

Chapter 1

Introduction

Referral

1.1 On 26 March 2015, the Senate referred the Social Services Legislation Amendment Bill 2015 (Bill) to the Community Affairs Legislation Committee (committee) for inquiry and report by 15 June 2015.¹

Purpose of the Bill

1.2 The Bill ceases social security payments to a person who is undergoing psychiatric confinement because they have been charged with a serious offence.²

1.3 The intention of the Bill is not to enact new measures within the *Social Security Act 1991*. The Bill seeks to return the system of social security payments to people in psychiatric confinement to the original intention of amendments made in 1986:³

This essentially represents a return to the original policy intention for people in these circumstances—that a person cannot access social security payments while in psychiatric confinement as a result of criminal charges.⁴

1.4 The Bill would give effect to the government's position that the relevant state or territory is responsible for taking care of a person's needs while in psychiatric confinement, with the exception of certain circumstances, such as when people are integrating back into the community.⁵

1.5 The explanatory memorandum submits that the Bill would have a financial impact, resulting in net savings for the Social Services portfolio of \$29.5 million over the forward estimates.⁶

1 Journals of the Senate, *No. 90—26 March 2015*, pp. 2458-2459.

http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/Journals_of_the_Senate

2 Social Services Legislation Amendment Bill 2015, *Explanatory Memorandum (EM)*, p. 2.

http://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r5442

3 EM, p. [3].

4 The Hon. Scott Morrison MP, Minister for Social Services, *House of Representatives Hansard*, 25 March 2015, p. 3353.

http://www.aph.gov.au/Parliamentary_Business/Hansard?wc=23/03/2015

5 The Hon. Scott Morrison MP, Minister for Social Services, *House of Representatives Hansard*, 25 March 2015, p. 3353, and Department of Social Services, *Submission No. 8*, p. [2].

6 EM, p. [3].

Background

1.6 Since 1908, there have been provisions in social security law that restrict payments to persons undergoing psychiatric confinement.⁷ Currently, the *Social Security Act 1991* (Social Security Act) restricts certain social security payments from being made to persons who are in gaol or psychiatric confinement following being charged with any offence.⁸ There have been similar measures in social security law since at least 1947.⁹

1.7 In 1986 an additional provision was included,¹⁰ which allowed that for a person in psychiatric confinement, a period where they are undertaking a course of rehabilitation is not to be taken as psychiatric confinement.¹¹ The intention of this provision was to recognise that people would need income support as they transitioned back into the community.¹²

1.8 A decision by the Federal Court in 2002 provided a ruling on defining a 'course of rehabilitation', which found that most people confined in a psychiatric institution may be considered to be participating in a course of rehabilitation and therefore attract social security payments.¹³ Prior to this case, many people in psychiatric confinement because of a criminal offence did not receive social security payments.¹⁴

1.9 The Department of Social Services (the Department) contends that this broad definition of a 'course of rehabilitation' was not the original intent of the 1986 amendment.¹⁵

Key provisions of the Bill

1.10 The Bill seeks to amend the Social Security Act, to ensure that people who have been confined to a psychiatric institution because they have been charged with a serious offence are not eligible for certain social security payments, regardless of

7 *Submission No. 8*, p. [2].

8 See *Social Security Act 1991*, s. 1158.
http://www.comlaw.gov.au/Details/C2015C00217/Html/Volume_1

9 *Submission No. 8*, p. [2].

10 See *Social Security and Veterans' Affairs (Miscellaneous Amendments) Act 1986* s. 51
<http://www.comlaw.gov.au/Details/C2004A03347>

11 *Social Security Act 1991*, ss. 23(9), <http://www.comlaw.gov.au/Details/C2015C00217>

12 Ms Halbert, Group Manager, Payments Policy Group, Department of Social Services, *Committee Hansard*, 21 May 2015, p. 33.

