

SENATE INQUIRY BRIEF

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

Concerns with the rationale for the Bill in the Explanatory Memorandum and 2nd Reading Speech

STATEMENT IN EM/2 ND READING SPEECH	MENTAL HEALTH AUSTRALIA'S CONCERNS
<p><i>The amendments represent a return to the original policy intent for people who have been charged with a serious offence - so 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 decision.</i></p>	<p>The Bill does not in fact represent a return to pre 2002 arrangements. The 2002 Federal Court decision (Franks) defined the phrase "course of rehabilitation". Multiple cases, prior to Franks, demonstrate that people who had not been convicted and in psychiatric confinement, were receiving payment - provided they were undertaking a course of rehabilitation. See Attachment A</p>
<p><i>While the person is undergoing psychiatric confinement, the relevant state or territory government is responsible for taking care of their needs, including funding their treatment and rehabilitation.</i></p>	<p>If the rationale is that states and territories are responsible for this cohort, a logical extension is for the Bill to also take payments away from people:</p> <ul style="list-style-type: none"> • 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. <p>In fact the Bill would take payments away from a select group (people charged with serious offences), but not those above. Mental Health Australia is not arguing for an extension of the Bill, but rather notes inconsistencies in the policy rationale.</p>
<p><i>These people will be treated in the same way as a person who is in gaol having been convicted of an offence, or who is remanded in custody while awaiting trial after being charged with an offence.</i></p>	<p>The people impacted by this Bill have not been convicted of any offence. In many cases, they will not even have had a trial, where they have been found unfit to plead. They are not criminals, and therefore should not be "treated in the same way".</p>



This Bill is expected to produce savings of \$29.5 million over the forward estimates.

Any budget savings arising from the Bill would be a false economy, as these small 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 employment;
- increased chances of homelessness and further interaction with the criminal justice system.



ATTACHMENT A – SUMMARY OF CASE LAW PRIOR TO *FRANKS*

CASE	FACTS & OUTCOMES	OTHER RELEVANT COMMENTS BY THE JUDGE/MEMBER	ANALYSIS
<p><i>Fairbrother</i> [1999] AATA 580</p>	<p>Mr Fairbrother was charged with murder and found not guilty by reason of mental illness. He was confined in Risdon prison. The AAT decided he was not entitled to payment because “the respondent was not at any time undertaking a course of rehabilitation”</p>		<p>By focusing on the issue of whether Mr Fairbrother was undergoing a course of rehabilitation, the member clearly recognised that access to social security payments while in psychiatric confinement as a result of criminal charges was dependent on whether there the person was undertaking rehabilitation.</p>
<p><i>Pardo</i> [2000] AATA 1105</p>	<p>Mr Pardo was charged with an offence. He was not convicted but the Magistrate ordered he be detained in an approved mental health facility for 12 months. The AAT found that Mr Pardo was eligible for payment because he was undertaking a course of rehabilitation.</p>	<p>“the [Act] provides that a [Pension] is not payable to a person if the person... is ‘undergoing psychiatric confinement because the person has been charged with an offence’ The Act provides that ‘if a person is consigned to a psychiatric institution during a period when the person is undertaking a course of rehabilitation it is not to be taken to be psychiatric confinement”</p>	<p>The AAT clearly stated that the law, prior to <i>Franks</i>, was that if a person was undertaking a course of rehabilitation, they are entitled to payment.</p>



<p>Garden [2001] FCA 827</p>	<p>Mr Garden was convicted of murder and sentenced to a psychiatric in-patient facility. Mr Garden was not entitled to payment because he was convicted.</p>	<p>Section 1158(a) “deprives a person of a right to receive social security if that person is undergoing psychiatric confinement because he or she has been charged with committing an offence. It is designed to deal with those who have been charged with offences, but not with those who have been convicted of offences. It operates in relation to those who have been remanded in custody while awaiting trial, those who have been found unfit to be tried because of their mental condition, and those who have been acquitted on the ground of their mental condition. It follows that those patients in Thomas Embling Hospital, and similar establishments, who are in these categories, are deprived of their rights to social security unless undertaking courses of rehabilitation.”</p>	<p>Because Mr Garden had been convicted, the judge’s quotes demonstrate his understanding of the law at the time – i.e. if you haven’t been convicted, you can still access payments if you are undertaking a course of rehabilitation.</p>
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