquency of the excluded (the moral underclass discourse, MUD), another on ‘welfare to work’ (the social integration discourse, SID), and a third emphasising the redistribution of resources from rich to poor (the redistribution discourse, RED). These have been humorously summarised as “in RED they have no money, in SID they have no work, in MUD they have no morals.”

At its best, social inclusion discourse and policy aspire to address social justice issues. However, social justice has prevailed as the dominant discourse. While social inclusion terminology is frequently used by social policy makers in Australia at present, the discourses of social inclusion actually reflect the same themes that are identifiable in various versions of the concept of social justice. This paper will apply the same analysis to themes which are common to social inclusion discourses and the concept of social justice.
7. Themes of social justice concept formulations

This section discusses the themes which have been identified by summarising different approaches to social justice (in Section 5).

7.1 Joint responsibility to address systemic/structural poverty and inequality

A social justice concept which focuses on joint responsibility involves creating fair institutions and institutional frameworks, for example creating a labour market with jobs that are socially inclusive and a system for providing adequate income and other support to those who are unable to work. Many would argue that this is the core of any concept of social justice: it is about making the systems and structure of society more just, rather than seeking justice in individual cases; and assumes the positive intervention of government (and other society leadership) to tackle structural inequalities.

Baldry sees social justice as including a commitment to the view that:

- A fair distribution and share of natural and social resources should be made across society
- This end should be pursued by those in positions of societal, political and organisational responsibility
- Social justice pays attention to and is in solidarity with those who are disadvantaged and excluded in society
- Socially just structures are vital and should be maintained as a key to achieve social justice

7.1.1 Getting a fair share of resources

There are different views about how to distribute society’s resources fairly. Reisch describes six different versions of distributive justice:

- Equal rights (to intangibles such as freedom) and equal opportunity to obtain social goods, such as property
- Equal distribution to those of equal merit
- Equal distribution to those of equal productivity
- Unequal distribution based on an individual’s needs or requirements
- Unequal distribution based on an individual’s status or position
- Unequal distribution based on different “contractual” agreements

The various themes that are discussed below reflect these different ideas about what is a fair distribution. However in this paragraph, what is meant by fair redistribution of resources is a distribution that creates less of a gap between the rich and the poor, which will inevitably involve ‘equal rights and equal opportunity to obtain social goods’ and ‘unequal distribution based on an individual’s needs or requirements’. Pro bono is actually a form of redistribution in this sense – from well resourced law firms and lawyers to people who do not have the resources to obtain the legal services required to achieve social justice or enforce human rights.

Redistribution to close the gap between rich and poor is the basis of the redistributive discourse (RED) of social inclusion, which recognises poverty and inequality as the major impediments of social inclusion. The policy implications of this approach include the necessity to provide adequate levels of income to those unable to work due to disability, caring responsibilities or age.

*The Spirit Level: why more equal societies almost always do better*, Wilkinson and Pickett provides a body of evidence for the positive effects on all aspects of society of greater income equality. Using mostly UN sources on inequality across affluent nations, they compare each nation’s level of income inequality (measured by the size of the gap in income between the wealthiest and poorest in society), with each other nation and with each nation’s level of health and social problems. The issues they researched included physical health, education, housing, imprisonment, mental health, drug abuse, obesity, social mobility, trust and violence. The outcomes for the more unequal countries
were substantially worse on every count. Australia sits with the UK, Singapore, New Zealand and the USA at the most unequal end of the scale.

Wilkinson and Pickett argue that they have provided evidence for the negative effects that inequality has on societies: eroding trust, increasing anxiety and illness, and encouraging excessive consumption. Those countries at the most equal end, that is that have the smallest gap between rich and poor incomes, like Finland, Sweden, Norway, Netherlands and Japan, have over decades ensured via a variety of government policies (not just by redistributive taxation), that incomes are more equal. Big spending European welfare states have also matched high levels of equality with high economic growth rates, casting doubt on the idea that welfare austerity is required for the Australian to be competitive in the global market.64

The authors point out that it is inequality, not poverty that is crucial to the negative effects in affluent countries. The less the income gap between the rich and poor, the better the nation does for everyone on all social factors.65

7.1.2 Critics of resource distribution: Protection of individual property rights

There are those who disagree with a social justice approach which involves redistributing wealth to close the gap between rich and poor, like Nozick (see Section 5.5.3), who argue that the state has no right to redistribute individuals’ wealth and see the role of government as umpiring the market to ensure that property is held by those to whom it rightfully belongs under a system of law.

