

27 September 2019

Committee Secretary
Senate Standing Committees on Community Affairs

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

NSSRN submission in relation to the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

1. The National Social Security Rights Network (NSSRN) is the peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to people experiencing issues with their social security and family assistance payments. The NSSRN draws on this front line experience in developing this submission and policy positions.
2. The Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 ("the Bill") is the third attempt in as many years by the Government to introduce a two-year trial of mandatory drug testing for 5000 people receiving Newstart or Youth Allowance in three specified regions.¹
3. We remain opposed to the forced drug testing of people on income support and once again **recommend that the Committee oppose this Bill**, and:
 - a. the budgeted amount for the trial should be reinvested into community drug and alcohol services; and
 - b. any form of income management and cashless debt card should be abandoned.
4. However if the trial is to proceed,
 - a. there should be rigorous consideration of the impact of canceling payments or withholding income support from a person for a four-week period before any such penalty is applied. Each individual's unique circumstances should be taken into account when the decision is being made; and
 - b. the definition of 'drug test trial pool member' in the Bill to explicitly exclude recipients of Youth Allowance (other) aged between 16-18 years.
5. We reiterate our concerns raised in our submissions to this Committee regarding the previous two bills.² In summary, these are that the proposal:

¹ This Bill, which is almost identical to one debated by both houses of Parliament in 2018, largely replicates what was originally drafted in Schedule 12 of the Social Services Legislation Amendment (Welfare Reform) Bill 2017. The drug testing trial was removed from that bill in late 2017 following parliamentary negotiations.

² National Social Security Rights Network, Submission No 18 to Senate Standing Committees on Community Affairs, Social Security Legislation Amendment (Welfare Reform) Bill 2017, 4 August 2017, p10.

- a. is an expensive measure that will not help those living with addiction;
- b. forces people onto a cashless debit card that quarantines 80% of their income;
- c. fails to consider the impact of payment cancellations on the individual's circumstances;
- d. is a coercive regime that compels individuals to have unwanted medical treatment; and
- e. forces children to be subjected to invasive drug testing without freely given consent.

An expensive measure that will not help those living with addiction

6. The exact cost of the trial program is unknown, but estimates place it at around \$2.5million.³
7. The fact is that the overwhelming majority of people seeking and receiving income support do not use drugs. The significant expense of the trial is not justified purely on the numbers, with the program unlikely to identify more than a few participants with substance abuse issues.
8. Other jurisdictions have spent considerable resources trialing similar schemes, with little benefit. For example, New Zealand drug tested approximately 8000 welfare recipients in 2017. Only 22 people tested positive.⁴
9. A similar test rate for the proposed trial in Australia would produce less than 14 positive results. While the Australian Government has stated that it expects a slightly higher rate of positive results than the New Zealand trial, it has nevertheless admitted that it still expects this number to be low.⁵
10. For the small number of people who might be identified through the trial, there is no evidence that drug testing people receiving income support helps to address addiction or improve employment outcomes. The proposal continues to attract widespread criticism from addiction specialists, medical professionals, community organisations, and drug and alcohol treatment services.
11. *The Australian National Council on Drugs* determined that "there is no evidence that drug testing welfare beneficiaries will have any positive effects for those individuals or for society, and some evidence indicating such a practice would have high social and economic costs."⁶
12. Addiction specialist Dr Adrian Reynolds expressed similar views that drug testing "may even be counterproductive" to this Committee last year, concluding "this drug testing trial

³ Philip Alston, Special Rapporteur on Extreme Poverty and Human Rights [2017], 'Mandates of the special rapporteur on extreme poverty and human rights'

⁴ Samuel Brookfield, 'Is evidence for or against drug-testing welfare recipients? It depends on the result we're after', *The Conversation*, 13 September 2017. <https://theconversation.com/is-evidence-for-or-against-drug-testing-welfare-recipients-it-depends-on-the-result-were-after-83641>

⁵ For example, the Department of Social Services anticipates that of 750 drug test participants in Mandurah, "only 10 to 15 participants... are expected to fail two drug tests during the trial. About 50 to 60 welfare recipients are expected to test positive once and be forced on to income management." See Phoebe Wearne, 'Controversial plans to drug test welfare recipients in Mandurah could result in no more than 15 people diverted into treatment', *The West Australian*, 26 October 2016.

