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Dear Secretariat

### **Inquiry into the Social Services Legislation Amendment Bill 2015**

The National Mental Health Consumer and Carer Forum (NMHCCF) welcomes the opportunity to provide a submission to the Senate Standing Committee on Community Affairs Inquiry into the *Social Services Legislation Amendment Bill 2015* (the Bill).

The NMHCCF is a united, independent and national voice of consumers and carers committed to reforming mental health in Australia. Members use their lived experience, understanding of the mental health system and communication skills to advocate and promote the issues and concerns of consumers and carers. NMHCCF members represent mental health consumers and carers on a large number of national bodies, such as government committees and advisory groups, professional bodies and other consultative forums and events.

The proposed amendment to the *Social Security Act 1991* is in breach of a basic tenet of Australian law which states that a person is innocent until proven guilty. The Bill states “a person who is undergoing psychiatric confinement because they have been *charged* [sic] with a serious offence...”. Being charged with an offence is not being convicted and the punitive financial measures such as those proposed by the Bill are excessive for a person not convicted of a serious offence.

The proposed change to the Bill, removing access to social security benefits for people who are charged with a serious offence confined in a psychiatric facility and undergoing a course of rehabilitation, is deeply concerning to mental health consumers and carers across Australia. The NMHCCF does not support this change which will result in significant disadvantage to a number of mental health consumers and carers across Australia. The consequences of this change in Commonwealth legislation will significantly affect consumers in forensic mental health services, one of the most vulnerable groups in our society. It highlights clear discrimination towards those hospitalised with mental health issues – be they forensic, voluntary or involuntary patients.

This Bill has the potential to impact on other areas of the person's life such as loss of tenancies, eviction and removal of utilities because of lack of payments. It will also impact on their ability to maintain a basic standard of living as they transition out of psychiatric confinement and enter back into the community. This would ultimately exacerbate their symptoms, make it even more difficult to find secure and appropriate housing and would potentially create the revolving door syndrome in terms of hospital admissions, which occurs at a huge emotional and financial cost. Implementing such an amendment while a person is being held on a charge and not yet convicted is imposing punishment without due process according to Australian law.

The proposed new subsection 23(9B) and (9C), outlines that when a person takes leave away from the psychiatric facility as a period of integration back into the community, the person is taken not to be in psychiatric confinement and therefore social security payments will be payable for that period. However, the explanatory memorandum states that a period of integration back into the community is to be worked out in accordance with a legislative instrument made for this purpose, without providing any detail. The memorandum refers to 'short periods', and suggests that a period of integration may constitute an individual spending 6 nights or more per fortnight in the community.

The reality is that the period of transition and integration back into the community may involve leaves of absence for regular periods less than 6 nights, resulting in the individual not receiving any form of financial assistance. Without social security support, the individual will not be able to purchase daily necessities, maintain a basic standard of living or plan for meaningful activities when they are discharged into the community. This goes against the principles of recovery oriented mental health practice.

The majority of people in forensic mental health services are entirely dependent on social security entitlements for their income, with many having ongoing financial commitments whilst detained. To add an unwarranted financial penalty creates a disadvantage that goes against the United Nations Convention on Rights of People with Disabilities (UNCRPD)<sup>1</sup>. The UNCRPD sets out the rights of persons with disabilities, including persons with mental illness, to equal recognition before the law (Article 12), access to justice (Article 13) and liberty and security (Article 14) on an equal basis with others.

#### Article 12.5

*Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.*

#### Article 13.1

*States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*

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<sup>1</sup> <http://www.un.org/disabilities/convention/conventionfull.shtml>

#### Article 14

1. *States Parties shall ensure that persons with disabilities, on an equal basis with others:*
  - a) *Enjoy the right to liberty and security of person, b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.*
2. *States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.*

The amendment to the Act and consequent financial implications also impacts on an individual's ability to have an adequate standard of living for themselves and their families, as set out in Article 28 of the UNCRPD.

#### Article 28

1. *States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability.*
2. *States Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures:*
  - a) *To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;*
  - b) *To ensure access by persons with disabilities, in particular women and girls with disabilities and other persons with disabilities, to social protection programmes and poverty reduction programmes;*
  - c) *To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;*
  - d) *To ensure access by persons with disabilities;*
  - e) *To ensure equal access by persons with disabilities to retirement benefits and programmes.*

Australia was one of the first western nations to sign and ratify the UNCRPD and has high status internationally as being compliant and having improved the standards and mechanisms for people with disabilities. This proposed Amendment will potentially jeopardise Australia's status in this regard.

People may be detained in forensic facilities for the purpose of assessment, treatment and rehabilitation, and not because they have been found guilty of a crime. It is important to note forensic consumers are not criminals and should not be treated on an equal level to individuals who have been convicted of a crime. This being the case, they should not have their social security entitlements taken away.

NMHCCF members query the definition and explanation of 'rehabilitation' in the social security context and whether it relates to a person's 'social formation and reintegration'. If this is the case, people with a forensic mental health issue are equated with those found guilty of a crime and the context of rehabilitation framed this way is inappropriate and misleading. People in

forensic mental health facilities need recovery focussed clinical treatments and psychosocial interventions. When regaining their wellness they need to be able to undertake social /vocational education in order to effectively integrate when returning to the community. Health and disability services do not resource these programs and people need to utilise their social security payments to budget for these and related integration activities. It is counterintuitive to withdraw payments from those who hope to play a role with a contributing life in society.

On behalf of mental health consumers and carers across Australia, the NMHCCF urges the Government not to proceed with the proposed amendments to this Bill and to take into account the issues we have raised.

Yours sincerely

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Consumer Co-Chair

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Carer Co-Chair