An example of an individual property rights approach to social justice for Indigenous Australians focuses on native title claims under property law, or repayment of wages earned by Indigenous people under contract law, rather than challenging the existing system of law or property ownership. Brennan et al observe that there remains systemic racism in Australia’s constitution, and legal and governing institutions.66

Critics of this emphasis on individual property rights regard attempts to right injustices by working within the existing system of property ownership as a bandaid approach that can never address the underlying cause of the problem. Baldry also argues that it is difficult to identify individual wealth creation that has not been built on natural resources that should be held in common (and in Australia were stolen from Indigenous persons), publicly provided resources like road, rail, communications, and from intellectual capital that has been shaped and built by a publicly funded education system.67

7.1.3 Equal access to opportunities and rights

An emphasis on equal access to opportunities and rights reflects an approach to social justice that focuses on ensuring that people are not excluded from life opportunities and the activities of society (such as health care, housing, employment, education), on an unfair basis (such as race, gender, sexual orientation, age). The importance of equal access to opportunities and rights has been recognised in international and Australian domestic human rights and anti-discrimination legislation which prohibits discrimination against people on the basis of particular immutable traits.

As explained in Section 3 of this paper, it is often those who have the greatest need to access or enforce rights who do not have the resources (such as knowledge, confidence or money) to obtain remedies under the human rights or anti-discrimination law. Therefore justice on a systemic or structural level is necessary to enable individuals to access, assert and enforce their rights.

Pro bono lawyers have a great capacity to assist by increasing equality of access to rights through casework (to assist disadvantaged people to enforce their rights), law reform (to ensure that rights of disadvantaged people are contained in and protected by law), and community legal education (to make disadvantaged people aware of their rights and how to enforce them).

For example, as a result of having lawyers representing more than 90 victims of sexual assault in NSW on a pro bono basis as part of a project to protect the rights of sexual assault victims during the criminal trial process, amendments have now been made to the Criminal Procedure Act 1986 (NSW) to ensure that victims are made aware of their right to oppose the production of their counselling records in Court, and to ensure that the Court recognises Sexual Assault Communications Privilege (SACP) as an essential element in the criminal trial process. SACP prevents defendants in
criminal trials from being able to trawl through a victim’s confidential counselling records. The policy behind SACP is to protect the confidentiality of sexual assault counselling, so as to encourage sexual assault victims to seek and stay in counselling, and to make victims feel more confident about being able to report sexual assaults. Until these changes to the law, most victims had no knowledge of their SACP rights, and no capacity to enforce those rights before the Court.

7.1.4  Fair system of law and due process

Equality of access to opportunities and rights cannot be achieved without a fair process of decision-making in a society. Procedural justice concerns the fairness and the transparency of the processes by which decisions in a society are made.

While a fair process on its own does not guarantee a socially just outcome, a fair system of law and due process are important to social justice because they provide the mechanism by which everyone in society (including governments, non-government organisations and individuals) applies the requirements of social justice to particular cases, which is particularly important for those who have less power in society.

An example of a group which is generally excluded from the polis is asylum-seekers, especially those arriving by boat. The federal government’s offshore processing regime had denied asylum seekers rights to appeal decisions taken against them. However the application of procedural justice in a recent High Court decision has provided asylum-seekers who arrive by boat and are detained offshore, with the same rights to judicial review as those who arrive on the mainland. The full bench of the High Court unanimously determined that two Sri Lankan Tamil asylum-seekers (M61 and M69), who had been detained on Christmas Island, had been denied procedural fairness. The Court found that inquiries into the refugee status of offshore entry persons were subject to the Migration Act 1958 (Cth) and accordingly the rules of procedural fairness applied.68

The result of the decision for the two individual asylum-seekers was that they were able to successfully appeal the decisions to refuse their claims for refugee status. However the decision potentially provides access to justice for all failed asylum-seekers whose claims were processed offshore, as they now have access to appeal to the Australian courts.69

7.1.5  Ability to take up opportunities and exercise rights

A focus on the ability to take up opportunities and exercise rights is embodied in Sen’s idea (see Section 5.5.5) that poverty has less to do with the absence of income than with people’s lack of resources to be able to choose the life they value. According to this approach, the state or system has a responsibility to build individual’s ability to take up opportunities and exercise rights, for example ensuring a minimum level of literacy and numeracy, computer and other skills.