⁶ Australian National Council on Drugs (2013) quoted in Simon Castle, 'Testing welfare recipients for drugs is wrong-headed', *The Age (Online)*, 7 November 2017, <https://www.smh.com.au/opinion/if-this-policy-is-love-then-we-probably-need-a-lot-less-love-20171103-gze3sl.html>

is clinically inappropriate and not designed in a way that will address the issues of substance dependence.”⁷

13. Drug addiction is a health issue, not a social security compliance issue. Solutions should be developed by medical professionals and administered through the Department of Health to ensure people suffering with addiction receive the proper care and support they need. Instead this program acts as a punitive measure that will deny people income support payments at a time when they need it most.
14. While the overwhelming majority of people seeking income support do not use drugs, under this regime they will be subjected to unwanted drug testing to receive the financial support they need to survive. Many of these individuals live below the poverty line, receiving meagre income support payments that are insufficient to meet the basic standard of living cost.⁸ They must also already comply with onerous mutual obligation activities to retain these payments, including Work for the Dole schemes and job search activities. Mandatory drug testing will only be further intrusion and punishment for those who are experiencing high levels of financial hardship and disadvantage in our society.
15. We believe the money that would need to be spent to run the drug testing program would have a more positive impact being used to fund drug and alcohol support services for the broader population.

Forces people onto a cashless debit card

16. If a person tests positive on an initial drug test, they will be placed on a cashless debit card that quarantines 80% of their income for a period of 2 years. A person will only be able to access 20% of their income support payments in cash, and their cashless debit card will only be able to be used on items deemed to be ‘priority needs’ by the Department. This is regardless of whether or not the person actually has an ongoing substance abuse issue.
17. This system ignores the existing processes at the State and Territory level for managing the finances of someone with a severe substance abuse problem, such as guardianship tribunals. There is no reason for the Commonwealth to be operating a parallel income management process, particularly when many people referred through the drug testing program will not have an ongoing addiction issue.
18. Research shows that income management has a negative impact on the health and wellbeing of communities. In the Northern Territory it even adversely impacted on the birthweight of children⁹ and school attendance rates.¹⁰ We further note that income management schemes in Australia disproportionately target Indigenous communities, with an overwhelming 79% of people on income management being Indigenous.¹¹

⁷ Clinical Associate Professor Adrian Reynolds, President, Australasian Chapter of Addiction Medicine, Royal Australian College of Physicians, Committee Hansard, 23 April 2018.

⁸ In August 2017, UNSW's Social Policy Research Centre determined that Newstart Allowance was not sufficient to meet the basic standard of living cost. See Peter Saunders & Megan Bedford, *'New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians'* (Report, Social Policy Research Centre, August 2017).

⁹ Recent research has shown that that “restricting welfare payments reduced birthweight by over 100 grams and increased the probability of low birthweight by around 30 percent.” Mary-Alice Doyle, Stefanie Schurer, Sven Silburn, *'Do Welfare Restrictions Improve Child Health? Estimating the Causal Impact of Income Management in the Northern Territory'*, (Report No 2017-23, ARC Centre of Excellence for Children and Families over the Life Course), December 2017.

¹⁰ Isabella Higgins and Bridget Brennan, ‘School attendance, birthweight fell during Northern Territory intervention rollout, study finds’, *ABC News (Online)*, 8 December 2017 <<http://www.abc.net.au/news/2017-12-08/school-attendance-birthweight-fell-during-nt-intervention-study/9238544>>.

