



7 September 2016

Mr Mark Fitt  
Committee Secretary  
Senate Standing Committees on Economics  
PO Box 6100  
Canberra ACT 2600  
Via email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Mr Fitt,

**Submission on the *Budget Savings (Omnibus) Bill 2016***

Thank you for the opportunity to make a submission to the Inquiry into the Budget Savings (Omnibus) Bill 2016.

Catholic Health Australia (CHA) is Australia's largest non-government grouping of hospitals, aged and community care services, providing approximately 10% of hospital and aged care services in Australia. Our members provide around 30 per cent of private hospital care, 5 per cent of public hospital care and provide 24,700 residential aged care beds and numerous community care and care in the home services across Australia.

Our comments are restricted to only those Schedules listed below, however due to the limited time allowed to consider the Bill and lodge a submission, we do not submit that the remaining Schedules are endorsed.

**Schedule 7 – Abolishing the National Health Performance Authority (NHPA)**

We note this measure abolishes the NHPA and moves most of its functions in the Australian Institute of Health and Welfare (AIHW).

**Recommendation:** We recommend that the consultative approach of the NHPA be continued as this work program transfers to the AIHW.

**Schedule 8 – Aged Care: Item 11 After subsection 27 – 3(3)**

This subsection refers to “significant decrease in care needs.”

Subsection (3A) would enable the Secretary to require an approved provider to undertake a care recipient reappraisal where the *Secretary reasonably suspects that the care needs of the care recipient have decreased significantly...*

**Recommendation:** CHA considers that this subsection (3A) should be deleted from the Bill. It is contrary to a key policy objective promoted by the Government when the sector was being encouraged to adopt the ACFI instrument.

In particular, noting the increasing acuity of residents and rising numbers entering residential aged care from hospitals, a policy objective of the ACFI was to assess on entry to the aged care home and

provide an incentive for providers to deliver wellness and reablement programs to assist in restoring function by removing the requirement for mandatory re-assessment.

This policy approach provides an incentive for providers to improve the wellbeing of residents by not incurring a reduction in the care subsidy. The policy was also in response to a concern in some quarters that some providers may be less inclined to invest in restorative care in order to maintain subsidy levels.

Subsection (3B) refers to the Classification Principles specifying the circumstances in which the care needs of a care recipient are taken to decrease significantly.

**Recommendation:** CHA considers that this Clause should also specify that the Classification Principles include a definition of 'significant decrease.'

#### **Schedule 8 – Aged Care: Item 15 Section 29 – 2**

The Bill seeks to repeal this section and substitute **29 – 2 Date of effect of change.**

**Recommendation:** CHA considers that this section should not be repealed. By not repealing and making the substitution, the status quo would remain whereby the Secretary can recover "overpayments" brought about through validation downgrades of ACFI Classifications back six months. The six months reclaiming period has been the practice since Classifications were introduced.

ACFI downgrades can be brought about through inadvertent error or missed documentation on the part of the provider when making the original Classification for the ACFI care subsidy. The validation downgrade resulting in the "overpayment" does not necessarily mean that the original Classification was incorrect. Also the resident would have been receiving the relevant care level commensurate with the original classification care subsidy.

#### **Schedule 8 – Aged Care: Item 20 After section 85 – 5**

The Bill seeks to insert:

#### **85 – 6 Application fee for reconsideration of decision to change classification of care recipient**

The Bill makes no reference to the provision of refunds.

**Recommendation:** CHA considers that a clause should be inserted that provides for a refund to the approved provider where the reconsideration decision is favourable to the provider.

#### **Schedule 20 – Psychiatric confinement**

CHA wishes to support the submission of the National Mental Health Commission as articulated by Professor Allan Fels AO, NMHC Chair, in his letter to you of 15 May 2015 as it does not appear that those concerns have been adequately addressed in the current Bill under consideration.

**Recommendation:** That the concerns raised in the *attached* letter of 15 May 2015 by the National Mental Health Commission be addressed.

We urge the Committee to take these recommendations on the Bill into consideration. Please do not hesitate to contact me directly if you require any further information.

Yours sincerely,



Suzanne Greenwood LLM LLB FAIM MAIDC  
Chief Executive Officer

**Attachment 1:** Letter National Mental Health Commission to the Senate Standing Committees on Community Affairs, 15 May 2016



**Australian Government**

National Mental Health Commission

15 May 2015

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

Dear Committee Secretary

I am writing to provide the below submission from the National Mental Health Commission to the Community Affairs Legislation Committee's Inquiry on the Social Services Legislation Amendment Bill 2015.

The Commission provides independent reports and advice to the community and government on mental health. We work across all areas that promote mental health and prevent mental illness and suicide—not just government and not just health, but education, housing, employment, human services and social support. By leading, advising, collaborating and reporting we will help transform systems and promote change, so that all Australians achieve the best possible mental health and wellbeing.