From a capability approach, for the investment to be effective it would have to be directed as much at people’s health and wellbeing, as their ability to join the paid workforce. According to the Brotherhood of St Laurence, the focus needs to be less on a basic subsistence income, and more on investing in people’s capacity to negotiate the varied challenges of the typical life course, identifying four key stages of the life course: early years, school to work, the working years, and retirement and ageing.70 According to this approach, social spending would not be conceived simply as a passive system of insurance against life’s risks but a system of positive investments so that we can all realise our individual potential and contribute fully to the development of our society.71

This approach has been widely adopted in contemporary Australia at both the government and non-government levels. Under the leadership of Noel Pearson, the Cape York Institute has sought to operationalise Sen’s schema of capability in Cape York communities.72 The Council of Australian Governments (COAG) agenda calls for investment in the early years of childhood development to build capabilities from a young age, and the 2007 federal election campaign saw the Australian Labor Party identify investment in capabilities as the basis of the inclusive society it sought to encourage through a social inclusion agenda.73
7.1.6 Support and protection of vulnerable and disadvantaged people

This element of social justice involves recognition that there will always be some people in society who will need a lot of support and assistance, no matter how much education, training, encouragement or coercion is provided. There are people who have severe difficulties in understanding or communicating or organising their daily lives. This includes many people with a mental illness, other disabilities, literacy problems and other learning difficulties.

7.2 Individual responsibility

7.2.1 Getting what you deserve

7.2.1.1 Status

This view emphasises a person’s status in society as determining the share of resources they deserve, and rationalises giving less to those of lower social status.

Social status, the position or rank of a person or group within the society, can be determined either by the characteristics that a person is born with (inherited), or by a person’s achievements throughout their lifetime (achieved). This section deals with the idea that an unequal distribution should be made based on inherited status, which can be based on factors such as a person’s sex, age, race, ethnic group and family background.

Status can also be gained during a person’s lifetime as a result of their efforts to exercise their abilities through education, occupation, and even marital status. This type of status will be dealt with in the following section on individual capability.

Morrison observes that feminism, multiculturalism and other social movements have persistently called for greater attention to the unjust social and cultural processes that determine status, and are integral to the unjust distribution of material resources.

An example of unequal distribution by status is the undervaluing of work done by women and minority ethnic groups which are seen as having lower status in society.

7.2.1.2 Moral responsibility

An emphasis on the moral responsibility of individuals for their situation implies that those who are poor, disadvantaged or socially excluded are different from people in the mainstream of society, and deserve their situation due to their behaviour. This is the view reflected in stereotypes about single mothers and ‘dole bludgers’. According to this view, individuals need to be encouraged or disciplined to get off welfare. Work for the Dole has been described as a punitive program designed to stigmatise by designating income support recipients as requiring remedial action “to maintain work ethic and work habits and improve their contact with the local community”.

This idea is consistent with the notion that a fair distribution is an unequal distribution based on different ‘contractual’ agreements: the poor have done something to breach the social contract and therefore deserve to be poor.

This theme is well illustrated by the moral underclass discourse (MUD) which attributes social exclusion to the moral or behavioural deficiencies of the excluded. According to Levitas, “this viewpoint ignores structural factors, such as a labour market with low demand for unskilled labour, in order to blame the excluded. According to this perspective the existence of welfare state benefits has caused a deviant behavioural response of choosing a life of dependency rather than the independence that paid employment provides. Since work is seen as necessary as a form of social discipline, the major policy implication of this view is that income support should be kept at low levels to deter people from choosing dependency. Non-participation in the paid workforce is not viewed as legitimate and unpaid work is not valued”.

The Australian Council of Social Service has released a paper challenging myths about ‘typical’ unemployed people, disability support pensioners and sole parents on income support, which found that the stereotypes which formed the basis of moral judgments about these groups were not supported by facts. There is also evidence to suggest that the punitive measures that have been adopted to encourage these people into paid work are counterproductive. The Department of Education, Employment and Workplace Relations, found that the system introduced by the Howard
government of penalising job seekers who failed to comply with participation requirements by imposing non-payment of benefits periods was counterproductive. First it failed to provide a deterrent, since the number of non-payment periods doubled between 2006-07 and 2007-08 from 16,000 to around 32,000. Second, it severed the relationship with the job seeker for the non-payment period. Third, a DEEWR survey found that 75 percent of those who endured a non-payment period reported that “having no income made it harder to look for work, with over 50 percent reporting that it made it a lot harder.”

7.2.2 Workforce participation

An emphasis on workforce participation as the only legitimate way to contribute to society and be socially included implies that a fair distribution is an equal distribution to those of equal productivity. This view is reflected in the social integrationist discourse (SID) of social inclusion, which narrows the definition of social inclusion to participation in paid work.

The move towards this view in Australia can be seen starting in the early 1990s, when voluntary activation programs were introduced for sole parents and people with disabilities – two groups who were previously seen as legitimately sitting outside the paid workforce. Spouses of income support recipients who did not have dependent children were also moved onto benefits which required them to look for paid work or other activity requirements.

