



Martin Foley MP

Minister for Housing, Disability & Ageing  
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Senator Zed Seselja  
Chair, Senate Community Affairs Legislation Committee  
PO Box 6100  
Senate  
Parliament House  
CANBERRA ACT 2600

Dear Senator Seselja

I am writing about the amendments proposed in the Social Services Legislation Amendment Bill 2015. The effect of the bill is that persons undergoing 'psychiatric confinement' in a Victorian designated mental health service because they have been charged with a serious offence will no longer be eligible to receive relevant social security payments under the *Social Security Act 1991 (Cth)*, irrespective of whether the person is undertaking a course of rehabilitation. I understand the bill has been referred to the Senate Community Affairs Legislation Committee for inquiry and report by 15 June 2015.

In Victoria, the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)* establishes a legal framework for the detention, management and release of persons found by a court to be either unfit to stand trial or not guilty of an offence on the grounds of mental impairment. When detained in a designated mental health service, these people are known as 'forensic patients'.

Part of the legal framework includes procedures by which forensic patients who are detained in a designated mental health service may apply for and be granted different types of leave of absence with a view to rehabilitation and facilitation reintegration into the community. The legislation takes a graduated approach to granting leave. A forensic patient may receive increasing entitlements for leave subject to satisfactory progress and community safety. This slow approach to leave of absence allows for a gradual reintroduction into the community and provides clinical staff with a valuable opportunity to monitor how the person copes and adapts in a community setting. Capacity to engage in a wide range of community-based activities is also critical to evaluate any associated risks to community safety associated with reintegration.

The Victorian Government is concerned that the bill will seriously limit the effectiveness of this highly successful model for rehabilitation and adversely affect forensic patients. It is critically important that forensic patients have access to income support to enable them to engage in a wide range of community-based daily living activities to promote recovery and community participation, including maintaining relationships with family and friends, participation in external therapeutic programs, transport, education and employment activities. These activities go well beyond the support, treatment and rehabilitation activities provided by the Victorian government within the hospital environment.

This model is consistent with the mental health recovery principles encompassed in the *National Standards for Mental Health Services* (2010), the *National framework for recovery-oriented mental health services* (2013), the *National practice standards for the mental health workforce* (2013), the *Mental Health Act 2014* (Vic) and related policies and guidelines. Recovery oriented mental health practice supports individuals to build on their strengths and take as much responsibility for their lives as they can at any given time while ensuring there is a balance between duty of care and support for individuals to take positive risks and make the most of new opportunities. This community connection and participation have been demonstrated to be integral to personal recovery.

Forensic patients are typically a highly vulnerable and disadvantaged group. Without social security payments and related concessions available through the Health Care Card, such as reduced public transport costs, they will have limited capacity to engage in external activities and to achieve recovery.

I note that the bill will enable forensic patients to receive social security payments if they are undertaking a 'period of integration back into the community'. The bill provides that the Commonwealth Minister for Social Services will specify the eligibility criteria for determining whether a forensic patient is undertaking a period of integration back into the community. I understand that the Commonwealth Department of Social Services has proposed a threshold of six nights overnight leave in a fortnight for this purpose. In Victoria this would mean very few forensic patients will be eligible to receive relevant social security payments. In the future under the proposed legislation, it is unlikely any forensic patients will progress to overnight leave because successful use of a wide range of daily leave of absence over an extended period is a necessary precursor to being granted overnight leave.

I also note that the bill will result in fewer transitional housing options being available to forensic patients to reintegrate into the community. Without relevant social security payments, forensic patient will have less capacity to accumulate funds to establish a bond and pay rent to access staged accommodation services such as community care units while on limited leave of absence, and permanent accommodation once they have been granted extended leave (of up to 12 months duration) under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic). The effect will be to slow rehabilitation and recovery, and increase institutionalisation.

The Victorian Government is concerned that the bill discriminates against people who have been found by a court to have no criminal responsibility for their offending behavior because of mental impairment. It is a well established sentencing principle that persons who are not morally culpable for their offending behavior should not be punished.

Consistent with other patients who have a serious mental illness and require treatment and rehabilitation and a graduated return to the community, it is important that forensic patients are able to access relevant social security payments to support their recovery and community integration. Discriminating against this small and vulnerable group of individuals can only lead to increased stigma and fear of mental illness by the broader community.

It is also important that consistent with other patients who have serious, physically disabling conditions for whom relevant social security payments support recovery and integration, that forensic patients are able to access relevant social security payments.

I urge you to reconsider this legislation. I have copied the Hon Scott Morrison MP and the Hon Sussan Ley MP in order that the matters can be considered in preparing a report to the Senate.

Should you, the Committee or the Commonwealth Department of Social Services require further information, please contact Leanne Beagley, Director, Mental Health Branch

Yours sincerely

**Martin Foley MP**

*Martin Foley*  
12/07 2015

cc Hon Scott Morrison MP  
Australian Minister for Social Services

Hon Sussan Ley MP  
Australian Minister for Health

Senator Gavin Marshall  
Deputy President of the Senate Chair of Committees