

Submission:

Senate Committee for Community Affairs on the Social Services Legislation Amendment Bill 2015

May, 2015

The Hallmark Disability Research Initiative and the Melbourne Social Equity Institute at the University of Melbourne, in collaboration with affiliated researchers at the University of New South Wales, provide this written submission to the Senate Committee for Community Affairs on the Social Services Legislation Amendment Bill 2015.

Introduction

The Disability Research Initiative, the Melbourne Social Equity Institute and affiliated researchers welcome the opportunity to provide this submission to the Senate Committee for Community Affairs. The Disability Research Initiative was created at the University of Melbourne to facilitate the development of research that is responsive to the needs of people with a disability, and the organisations that support them. Our aim is to forge connections between academia and community organisations and to combine the strengths of both in order to support real outcomes for people with a disability. We plan to develop high quality applied research and policy that is formed in response to the lived-experiences of people with disabilities. To this end, a steering group of senior researchers and community leaders in disability rights advocacy and disability, has been convened. This steering group will guide the Initiative's research agenda.

The Disability Research Initiative also conducts a number of other actions to further the aim of multidisciplinary disability rights research. These include:

- High quality educational programs such as the Disability Human Rights Clinic for the Juris Doctorate program at Melbourne Law School. This program will inform and shape the next generation of disability advocates.
- Free public seminars on various areas of disability research and disability rights, presented by local and international experts from a number of areas in the disability field.
- Seed funding to encourage small to medium scale interdisciplinary research projects at the University of Melbourne.

In short, the objective of the Disability Research Initiative is to strengthen interdisciplinary collaboration and increase community involvement, while at the same time, increasing public awareness of academic research. Underpinning this is our aim to support measures that are responsive to the disability community. This is why we are concerned about the changes proposed in the Social Services Legislation Amendment Bill 2015.

The Melbourne Social Equity Institute is one of five “virtual” research institutes established by the University of Melbourne to facilitate interdisciplinary research projects. The Institute brings together researchers from across the University of Melbourne and external organisations to identify unjust or unfair practices that lead to social inequity and work towards finding ways to ameliorate disadvantage. A number of Institute-supported projects focus on the health, wellbeing and social participation of individuals with mental and cognitive impairments. It is in this context that the Foundation Director of the Institute supports this submission.

Concerns about the Social Services Legislation Amendment Bill 2015

The 2014 *Mid-Year Economic and Fiscal Outlook* contained the following paragraph:

“The Government will achieve savings of \$29.5 million over four years from 2014-15 by ceasing payment of social security benefits to people who are incarcerated or confined in a psychiatric institution under state or territory law due to serious criminal charges because they were considered unfit to stand trial or were not convicted due to mental impairment. This will ensure the same social security treatment of people in the criminal justice system whether they reside in a psychiatric or penal institution.”

The Social Services Legislation Amendment Bill 2015 is now proposing to deny social security payments to

“(9A)...a person whose confinement in a psychiatric institution is because the person has been charged with a serious offence.”

A “serious offence” is defined as

*“(a) murder or attempted murder; or
(b) manslaughter; or
(c) rape or attempted rape.*

(9F) An offence is also a serious offence if:

(a) it is an offence against a law of the Commonwealth, or a State or Territory, punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and

(b) the particular conduct constituting the offence involves:

*(i) loss of a person’s life or serious risk of loss of a person’s life; or
(ii) serious personal injury or serious risk of serious personal injury; or
(iii) serious damage to property in circumstances endangering the safety of a person.”*

We have a number of concerns with this proposed amendment. The Bill has serious human rights implications as well as potentially undermining Australia’s National Disability Strategy 2010-2020.

The Right to a Fair Trial

1. If this policy is implemented, people who have been charged with a serious crime, found unfit to plead and are confined in a psychiatric institution will be effectively

punished by the law without conviction. They will be denied essential social security benefits without appropriate due process of the law regarding the actual commitment of the crime.

2. Analysis of the human right to a fair trial is absent from the Explanatory Memorandum that accompanies the Bill. Article 14(2) of the International Covenant on Civil and Political Rights states that “*Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*” Where an individual has been found unfit to plead and has not been convicted of a crime, it may be a violation of the right to a fair trial to deny the individual benefits, such as the social security benefit, that he or she would have maintained if found not guilty. The unacceptable outcome here is that such persons found unfit but still detained on serious charges will never have the opportunity to defend themselves. They may not be able to afford proper access to justice and thus remain in detention for long periods of time. There have been a number of instances of this perverse situation recently.