Critics of this approach express concern that, like the moral underclass discourse, it ignores the structural causes of disadvantage. As non-participation in the paid workforce is not seen as legitimate, unpaid work is not valued. Cook’s paper on social exclusion discourse and welfare reform concluded that: “The portrayal of paid work as the only legitimate route out of poverty has allowed governments to abrogate their responsibility to give serious and urgent consideration to the levels of income support in Australia with the result that large numbers of people remain in poverty.”

Levitas argues that the dichotomy of this approach that considers ‘included’ as being in paid work, and ‘excluded’ as not in paid work, also prevents consideration of inequality within the included group. Once people are in paid work, they are included and no longer seen as disadvantaged, so there is no visibility for the working poor. “Thus there is no need for policies to address wages and working conditions or to inequalities between classes, genders or ethnic groups.” However, despite the minimum wage in Australia, the prevalence of low pay and poor conditions means that paid work does not automatically mean a path to social inclusion.

7.2.3 Individual capability

An emphasis on individual capability focuses on the personal characteristics that enable people to take advantage of opportunities and implies that there should be equal distribution to those of equal merit. It places the responsibility on the individual to improve their own capabilities, rather than on the state or system to build the capability of individuals.

According to this approach, everyone should be able to pull themselves up and earn or achieve a higher status (usually by being in the paid workforce or getting a better job, and therefore more material wealth and inclusion), by exercising their own knowledge, ability, skill and/or perseverance.

This view was reflected in the Howard government’s welfare policies which imposed increasing participation requirements on people who were having difficulty finding a job, with little or no investment in training. According to Barnett & Spoehr, “under the previous government there was little training provided through the Job Seeker Account and there were financial and non-financial disincentives for parents and people with a partial capacity to work to undertake training.”

Welfare reforms since 2000 emanate from the McClure report that specifically endorsed the ‘principle’ of expecting people on income support to help themselves and contribute to society through increased social and economic participation in a framework of ‘Mutual Obligation.’ The McClure report claimed “An important part of building individual capacity and working towards self-reliance is empowering and enabling people to identify their hopes and aspirations, and negotiate the steps they need to make in order to participate.”
7.3 Recognition of human value and wellbeing

Recognition refers to a reciprocal respect for both the unique and equal status of all others. A view of social justice which emphasises recognition is concerned with human value beyond a person's status and economic productivity. This approach is consistent with the redistributive discourse (RED) of social inclusion which addresses social, cultural and political participation as well as economic participation.

Recognition issues are usually understood as simply a consequence of a lack of material resources, for example the idea that powerlessness, a pervading sense of shame and failure, and a loss of hope come from being poor. However feminism, multiculturalism and other social movements have persistently called for greater attention to the unjust social and cultural processes that, as well as creating injustices on their own, are integral to the unjust distribution of material resources.

A focus on recognising human value and wellbeing leads to a distribution of resources that is unequal, based on an individual's needs or requirements. As Morrison explains: “If we are to truly appreciate the Other, through recognising their uniqueness, their worth, and their ways of being in the world, we cannot justify or tolerate their suffering from lack of economic inequality. Human dignity requires both due recognition, and adequate redistribution, and social inclusion requires nothing less and, perhaps, nothing more.” It also has the potential to valorise unpaid work as a legitimate contribution to society.

Understanding institutional recognition issues sheds light on what is a fair redistribution. For example, increasing the wages of poorly paid childcare workers is an issue which, at first glance, would surely seem to be about redistribution. However, as MacDonald and Merrill explain, “childcare workers are mostly women, often from minority ethnic groups, and their work is frequently devalued... their contributions to the greater good are demeaned and misrecognised because their work is defined as unskilled, as work that would (and perhaps should) be limited to the private sphere.” Therefore “any attempt to revalue care work must involve not only appeals to redistributive justice, but also to overcoming institutional misrecognition.”

An example of overcoming institutional misrecognition is the Fair Work Australia decision of 16 May 2011, which found that social and community services (SACS) workers are paid lower wages than public sector employees doing similar work. The Tribunal found that “gender has been important in creating the gap between pay in the SACS industry and pay in comparable state and local government.”

8. Identifying themes in contemporary Australian context: Two examples of disadvantaged groups

Two examples of disadvantaged groups have been chosen to illustrate the themes that have been identified. It is hoped that these examples will assist readers to more easily identify the particular construction of social justice that is reflected in a government policy, community program, or other initiative in which they may be interested.