The Commission has a number of concerns about the Social Services Legislation Amendment Bill 2015 in its current form:

- The bill determines access to social security support based on the offence with which people were charged, despite not being convicted as a result of mental illness or intellectual disability.
- The practical effect of removing access to social security payments would be detrimental to rehabilitation and recovery for people with a mental illness, especially without close consultation with the States and Territories
- Other provisions in the bill appear to be discriminatory or have negative symbolic effect.

These concerns are detailed below.

**Legal status of people not convicted of an offence due to mental illness or intellectual disability**

The bill fails to recognise the significant difference in legal status between those convicted of a criminal offence, and those who are not convicted due to mental illness or intellectual disability.

Persons found unfit to stand trial or who have not been convicted due to a mental impairment have been found not legally (or morally) culpable of the offences with

which they were charged. This vital distinction, which has a long history in English and Australian law, is not acknowledged in this bill.

In particular, subsection 23(9A)'s distinction between a person charged with a 'serious offence' (who would not receive social security payments) and others (who would continue to receive such payments) appears arbitrary. There is no clear rationale given for why a person charged with – but not convicted of – certain offences should be taken to be in psychiatric confinement, rather than undertaking a course of rehabilitation, while others charged with offences that do not classify as 'serious' are still taken to be undertaking a course of rehabilitation. The nature of the offence with which a person was charged – but not convicted – should not define whether they are taken to be in psychiatric confinement or undertaking a course of rehabilitation, nor should it be relevant to whether they have access to social security payments.

### **Practical effect of removing access to social security payments on rehabilitation and recovery**

Detention in a forensic psychiatric facility is generally seen as a process of rehabilitation. However, a rapid shift placing the onus on state and territory health systems to fund rehabilitation would be likely to have a detrimental impact on the rehabilitation and recovery of affected people.

In his second reading speech, the Minister stated that: "it is the relevant state or territory government that is responsible for taking care of a person's needs while in psychiatric confinement, including funding their treatment and rehabilitation." This does not reflect current practice. In many facilities, patients contribute much of the funding for their hospital costs and other extra costs related to their rehabilitation.

The Commission acknowledges that there may be worthwhile policy and budgetary questions to explore about the adequacy of current funding arrangements, in which rehabilitation is subsidised by those undertaking a course of rehabilitation (using Commonwealth social security payments) rather than States or Territories. However, moving to alter the situation rapidly (as per the bill) could result in significant funding shortfalls that would impact on a person's rehabilitation and place greater financial burden on the individual's family and support people. Practical discussions between the Commonwealth and the States and Territories should be undertaken before such provisions are put into effect.

There also is the question of how ceasing social security payments to psychiatric patients will affect their recovery and rehabilitation after they leave forensic facilities. The Commission advocates for 'a contributing life' in promoting and maintain good mental health. A contributing life is a fulfilling life enriched with close connections to family and friends. It means having something to do each day that provides meaning and purpose, whether this is a job, supporting others or volunteering. It means having a home and being free from financial stress and uncertainty. In the case of a person undertaking a course of rehabilitation in a forensic psychiatric institution, social security payments may play a key role in enabling a contributing life. Although the bill includes provisions for allowing payments during periods of integration, it is unclear whether this would provide sufficient assistance to enable a transition to life

in the community, including in securing stable housing or paying for education and training.

### **Apparent discrimination related to periodic detention**

Under proposed subsection 23(9D), the bill proposes to remove a person's access to social security payments even during periods of leave outside the psychiatric institution, if this is not taken to be a period of integration back into the community. No such provisions exist for people found guilty of an offence who are on periodic detention – they instead receive social security payments for any days outside detention. The Commission is concerned that this provision, in its present form, appears to discriminate against persons with a mental illness or intellectual disability.

### **Concerns about symbolic effect**

Currently, the effect of subsection 23(9A) is to distinguish between psychiatric confinement, and undertaking a course of rehabilitation. The proposed amendments would serve to collapse this distinction, rendering rehabilitation a subordinate element of confinement. This sends a negative symbolic message, reinforcing stigmatised beliefs that people with mental illness or intellectual disability need to be confined first and rehabilitated second. The Commission argues that rehabilitation is and should be the prime aim of forensic psychiatric detention, and that relevant legislation needs to be consistent with this function.

### **Conclusion**

Based on the concerns outlined above, it is the Commission's view that the bill should not proceed in its current form. Persons who have been charged but not convicted of an offence, 'serious' or otherwise, as a result of mental illness or intellectual disability should be appropriately supported in their rehabilitation, and not suffer discrimination. Where there are legitimate questions about funding for their rehabilitation, further consultation between the Commonwealth and States and Territories would be strongly advisable before any legislative changes are made.

Yours sincerely

Prof Allan Fels AO  
Chair