Queensland Advocacy Incorporated

Systems and Legal Advocacy for vulnerable people with Disability

15 May 2015

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Re: Inquiry into the Social Services Amendment Bill 2015 (plan to cease payment of Disability Support Pension to people in psychiatric confinement)

I am writing to you as a disability advocate and Director of Queensland Advocacy Incorporated (QAI). We are a membership based non-government charitable organisation whose mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI provides legal advice and advocacy to people with mental illnesses and intellectual impairments who would bear the brunt of this measure. Our Mental Health Legal Service and Human Rights Legal Service have provided legal representation to people on forensic orders and who are subject to 'psychiatric confinement' as defined in the Social Services Amendment Bill 2015 ('the Bill'). Our systems advocacy team has campaigned and made submissions to the Queensland and Commonwealth governments in relation to the needs and rights of persons with disability in forensic detention.

The Social Services Amendment Bill 2015

The Bill's policy objectives are confused and incompatible. From the MYFEO statement and the Bill's explanatory notes the purposes are:

- to save Commonwealth money
- to achieve parity across the criminal justice system
- to avoid duplication, where a State or Territory already caters to the need
- to return to the original policy intent, namely, the denial of social security payments to people in psychiatric confinement as a result of criminal charges

The Bill will not achieve these objectives. Any short term savings to the Commonwealth will be costs to individuals confined, to the states and territories, and to communities that would benefit from the long-term recovery and habilitation of their most vulnerable members.

If enacted, the Bill would —

- Fail to achieve the stated aim of parity across the criminal justice systems. The people targeted **are not criminally responsible** for their actions.

- **Reintroduce a punitive dimension** that for good reason has been long been absent from the intent of forensic detention.

- **Save taxpayers no money in the short term, shifting costs** from Commonwealth to states and territories, and

- **Increase costs** by prolonging institutionalisation and dependency.

- **Introduce arbitrary inequity** by denying income support to people in relation to (alleged) offences far less serious than those specified in the amendment. The 'serious offence' provision is broad in scope. In our view, the offences specified in section 9E are misleading and only the 'tip of the iceberg'. In Queensland 'serious offence' will likely capture many offences set out in the *Criminal Code 1899* (Qld) (the Code), including:

    - s 61 Riot,
    - s 72 Affray,
    - s 408A Unlawful use or possession of a motor vehicle and
    - s 225 The like by women with child (Any woman who [attempts to] procure her own miscarriage.

- Each of these and many others in Queensland's Code fall within the scope of offences involving loss of or serious risk to life, wellbeing or safety and carries a maximum penalty of 7 years or more.

- Cause **financial hardship** for people who have done no criminal act, and in some cases for their dependents who rely on the bill's targets for support.

- Cause **administrative confusion over seven jurisdictions**, requiring subjective evaluations regarding what constitutes 'transition' or a 'serious offence'.

- (Above all) **prevent people from transitioning out of institutions** and impede recovery by making it impossible for them to afford to do so, and

- **Defeat the public interest** in the successful **recovery and habilitation** of citizens.

I will explain some of these points in more detail.

1. **The explanatory notes suggest that passage of the Bill would guarantee equal treatment across the criminal justice system.**

A cessation of payments would not achieve this aim. Forensic processes and forensic detention stand apart from of the criminal justice system, [2] and blame and retribution are not part of the forensic calculus.

In the Explanatory Notes, the use of the phrase 'people in psychiatric confinement[1] because of criminal charges' is misleading. They are not in confinement because of criminal charges in the same way that a person is sent to jail because of criminal charges— for a number of reasons.

[2] Except where a prisoner develops a mental illness after their incarceration and is moved into psychiatric detention.

[1] Under the *Social Security Act* 'Psychiatric confinement' includes confinement of people with intellectual impairments and people with mental health conditions. The conflation of mental illness and intellectual impairment is an all too frequent error in Commonwealth, state and territory legislation and policy.)

A person in psychiatric confinement is not guilty of an offence: there has been no determination of facts beyond a reasonable doubt, no finding of criminal responsibility, and no conviction. The order of the court is not about punishment or deterrence, which are key components of criminal sentences. The focus of forensic orders is habilitation, treatment and community protection.

Governments in every state and territory have passed mental impairment legislation because they recognise, as the common law has done for centuries, that people who are of unsound mind or who are unfit to plead or to stand trial cannot rightly be held criminally responsible for their actions. The court will suspend the criminal justice process accordingly.

Forensic detention, instead, is partly a matter of risk management and partly a matter of meeting therapeutic need.

2. The Bill will cause financial hardship and reduce prospects for recovery and rehabilitation.

People placed in psychiatric detention may still have financial responsibilities such as rent, the welfare of those dependent upon them, education and other necessaries. Depriving people of income promotes institutionalisation. It encourages dependency and helplessness.

The proposal will diminish the recovery prospects of detainees who have a mental illness. It will diminish prospects for habilitation and skills development for people who have intellectual impairment. Deprived on an income, a person loses an important link to the everyday world. It diminishes their capacity to function.

The establishment of modest savings (e.g. enough to pay a bond for a rental property, or to enrol in a TAFE course) whilst in detention dramatically assists these persons to rehabilitate from the circumstances that lead to the alleged commission of a crime and provides treating teams with more effective options for their rehabilitation in the wider community.

Even if detained for short periods, people may lose their accommodation/tenancy, or be deprived of the means to re-establish themselves in suitable accommodation on release. Stable accommodation is the most important factor in a person's recovery from mental illness, and lack of accommodation is the most serious barrier to post-detention reintegration for people with intellectual disability. Incarceration detrimentally affects anyone's life skills, but incarceration for someone with a mental illness or intellectual impairment is worse. Newly-released detainees require assistance to find a safe place to live, work or other personal development. Support reduces recidivism. Post-release care and support is critical for increasing the probability of the inmate succeeding in the community.

A case example illustrates these problems. X is a middle aged man who some years ago killed his parents. He has since been diagnosed with a number of underlying mental illnesses. He lives in Baillie Henderson hospital, which charges approximately 67% of his income as an accommodation fee. He now gets up to three overnights of limited community treatment a week. LCT costs $100 per night. If he didn't have some savings from his income support (DSP) he would not be able to get LCT. Nor could he afford modest entertainment, or even catch buses. As things stand he cannot exercise all of his LCT because he cannot afford to.

3. **The Bill is not practical to administer.**

Key terms such as are not well-defined and will inevitably require administrators to draw arbitrary distinctions.

- A 'period of reintegration back into the community' is problematic. The majority of people in confinement are in recovery or undergoing habilitation.

- When a person does not successfully reintegrate into the community this is usually more a reflection on the lack of treatment, supports and resources than on the people themselves. Income support is fundamental to community integration. A person in confinement is needs to keep in touch with every-day living. They need to purchase clothes, food, necessaries, and they need to pay for outings and overnight stays, even if their return to community is not imminent. Remove income support, and the person's prospects of recovery or habilitation diminish and is likely to substantially increase the length of a person's confinement.

  Serious offences attracting a maximum of 7 years imprisonment vary from jurisdiction to jurisdiction. If the Bill is not meant to be punitive, why does it distinguish between these offences, and others?

Conclusion

Queensland Advocacy Incorporated urges you to oppose the passage of this Bill. The details of the Bill and the policy reasons behind them are flawed— in our view, irremediably so. No modification of the key terms will improve it, and we urge you to reject the Bill outright.

Money saved by the Commonwealth will be a loss to the states and territories, to the people in confinement, and to communities whose long-term interest in the rehabilitation of offenders will not be served.