8.1 Sole parents

In Australia, the number of single parent families has significantly increased over the last two decades. Approximately 22% of all families with children under 15 years of age are single parent families, with 87% of these headed by mothers. While covering a wide spectrum of families, single parents are more likely to experience disadvantage, and in multiple areas. Approximately 49% of sole parent families with children under 15 are in the lowest 3 deciles of income and net worth, and around 84% of jobless families receiving income support are single parent families. Sole parents tend to have lower levels of educational attainment than partnered parents (although both groups encompass a wide range of high and low level qualifications).

Recent welfare reforms in Australia have reflected the domination of the MUD and SID discourses of social inclusion (see Section 6 on social inclusion), justifying progressively increasing participation requirements for sole parents, who were previously recognised as legitimately sitting outside the paid labour force. Sole parents were previously paid a...
Sole Parent Pension until their youngest child turned 16. In 1998 Sole Parent Pension was replaced with Parenting Payment (Single) which is a lower payment as it is categorised with other temporary working-age payments. This reflects a shift from thinking that caring for children is in itself a valuable way for sole parents to contribute to society, to thinking that paid employment is the only legitimate participation.

Parenting Payment (Single) is currently for parents who are single and caring for at least one child. If the parent claimed the payment after 1 July 2006, once their child turns 6 years old they will be subject to an Employment Pathway Plan which requires them to participate in at least 15 hours per week of paid or voluntary work, educational activities or job seeking activities. Once a sole parent is no longer able to receive the payment because of the age of the child, they may be able to receive Newstart Allowance or Youth Allowance (payments intended for people who are looking for work or studying, rather than parenting) as a ‘principal carer’. These payments are paid at a much lower rate and do not attract many of the other benefits that are attached to Parenting Payment.

The current rate of payment of the Parenting Payment (Single) is $625.90 per fortnight (including the pension supplement basic amount), which is $45.00 less than the pension rate of payment. To be eligible for this maximum rate, parents must not earn more than $170.60 per fortnight (plus $24.60 for each additional child).

For income over that amount the payment is reduced by 40 cents for each extra dollar.

Research on the quality of life of single mothers in Australia making a mandatory transition from welfare to work has found that their quality of life was significantly lower than the general population. This is despite the fact that the aims of this policy included not only higher incomes, but also better social participation and improved wellbeing. Instead of presuming participation in paid work could ensure all this, researchers have argued that, “Centrelink programs should focus on improving these mothers’ life circumstances before expecting a successful return to work.” This could be achieved through improving the mothers’ financial position, ensuring the availability of child care or increasing the recognition of care-giving work, ensuring adequate health care, and better identifying women at risk of violence and abuse. This would not only lead to improvements in women’s wellbeing, but also improve their chances of finding meaningful, secure employment.

Morrison warns that the rhetoric of ‘jobless households’ and the idea that Australia’s child poverty rate could be significantly improved by getting lone parent families into work, runs the risk of not adequately recognising the full range of factors that contribute to children’s equality, wellbeing, and social inclusion.

At its most basic level, lifting a family out of poverty through paid work entails a decrease in parental time spent caring for children, particularly for lone parents.

<table>
<thead>
<tr>
<th>Theme</th>
<th>Policy example</th>
</tr>
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<tbody>
<tr>
<td><strong>Joint responsibility to address systemic/structural poverty, inequality and unfairness (emphasises responsibility of system or government to provide)</strong></td>
<td>Test cases, such as the Fair Work Australia Equal Remuneration Case (see Section 7.3), to address structural inequalities affecting sole parents (an overwhelming majority of whom are women). Law reform to improve parental leave provisions (6-12 months parental leave with high proportion of previous salary is now the norm in many European countries, e.g. Sweden pays parental leave for 15 months at 80% wages).</td>
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<tr>
<td>● Getting a fair share of resources</td>
<td>Social security law reform to recognise the value of caring work, and allocate resources accordingly. Structure income support in a way that enables parents to make choices about how they will care for their children (e.g. reduce the effective marginal tax rate so that working part time is worthwhile and increases the living standard of sole parents).</td>
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### What is Social Justice?

<table>
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<tr>
<th>Theme</th>
<th>Policy example</th>
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<tbody>
<tr>
<td><strong>Equal access to opportunities and rights</strong></td>
<td>Free legal assistance to sole parents in relation to issues that affect them, such as advice on child support, Centrelink entitlements, family law issues; administrative appeals against decisions of Centrelink to refuse payment, raise debts or impose penalties for non-compliance with participation requirements.</td>
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<tr>
<td><strong>Ability to take up opportunities and exercise rights</strong></td>
<td>Community Legal Education programs to increase general awareness about legal issues among sole parents so they have the knowledge they need to exercise their rights. Individually tailored participation plans and coordinated case management which aim to address particular barriers the parent faces in gaining employment.</td>
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</table>

**Individual responsibility**

Reduction in the rate of sole parent income support payments which are no longer paid as pensions, but rather as working age payments at a lower rate of payment (Therefore more of the cost of parenting has become a private expense.)

