

Thursday, December 6, 2018

Dear Member of Parliament,

## **RE: Disability Support Pension – reducing suspension periods for prisoners**

We are writing to raise serious concerns about proposed changes to the Disability Support Pension for prisoners, which are due to come into effect from 1 January 2019.

Under the proposed changes, the Department of Human Services will cancel the Disability Support Pension for people who have been in custody (including on remand) for just 13 weeks. This is an 85% decrease from the current two-year suspension period that applies to the Disability Support Pension for prisoners.

The measure will force more people onto the lower Newstart payment when they are released from custody. At a time when people are particularly vulnerable, we are concerned that this proposal will further entrench financial disadvantage and make it more difficult for them to readjust to life in the community.

We recommend that these proposed changes to the Disability Support Pension be abandoned.

## **ABOUT COMMUNITY LEGAL CENTRES NSW**

Community Legal Centres NSW is the peak representative body for almost 40 community legal centres in NSW. Our team supports, represents and advocates for our members, and the legal assistance sector more broadly, with the aim of increasing access to justice for people in NSW.

Community legal centres are independent non-government organisations that provide free legal services to people and communities, at times when that help is needed most, and particularly to people facing economic hardship and discrimination. Community legal centres provide a safety net to prevent people's legal problems from escalating. Without early legal advice, families can break down and health problems can escalate; people can be unnecessarily evicted and can lose their jobs.

## **DETAILED CONCERNS ABOUT THE CHANGE**

### **People with a disability are over-represented in the prison population**

We are deeply concerned that the proposed changes will disproportionately impact people who are most vulnerable within the prison population and the Australian community more broadly.

People with a disability make up 8% of the prison population but only 2% of the general population. People with a cognitive disability are three to nine times more likely to be in prison than the general population.<sup>1</sup> This is even though their crimes are almost always in the lowest

---

<sup>1</sup> Ruth McCausland et al, *People with Mental Health Disorders and Cognitive Impairment in the Criminal Justice System: Cost-Benefit Analysis of Early Support and Diversion (UNSW/PwC Report, August 2013)* 3–4.

10% of seriousness,<sup>2</sup> are not usually pre-meditated, and turn on an inability to control impulses or understand legal consequences.<sup>3</sup>

Aboriginality compounds this vulnerability.<sup>4</sup> Aboriginal and Torres Strait Islander people are more likely to have a cognitive disability (8%) than the general population (2.9%).<sup>5</sup> Aboriginal and Torres Strait Islander people with a disability are 36% more likely to be the subject of police attention than non-Indigenous people and are 6.4 times more likely to be incarcerated.<sup>6</sup> Aboriginal and Torres Strait Islander people's post-incarceration outcomes are also worse than average.<sup>7</sup> In NSW, they have poorer access to services and higher rates of homelessness and recidivism.<sup>8</sup>

Aboriginal and Torres Strait Islander women with a disability are even more vulnerable. They face significantly higher conviction rates and numbers of convictions than Aboriginal and Torres Strait Islander men.<sup>9</sup>

### **Entrenching further disadvantage**

The measure will deliver savings to government by:

- increasing the number of people the government can permanently exclude from the Disability Support Pension
- forcing some people whose Disability Support Pension is cancelled onto the lower Newstart Allowance when they are released from custody.

Under the measure, prisoners serving short sentences for summary offences as well as people being held on remand will have their payments cancelled (rather than suspended for the period they are in prison). Community Legal Centres NSW is particularly concerned about the impact on people on remand, who may lose access to the Disability Support Pension even though they may not be convicted of an offence or, if they are convicted, sentenced to more time in jail.

On release from prison, people whose Disability Support Pension is cancelled under the measure will need to reapply under new eligibility criteria, including via more stringent definitions of impairment. In addition to meeting these stricter requirements, people may struggle to provide the necessary documentation to prove their impairment soon after their release from prison. Senior officials from the Department of Human Services estimate that the measure will deliver budget savings by forcing up to 10% of prisoners whose DSP is cancelled

---

<sup>2</sup> Victorian Law Reform Committee, *Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers* (Report, March 2013) 17; NSW Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Diversion* (Report No 135, June 2012) 13.

<sup>3</sup> Ibid 19.

<sup>4</sup> Eileen Baldry et al, *A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System* (UNSW Report, October 2015) 15.

<sup>5</sup> Ibid 16.

<sup>6</sup> Victorian Legal Aid, *Access to and Interaction with the Justice System for People with an Intellectual Disability and their Families and Carers*, Submission to the Victorian Parliamentary Law Reform Committee (2011); Baldry, above n 3, 33.

<sup>7</sup> Baldry, above n 3, 15.

<sup>8</sup> NSW Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Diversion* (Report No 135, June 2012) 13.

<sup>9</sup> Ibid 21, 40.

while they are in prison onto the lower Newstart Allowance when they are released from prison.<sup>10</sup>

Community Legal Centres NSW is deeply concerned the measure will increase financial disadvantage and reduce the supports available to help people with a disability adjust to life in the community and reduce the risk of recidivism.

### **Diverting people from the prison system**

People with a disability can struggle to function within the prison system. They face a higher risk of sexual and physical violence than other prisoners.<sup>11</sup> Community Legal Centres NSW suggests that the government could deliver greater savings and better outcomes by diverting people with a disability from the prison system.

Research shows that investing in early support programs to divert people with a disability from prison has the potential to deliver better outcomes for people as well as significant savings to government.<sup>12</sup> Indeed, a joint University of NSW and Price Waterhouse Coopers report found the costs to the economy of failing to address disability issues in the criminal justice system can be as high as \$1 million per annum, per person in the system.<sup>13</sup> In contrast, the savings under this measure are predicted to be just \$2.2 million over five years.

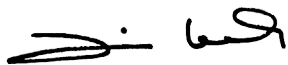
## **CONCLUSION**

Community Legal Centres NSW believes that the proposed reforms to the Disability Support Pension will create negative outcomes for people, communities and the government that will far outweigh any budget efficiencies achieved. These costs include lost economic productivity of family members in carer roles, policing and institutional-response costs associated with unaddressed recidivism and costs to health and social services associated with failing to provide appropriate care in the first instance.

We request that these proposed changes to the Disability Support Pension be abandoned.

Thank you for taking the time to consider our concerns. If you would like further information, please contact Emily Hamilton, Senior Policy Officer via [emily.hamilton@clcnsw.org.au](mailto:emily.hamilton@clcnsw.org.au) or on (02) 9212 7333. We look forward to your response.

Kind regards,



Tim Leach  
**Executive Director**  
Community Legal Centres NSW

---

<sup>10</sup> Evidence to Senate Estimates Community Affairs Legislation Committee, Parliament of Australia, Canberra (31 May 2018) 71-80 (Kathryn Campbell, Serena Wilson, Shane Bennett).

<sup>11</sup> Human Rights Watch, *I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia* (Report, 2018) 3.

<sup>12</sup> Baldry, above n 3, 9-11.

<sup>13</sup> *Ibid.*