¹¹ Department of Social Services, *Income Management and Cashless Debit Card Summary* (25 August 2017)

19. We do not support any policy that utilises income management or cashless debit cards.

Failure to properly consider the consequence of payment cancellations

20. Anyone who refuses to agree to be tested, or refuse a test when randomly selected, will have their income support cancelled and be precluded from further support for four weeks. The effects of this payment cancellation period may be severe.
21. Income support should not be dependent on an individual's behaviour or conduct. It is there to ensure that all members of our community have the support they need when times are tough, to ensure that they are able to meet their basic needs.
22. The reality of a payment cancellation is that many people will no longer be able to pay their rent, buy food for their children, or the medication they need. They may not even have the money to get to a job interview or an appointment with their job service provider. It will do nothing but further entrench the disadvantage that people are facing and increase costs associated with supporting people in desperate circumstances, for example with emergency housing and health care.
23. At the same time, we note that the threat of such severe punishments are unlikely to deter those with genuine substance abuse issue. Dr Alex Wodak, a leading Australian expert in the treatment and response to substance abuse, has argued that an addict by definition is someone who will continue to consume a substance despite severe adverse consequences. As a result, he concludes that "*people cannot be coerced or punished into treatment and there is a good chance that they will commit more crime or even be pushed into suicide.*"¹²
24. If the trial is to proceed, there should be rigorous consideration of the impact of canceling payments or withholding income support from a person for a four-week period before any such penalty is applied. Each individual's unique circumstances should be taken into account when the decision is being made.

Coercive regime without free and informed consent

25. If someone refuses to take a drug test when they claim a payment, their payment will be denied. If they refuse a test, their payment will be cancelled. This is not freely given consent - it is economic coercion.
26. Our laws recognize that all adults who have capacity to make decisions have the right to consent to or refuse medical treatment. But under the drug testing measure, new claimants are required to acknowledge on their claim form that they may be subject to the drug testing trial. This is not the expression of informed consent.¹³ If a person is randomly selected for a drug test and refuses to consent, they will have their income support suspended for 4 weeks.
27. Someone who is coerced into consent by the threat of lost income support when they need it to meet basic life needs is not giving free and willing consent.
28. Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, has

<<https://data.gov.au/dataset/income-management-summary-data/resource/b898777c-8a2b-4094-b378-cdb48346a110>>

12 Alex Wodak, 'People who think punitive measures help drug addicts haven't seen what I have', *The Guardian (online)*, 22 August 2017, <<https://www.theguardian.com/commentisfree/2017/aug/22/people-who-think-punitive-measures-help-drug-addicts-havent-seen-what-i-have>>

13 We also note that a person may consent to medical treatment but subsequently withdraw that consent.

identified similar issues. He argued that the drug testing trial is coercive and will stigmatise social security recipients,¹⁴ concluding it was more likely to push affected individuals further into poverty and cause heightened risk of negative behaviour.¹⁵

Forces children to be subjected to invasive drug testing

29. The issue of a lack of free and willing consent is particularly acute for the children who will be subjects of this trial.
30. All new Youth Allowance (other) claimants in the trial site locations will be subject to the drug testing trial. Youth Allowance (other) is a payment for people aged 16 – 21 years of age who are looking for work. It excludes full time students or apprentices. The age eligibility means that young school leavers aged 16 or 17 may be in receipt of Youth Allowance (other).
31. We should not be forcing children to receive invasive drug testing without their free and informed consent.
32. We call for an expansion of the definition of ‘drug test trial pool member’ in the Bill to explicitly exclude recipients of Youth Allowance (other) aged between 16-18 years.

Conclusion

33. The NSSRN strongly opposes the drug testing trial. It is an expensive measure that will have little positive impact on the communities living within the trial sites. It is a punitive measure that will push people with no addiction issues onto a restrictive income management scheme. It may cause others to forego or lose their entitlement to income support, despite their recognised need for financial assistance.
34. For the reasons set out in this submission, the Bill should be opposed.

Contact for this submission

The NSSRN would welcome the opportunity to provide further feedback to the Committee on our submission.

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¹⁴ Office Of The High Commissioner For Human Rights, Mandates Of The Special Rapporteur On Extreme Poverty And Human Rights, Reference: OL AUS 5/2017, 17 October 2017, <http://www.ohchr.org/Documents/Issues/Poverty/OL-AUS-17-10-17.pdf>

¹⁵ Philip Alston, Special Rapporteur on Extreme Poverty and Human Rights [2017], ‘Mandates of the special rapporteur on extreme poverty and human rights’