

15 June 2015

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Re: *Social Services Legislation Amendment Bill 2015*: Proposal to deny payment of social security benefits to forensic patients who are detained

Dear Senators,

The Mental Health Coordinating Council (MHCC) is the peak body representing community managed organisations (CMOs) in NSW. Our members deliver a range of psychosocial support programs and services including housing, employment and social inclusion activities, as well as clinical and peer supported services with a focus on recovery orientated practice. Our membership in NSW consists of over 200 organisations whose business or activity is wholly or in part related to the promotion and/or delivery of services for the wellbeing and recovery of people affected by mental health conditions. We work in partnership with both State and Commonwealth Governments to promote recovery and social inclusion for people affected by mental health conditions, participate extensively in policy and sector development and facilitate linkages between government, community and private sectors in order to effect systemic change.

MHCC is also a founding member of Community Mental Health Australia (CMHA) the alliance of all eight state and territory community sector mental health (MH) peak bodies. Together we represent more than 800 CMOs delivering mental health and related services nationally.

We make this submission in relation to the proposed changes to deny social security benefits paid to forensic patients detained in psychiatric facilities. The *Social Services Amendment Bill 2015* does not recognise the significant difference in legal status between those convicted of a criminal offence, and those who are not convicted due to mental illness or cognitive impairment.

Persons found unfit to stand trial or who have not been convicted due to a mental impairment have been found not legally responsible of the offences. The acknowledgement of this distinction has long been a feature in both English and Australian law, which is not recognised in this bill. The consequence of this is that social security payments to persons in forensic hospitals or psychiatric confinement charged with a serious offence, will only become available when and if they are engaged in a 'course of rehabilitation' back into the community.

Detention in a forensic psychiatric facility is generally seen as part of that process of rehabilitation. The proposed obligation on state and territory health systems to fund rehabilitation would most likely have a negative impact on the rehabilitation and recovery of forensic patients. In reality forensic patients are not usually discharged without a transitional phase back to the community. The period of transition and integration back into the community often involves leaves of absence for regular periods less than 6 nights, resulting in the individual not receiving any form of financial assistance.

Most people in forensic care are entirely dependent on social security entitlements for their income. Many forensic patients have ongoing financial commitments whilst detained, and often have few social supports in the community, and may be quite socially isolated. Without social security support, often, the individual will not be able to purchase basic necessities of daily life to ensure a minimum standard of living and the possibility to engage in meaningful activities when they are discharged into the community. This absolutely runs counter to the principles of recovery orientation, widely identified as best practice in mental health and clear in mental health service policy directives nationally.

MHCC propose that this removal of financial support is punitive and will create further disadvantage affecting the potential for a person's recovery and rehabilitation after they leave forensic facilities. This policy change will disproportionately affect Aboriginal people with coexisting mental illness and cognitive impairment as they are significantly over represented in forensic environments.

MHCC are clearly not alone in expressing deep concern about the bill proceeding in its current discriminatory form. We therefore join with the multitude of very strong views against this proposal expressed in the many submissions published from across mental health and human service stakeholders.

Persons who have been charged but not convicted of an offence, 'serious' or otherwise, as a result of mental illness or cognitive impairment must be appropriately supported in their rehabilitation. We urge you to make sure that this bill is not passed into law.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jenna Bateman', written in a cursive style.

Jenna Bateman
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CC. The Hon Scott Morrison MP, Federal Minister for Social Services
The Hon Pru Goward MP, NSW Minister for Mental Health
The Hon Sussan Ley MP, Federal Mental Health Minister
John Feneley, NSW Mental Health Commissioner