**Getting what you deserve**

- **Status**
  
  Undervaluing of caring/parenting work which is traditionally done by women (This reflects women's historically lower status in society and gendered images that paint much of the work women do as unskilled, natural and easy.)

- **Moral responsibility** (emphasises the behaviour of those who are poor, excluded or disadvantaged)
  
  Punitive measures for parents who choose not to engage in paid work e.g. 2011 budget measures introducing compliance requirements for teenage parents receiving income support from the time their baby turns 6 months old. (Teenage mothers are over-represented as recipients of the Parenting Payment (Single).)

**Workforce participation** (emphasises workforce participation as the only legitimate way to contribute to society and be socially included)

- Reduction in level of income support for sole parents who were previously paid at the higher pension rate, but are now paid the lower working age payment rate.

- Targeting of sole parents’ participation plans at paid employment rather than caring work.

**Individual capability** (emphasises the personal characteristics that enable people to take advantage of opportunities)

- Introduction of participation requirements when the child of a Parenting Payment (Single) recipient is 6 years old (This reflects the perception that parents have greater capability for finding and undertaking paid work given the extra time they have available when their child goes to school.)

**Recognition of human value and wellbeing** (emphasises human value beyond economic productivity)

- Policies that value parenting (and other unpaid caring for disabled, elderly etc) as legitimate and positive human endeavour.

- Programs that recognise that parenting activities and domestic duties take time and may not be compatible with paid work (Lifting a lone parent family out of poverty through paid work entails a decrease in parental time caring for children.)

- Provision of legal services to single parent support groups, such as the National Council of Single Mothers and their Children, Sole Parents’ Union or Single With Children.
8.2 Mental health

The second example of a disadvantaged group to illustrate the themes that have been identified is people experiencing mental illness.

According to the World Health Organisation, mental disorders account for 28% of non-communicable disease worldwide. These include schizophrenia, unipolar affective disorder, bipolar affective disorder, dementia, and substance-use and alcohol-use disorders.\(^{118}\)

In 2007, approximately one in five Australian adults had a mental illness.\(^{119}\) An overwhelming theme that was raised in a NSW Law and Justice Foundation Project on the legal needs of people with a mental illness was that many people with a mental illness face great social and financial disadvantage.\(^{120}\) That study indicated that people with a mental illness have lower rates of educational attainment, are less likely to be employed full time, and are often reliant on social security benefits. People with a mental illness are less likely to be married or living in a relationship, and have high rates of divorce and separation. Previous literature has indicated that many people with a mental illness are dependent on private rental accommodation, public and community housing and boarding house accommodation. Housing stress and homelessness is a reality facing many people with a mental illness.\(^{121}\)

The Law and Justice Foundation Project also found that the difficulties that people with a mental illness faced in accessing mental health care and treatment exacerbated problems in other areas of their lives.\(^{122}\) For example, not having access to appropriate health care and treatment may prevent people who face having their children removed by DoCS from accessing the support they need to be able to keep them. Fines and public disorder crimes may arise as a result of not receiving appropriate treatment.\(^{123}\) In some cases, people with a mental illness are detained in police or gaol cells because there are inadequate mental health facilities.

Recent welfare reforms in Australia have reflected the domination of the MUD and SID discourses of social inclusion, which have justified measures making it more and more difficult to fulfil the criteria to prove that a person with a mental illness qualifies for disability support pension. As a result of these changes, many people with a disability who were previously seen as legitimately sitting outside the paid workforce, due to their medical condition, are now expected to join the paid workforce.\(^{124}\)

In Australia, 21% of people receiving the disability support pension have a psychological or psychiatric disability.\(^{125}\) However problems with proving eligibility for disability support pension may mean that many people with a mental illness receive other social security benefits which are designed for healthy jobseekers, and are therefore paid on less generous terms and have much stricter ‘compliance’ obligations attached to them. Due to the nature of their illness, they may also have problems adhering to these requirements, and face being breached and cut off from payments. This places them at risk of increased financial disadvantage. A recent study on the prevalence of mental illness among social security income recipients found that almost one in three income support recipients had a diagnosable mental illness in any 12 month period.\(^{126}\)