13 FCAFC 436 (20 December 2002),
<http://www.austlii.edu.au/au/cases/cth/FCAFC/2002/436.html>

14 EM, p. [3]

15 *Submission 8*, p. [2].

whether they are undertaking a course of rehabilitation, but will be eligible for payments during a period of reintegration back into the community.¹⁶

1.11 Schedule 1 Items 1, 2, 4, 7, 8 and 9 are consequential technical amendments.

1.12 Items 3 and 6 amend subsection 23(1) and create new subsections 23(9E) and 23(9F). Taken together, these changes insert a definition of serious offence which includes the offences of murder or attempted murder, manslaughter, rape or attempted rape, as well as other violent offences that are punishable by imprisonment for life or for a period of at least seven years.¹⁷

1.13 Items 5 and 6 amend subsection 23(9) and create new subsection 23(9A), which amends the existing provision that allows for social security payments to be made to a person in psychiatric confinement while the person is undertaking a course of rehabilitation,¹⁸ so that it does not apply to a person who is in psychiatric confinement because the person has been charged with a serious offence.

1.14 Item 6 also creates the following new subsections:

- (a) subsection 23(9B) allows that a period of integration back into the community is not to be taken as psychiatric confinement for persons who have been charged with a serious offence;
- (b) subsection 23(9C) provides that the definition of a period of integration is to be made by a legislative instrument made by the Minister for the purposes of the Social Security Act; and
- (c) subsection 23(9D) provides that during a social security payment instalment period, if a person is undergoing psychiatric confinement on one or more days during the instalment period, all days within the instalment period are taken to be in psychiatric confinement. This provision is to ensure that social security payments are not made to persons on a period of leave from psychiatric confinement, but who are not in a period of integration back into the community.¹⁹

1.15 Should the Bill be passed, the measure is due to be implemented from 1 July 2015, as announced in the 2014-15 Mid-Year Economic and Fiscal Outlook.²⁰

1.16 The measure is expected to affect approximately 350 people on implementation and 50 people each year afterwards.²¹

16 EM, p. 2.

17 EM, p. 6.

18 *Social Security Act 1991*, ss. 23(9).

19 EM, p. 5.

20 EM, p. 2.

21 *Submission 8*, p. [3] and *Committee Hansard*, 21 May 2015 p. 34.

Consideration of the Bill by other committees

1.17 The Bill was considered by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) on 13 May 2015²². The Scrutiny committee made no comment on the Bill.

1.18 The Parliamentary Joint Committee on Human Rights (Human Rights committee) reviewed the Bill and in its report of 13 May 2015 stated:

The measures in the bill would result in certain individuals who are in psychiatric confinement because they have been charged with a serious offence losing existing entitlements to social security payments. The bill engages and limits the right to social security.²³

1.19 The Human Rights committee also reviewed the Statement of Compatibility with Human Rights²⁴ contained in the Explanatory Memorandum, which concluded the legislative instrument did not give rise to human rights concerns because people in psychiatric confinement receive 'benefits in kind' in lieu of a social security payment by having their basic needs provided for by the relevant state or territory government. Additionally, the partners and children of people in psychiatric confinement are adequately provided for under existing social security arrangements.

1.20 Further advice has been sought from the Minister for Social Services by the Human Rights committee in relation to the impact of these measures.²⁵

Conduct of the Inquiry

1.21 Details of the inquiry, including links to the bills and associated documents, were placed on the committee's website²⁶. The committee also wrote to 55 organisations, inviting submissions by 15 May 2015. Submissions continued to be accepted after that date.

1.22 The committee received 35 submissions, which are listed at Appendix 1. All submissions were published on the committee's website.

22 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 5 of 2015*, p. 29.
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Alerts/Digests/2015/index

23 Parliamentary Joint Committee on Human Rights, *Twenty-second Report of the 44th Parliament*, p. 105.

24 EM, pp. [11-13]

25 For example: the objective of the measure and the connection between the limitation on rights and achieving the objective.

26 See: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Social_Services_2015.

1.23 The committee held a public hearing in Canberra on 21 May 2015. A list of witnesses who appeared at the hearing is at Appendix 2, and the *Hansard* transcript is available through the committee's website.²⁷

Acknowledgement

1.24 The committee thanks those organisations who made submissions and who gave evidence at the public hearing.

Note on references

1.25 References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

27 See: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Social_Services_2015/Public_Hearings.

