

OPENING STATEMENT

Mental Health
Australia

Senate Community Affairs Legislation Committee Inquiry into the Social Services Legislation Amendment Bill 2015

Thank you for inviting us to appear.

People with severe mental illness are some of the most vulnerable in our community. They are more likely homeless; more likely unemployed; more likely to have substance abuse issues; and unfortunately more likely to be incarcerated.

The National Mental Health Commission has found that approximately two in five people entering prison reported having been told they have a mental illness. This is double the national average.

Too often, police cells and prison is seen as the only option for people with severe mental illness. Indeed, police detain a mentally ill person every two hours in Victoria.

This measure, first announced when Mr Andrews was the Minister, will make matters worse, by further eroding support for people with mental illness, and further entrenching systemic discrimination.

Firstly, I would like to address the three competing justifications for this Bill. I seek leave to table a document detailing the more technical issues associated with these concerns.

The Minister's 2nd Reading Speech states that

This essentially represents a return to the original policy intention for people in these circumstances—that a person cannot access social security payments while in psychiatric confinement as a result of criminal charges. The current arrangements flow from a 2002 Federal Court decisions

This is not the case. All the 2002 Federal Court decision (known as *Franks*), did was define the phrase "course of rehabilitation". A raft of other cases, prior to *Franks*, demonstrate that people who had not been convicted, and were in psychiatric confinement as a result of criminal charges, could receive payment - provided they were undertaking a course of rehabilitation. So that justification appears flawed.

I understand this may be a point of contention, and I would be happy to expand on this issue during questions.

The second justification in the 2nd Reading Speech is that "it is the relevant state or territory government that is responsible for taking care of a person's needs while in psychiatric confinement, including funding their treatment and rehabilitation."



If the rationale is that states and territories are responsible for this cohort, a logical extension is for the Bill to also take payment away from people:

- charged with lesser offences (who may be in psychiatric confinement for just as long); or
- people who have not been charged with any offence, but are in psychiatric confinement for other reasons.

In fact the Bill would take payments away from a select group (people charged with serious offences), but not those above. I am not arguing for an extension of the Bill, but rather noting inconsistencies in the policy rationale.

The third justification equates this group of people with criminals. The Explanatory Memorandum states “[t]hese people will be treated in the same way as a person who is in gaol having been convicted of an offence.” Unfortunately, that is exactly what this Bill does. The problem is, these people have not been convicted of an offence. In many cases, they will not even have had a trial. They are not criminals, and therefore should not be “treated in the same way”.

So this final justification appears flawed.

There are two other areas of the Bill that Mental Health Australia would also like to briefly mention here.

Firstly, we are concerned about the situation for people on remand. The Explanatory Memorandum for the Bill states:

These people will be treated in the same way as a person who... is remanded in custody while awaiting trial after being charged with an offence.

However, this seemingly innocuous statement hides the inherent systemic discrimination in the criminal justice system, which your predecessors noted in a 2006 Senate Committee Report, (Senator Seselja, your predecessor, Sen Humphries, was Deputy Chair of this inquiry), which stated:

once arrested, mentally ill people may have trouble obtaining bail because they are too poor to raise bail, because they have no fixed address, or because they do not comprehend or comply with bureaucratic requirements.

Thus, the practical impact of the Bill is discriminatory, and does not ensure the same treatment.

We are also concerned about the practical impact on people’s ability to reintegrate back into society. Forensic patients are often held indefinitely, and their release is usually dependent on securing stable accommodation. If a person loses their Centrelink benefits, they will also lose their housing, creating a catch 22 situation. No release without housing. No housing without payment. No payment without release.

I commend the Victorian Legal Aid submission to you on this point.

Finally, any ‘savings’ generated are likely to be a false economy. These savings are likely to be dwarfed through increased costs to governments and society through:



- longer psychiatric confinement, as people can't be released until accommodation is found;
- longer periods on Centrelink payments once released and reduced changes of employment;
- increased chances of homelessness and further interactions with the criminal justice system.

Last week's budget announced an intention to finalise the 5th National Mental Health Plan. For too long, each level of government has attempted to pass the buck on an already under-resourced mental health system. We hope that as part of this Plan, all jurisdictions will finally agree to clear roles and responsibilities in mental health.

Before I conclude, I would like to refer you back to our Submission, which covers further issues, including the impact of proposed subsections 23(9B) and (9C), relating to transitioning back into the community.