There is increasing recognition internationally that a lack of social justice affects, and perhaps even causes, mental health problems. Wilkinson and Pickett’s 2009 study found that a much higher percentage of the population suffer from mental illness in more unequal countries.\(^{127}\) They explain the particularly strong correlation between inequality and anxiety disorders as ‘status anxiety’ which occurs when we fail to maintain our position in the social hierarchy.\(^{128}\) Similarly, a 2003 review of 53 studies in the United States found a decline in mental health status as racism increased.\(^{129}\)

Albee wrote extensively on the role of society in the development of mental illness. He observes that prevention of mental illness is generally approached from a public health perspective, focusing on interventions aimed at protecting individuals from specific mental illnesses.\(^{130}\) According to Albee and Ryan-Finn, this approach fails to address critical elements that contribute to mental illness. They suggest that prevention must be proactive, aimed at environmental systems rather than individual people, and directed toward social change that reduces exposure to exploitation and the stress generated by oppression, victimization, and discrimination.\(^{131}\)

The idea that lack of social justice leads to poor mental health is consistent with research in Australia, especially in relation to Aboriginal and Torres Strait Islander peoples. The National Aboriginal Health Strategy of 1989 linked...
the health of Aboriginal and Torres Strait Islander peoples to control over their physical environment, dignity, community self-esteem, and justice.\textsuperscript{132} It is not merely a matter of the provision of doctors, hospitals, medicines nor the absence of disease and incapacity. Former HREOC Social Justice Commissioner, Tom Calma, argued that strengthening communities and culture clearly has potentially positive implications for the mental health of community members.\textsuperscript{133}

<table>
<thead>
<tr>
<th>Theme</th>
<th>Policy example</th>
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<tbody>
<tr>
<td>Joint responsibility to address systemic/structural poverty, inequality and unfairness (emphasises responsibility of system or government to provide)</td>
<td>Recognition of the societal causes of mental illness and prevention of mental illness by reducing inequality, discrimination, and exclusion</td>
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<td></td>
<td>Development of therapeutic jurisprudence and specialist courts to better address the issues facing a person with a mental illness and improve legal responses to mental illness</td>
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<tr>
<td></td>
<td>● Getting a fair share of resources</td>
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<td></td>
<td>Reform of social security law to allocate resources in a way that recognises the difficulties involved in undertaking paid work for people experiencing mental illness (e.g. advocating for amendment to the qualification criteria for Disability Support Pension so it is available to people with a mental illness who need income support)</td>
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<td></td>
<td>Allocation of resources towards treatment and support services of people with a mental illness (e.g. more beds in hospitals, personal care support and respite for families and carers) to increase their wellbeing and ability to participate (e.g. National Disability Insurance Scheme to be trialled in 2014)</td>
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<tr>
<td></td>
<td>● Getting a fair share of resources</td>
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<td></td>
<td>Free legal assistance to people with a mental illness (e.g. through The Mental Health Legal Centre in Victoria) including assistance with Centrelink appeals, criminal matters, issues relating to dealings with DoCS or discrimination matters</td>
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<td>Continuing law reform efforts to enshrine and protect the Right to Health in Federal and State human rights legislation</td>
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<td>● Equal access to opportunities and rights</td>
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<td></td>
<td>Law reform and/or legal assistance to address discrimination which may be one of the environmental conditions contributing to feelings of oppression or victimisation that prevent people with a mental illness from participating in society</td>
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<td></td>
<td>Community legal education to raise awareness of the rights of people with mental illness and how to enforce those rights (This can be directed at people with mental illness and also at the wider community, particularly those who may engage with people with a mental illness such as health workers.)</td>
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<tr>
<td>Theme</td>
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<tr>
<td><strong>Individual responsibility</strong></td>
<td>Welfare reforms making the qualification criteria for Disability Support Pension more restrictive, and making it more difficult for people with a mental illness to meet the criteria (Therefore, more of the cost associated with having a mental illness is borne as a private expense.)</td>
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<tr>
<td>● Getting what you deserve</td>
<td></td>
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<tr>
<td>▶ Status</td>
<td>Past institutionalisation of people with a mental illness, based on the idea that the greater good took priority over the rights of people with a mental illness who were perceived to be less deserving due to native defect(^\text{(134)}) (The legacy of this view is still reflected in the over-representation of mentally ill people in the Australian prison population.(^\text{(135)}))</td>
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<tr>
<td>● Moral responsibility</td>
<td>Punitive measures for failure to meet compliance requirements resulting in income support payments being cut off for a period of time or indefinitely</td>
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<tr>
<td>(emphasises the behaviour of those who are poor, excluded or disadvantaged)</td>
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<tr>
<td>● Workforce participation (emphasises workforce participation as the only legitimate way to contribute to society and be socially included)</td>
<td>Ineligibility of many people with mental illness to receive disability support pension (Many people who used to be eligible for disability support pension, which is paid at the higher pension rate, are now assessed as having partial capacity to work and receive the lower working age payment rate.)</td>
</tr>
<tr>
<td>● Individual capability (emphasises the personal characteristics that enable people to take advantage of opportunities)</td>
<td>Increase in the welfare participation requirements for many people with a mental illness who were previously exempt, reflecting a perception that they have the capability to undertake paid work</td>
</tr>
<tr>
<td><strong>Recognition of human value and wellbeing (emphasises human value beyond economic productivity)</strong></td>
<td>Education about mental illness to reduce stigma, discrimination, isolation Privacy law reform to prevent vilification of Disability Support Pensioners in the media (following the release by Centrelink to the media of surveillance footage used in social security fraud prosecution cases(^\text{(136)}))</td>
</tr>
</tbody>
</table>
9. Endnotes


