

C/o Guardianship and Administration Board
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27 March 2015

The Hon. Scott Morrison MP
Minister for Social Services
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister

Social Services Legislation Amendment Bill 2015

I am writing on behalf of the Australian Guardianship and Administration Council (AGAC).

AGAC is comprised of the Public Guardians, Adult Guardians and Public Advocates, the Boards and Tribunals who deliberate upon applications under guardianship and administration (financial management) legislation and the State Trustees or Public Trustees.

All members of AGAC are statutory officials appointed under State or Territory legislation. Whether as a tribunal, a trustee or a guardian, we all make significant decisions regarding people with disabilities who lack capacity for independent decision making. Persons with dementia, intellectual disability, mental illness or acquired brain injury are commonly the kinds of persons for whom we make substitute decisions or appoint substitute decision makers.

Members of AGAC frequently make decisions for or about persons who are detained as a result of being found by a Court to be unfit to plead or not guilty by reason of mental impairment.

At our meeting in Canberra on 19 March 2015, AGAC members expressed concern about the *Social Services Legislation Amendment Bill 2015* for two reasons:

- (i) Persons who are detained as a result of being found by a Court to be unfit to plead or not guilty by reason of mental impairment have not been found guilty of a crime and are considered not to be responsible for the alleged crime as a fundamental principle of law. The removal of social security payments amounts to a punishment of persons who have not been found guilty, in the same manner as if they had been found guilty and runs contrary to traditional legal principles.

- (ii) Detention of such persons is traditionally and ethically viewed as a rehabilitative measure, not a punitive measure and, once rehabilitated, the persons may be released into the wider community (or to stand trial in the case of persons found unfit to plead). It has been the experience of AGAC members that funds accumulated from social security payments whilst in detention assist these persons to have safe and appropriate accommodation and support upon discharge from a facility. Persons with mental illness, head injury or intellectual disability (which may be the foundation of a finding by a Court that a person is unfit to plead or not guilty by reason of mental impairment) typically have low incomes and few assets and may enter the criminal justice system because of their very limited resources. 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 led to the alleged commission of a crime and provides treating teams with more effective options for their rehabilitation in the wider community.

Sadly at the time of our discussions, AGAC members were unaware that the Bill was to be tabled and have its first and second reading on 25 March 2015.

AGAC urges the Government to delay commencement of the Act from 1 July 2015 to enable full consideration of the impacts of this measure and to encourage wider consultation with relevant stakeholders.

Yours faithfully

Anita Smith
CHAIR