Implementation of the National Disability Strategy (NDS) 2010-2020

3. Maintenance of adequate income support is a key responsibility of all Commonwealth States and Territories in the implementation of the NDS 2010-2020. This is mentioned in the policy areas of *Economic Security* (pages 42-43) and *Rights protection, Justice, and Legislation* (page 41). In the area of *Rights Protection, Justice, and Legislation*, it was specifically identified as an area of future action to “Ensure that people with disability leaving custodial facilities have improved access to support in order to reduce recidivism. This may include income and accommodation support and education, pre-employment, training and employment services.” **This Bill may contravene this policy goal.** Although the Bill is addressing payments that will be made while the individual is in detention, that small accumulation of financial support that would occur if social security payments continue while the individual is in detention can be essential for the individual’s continued connections to community and reintegration into the community after detention.
4. Social security payments support transition back into the community. They can be put towards rental payments on accommodation; continue paying housing costs during detention so that individuals can return to their homes; and fund set-up costs to move back into the community, among other things. The *Rights, Protection, Justice and Legislation* policy area of the NDS 2010-2020 specifies a

recommended future goal to “Support people with disability with heightened vulnerabilities in any contacts with the criminal justice system, with an emphasis on early identification, diversion and support” (p. 41). **Cessation of financial support contravenes this goal and risks further marginalizing people with mental and cognitive impairments** who are charged with a crime and found unfit to plead.

5. Courts are unlikely to release clients back into community on bail if they have no accommodation to return to or sufficient financial support available. Therefore, removal of these payments, as the Bill would allow, may result in the prolonged and sometimes indefinite detention of individuals. The human right to an adequate standard of living (Article 28 of the Convention on the Rights of People with Disabilities (CRPD)) as well as the right to liberty (Article 14 CRPD) are at risk of violation. The *Rights Protection, Justice, and Legislation* policy area of the NDS 2010-2020 recommends a goal to “Monitor and ensure compliance with international human rights obligations” as well as the goal to “Review restrictive legislation and practices from a human rights perspective” (p. 41). **Cessation of financial support that may result in prolonged or indefinite incarceration of individuals does not support these goals.**
6. Removal of rights to social security benefits for this group may result in financial hardship, possible loss of home, and poverty for family members who are financially dependent on them. Continuous and stable housing is a principle social determinant of recovering and maintaining wellbeing. It has been found to be a key factor in post detention reintegration for people with intellectual disabilities. A lack of continuous housing may have a negative impact on rehabilitation, recovery and reintegration into the community¹. In the NDS 2010-2020 *Economic Security* policy area (pages 42-46), one item of future action specifically identified is the need for “Income support and tax systems to provide an adequate standard of living for people with disability, their families and carers; while fostering personal financial independence and employment” (page 43). **This Bill’s removal of financial benefits will have an adverse impact on the individual as well as his or her family and does not support this goal.**

Impact on Indigenous Australians

¹ Riches, V. R., Parmenter, T. R., Wiese, M. & Stancliffe, R. J. (2006) “Intellectual disability and mental illness in the NSW criminal justice system,” *International Journal of Law and Psychiatry*, Volume 29, Issue 5, September–October 2006, Pages 386–396.

7. This Bill will have a significant effect on Indigenous Australians with mental and cognitive impairments. Not only do all the concerns noted above apply to Indigenous Australians with disability in custody but because Indigenous Australians experience higher rates of incarceration and unfitness to plead findings,² with Indigenous Australian women being particularly vulnerable, **the Bill's impact will fall disproportionately on Indigenous Australians.**³

Conclusion

The Federal Government's goal to save \$29.5M in the budget may result in short term savings, but it will likely increase long-term costs. The Bill's cessation of the right to social security support for individuals found unfit to plead and charged with serious crimes may cause further marginalization of this group. It will have a negative impact on successful reintegration into the community. It will also reduce access to safe housing and continuous accommodation, which is essential for wellbeing and rehabilitation. This may result in longer periods of incarceration and an increased rate of re-offending.

We join several respected colleagues in recommending that the proposed amendment in this Bill be reconsidered. We strongly encourage you to ensure that the right to social security benefits are not denied to individuals with mental and cognitive impairments found unfit to plead.

We respectfully ask you to reconsider the two reasons given for the implementation of this Bill. We believe that: (1) **savings to the Federal Government will be short term**, and will be negated by long-term costs; (2) people with mental or cognitive impairments found unfit to plead have not had the opportunity to have their day in court and **have not been found guilty**. Therefore they should not undergo the '*same social security treatment*' as those who have been found guilty of a criminal offence.

Thank you for your consideration of our submission.

² Sotiri, M., McGee, P. & Baldry, E. (2012) No end in sight: The imprisonment, and indefinite detention of Indigenous Australians with a cognitive impairment. Report Prepared by the Aboriginal Disability Justice Campaign for the National Justice Chief Executive Officers Working Group.

³ HREOC Social Justice Report 2002: Indigenous women and corrections - A Landscape of Risk

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