7. For example of the debate see the article by Peter Quinlan, “On Witches and Unicorns” and the response article by Stephen Keim, “International Human Rights” in the May and August 2011 editions of Brief.


12. Reisch, above n 1.


14. Reisch, above n 1, 344.

15. Ibid.


18. Reisch, above n 1, 344.


20. Reisch, above n 1, 344.


28. Ibid 225.

29. Ibid 149.

30. Ibid 198-204.


34. Sen (2009), above n 33, 17.

35. Ibid 85.

36. Ibid 287.

37. Ibid 231.


42. Ex parte H. V McKay (1907) 2 CAR 1 (‘Harvester Case’).

43. Ibid 1.

44. Pusey, above n 41.

45. Baldry, above n 4, 5.


47. Ibid.


49. Smyth, above n 40, 14.


52. Ibid.


54. Ross Gittins, ‘Tax client was on the money way back then’, Sydney Morning Herald (Sydney), 8 June 2011, 17.

55. Ibid.

56. Smyth, above n 40, 7.


59. Levitas, above n 58; Cook, above n 51, 3.

60. Morrison, above n 57.
61. Baldry, above n 4, 3.
62. Reisch, above n 1.
63. Wilkinson & Pickett, above n 39.
64. Smyth, above n 40, 25.
65. Baldry, above n 4, 15-16.
73. Smyth, above n 40, 16-17.
74. Morrison, above n 57, 6.
75. Australian Municipal, Administrative, Clerical and Services Union and others, [2011] FWAFB 2700 (‘Equal Remuneration Case’).
77. Levitas, above n 58, 9-27.
80. Cook, above n 51, 8.
81. Levitas, above n 58, 9-27.
82. Smyth, above n 40, 31.
84. Reference Group on Welfare Reform ‘participation support for a more equitable society – final report’ in Cook, above n 51, 5.
85. Ibid.
86. Honneth ‘Recognition or redistribution?: Changing perspectives on the moral order of society’ in Morrison, above n 57, 3.
87. Morrison, above n 57, 6.
88. Ibid 20.
89. MacDonald & Merrill ‘It shouldn’t have to be a trade’: recognition and redistribution in care work advocacy’ in Morrison, above n 57, 11.
92. Ibid.
93. Ibid 2.
94. Ibid 6.
97. Cook, above n 51, 1.
99. Ibid.
100. Cook, above n 51, 1.
107. Ibid.
109. Ibid 476.
110. Ibid 487.
111. Ibid, Morrison, above n 57, 17.
112. Morrison, above n 57, 17.
113. Ibid 18.
What is Social Justice?


115. OECD Family Database, Child-related leave: Key characteristics of parental leave systems (2011) <http://www.oecd.org/document/4/0,3746,en_2649_38736976_1_1_1_1,00.html> at 24 August 2011.


120. Maria Karras, Emily McCarron, Abigail Gray & Sam Ardasinski, (2006) On the Edge of Justice: the legal needs of people with a mental illness in NSW, Law and Justice Foundation of NSW.

121. Ibid 189-90.

122. Ibid.

123. Ibid 197.

124. Cook, above n 51.


127. Wilkinson & Pickett, above n 39, Figure 5.1 66-67.

128. Ibid 69.


131. Albee & Ryan-Finn, above n 130, 115.


135. For example the 12 month prevalence of psychiatric disorders in the NSW inmate population is substantially higher than in the general community, at 74% vs. 22%. (Tony Butler and Stephen Allnutt, Mental Illness among New South Wales Prisoners (NSW Corrections Health Service, 2003) 2.)

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