



Submission to the Senate Community Affairs Legislation Committee inquiry into the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

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Summary and recommendations

The *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018* amends the *Social Security Act 1991* and *Social Security (Administration) Act 1999* to establish a two-year drug testing trial in three regions for 5000 new recipients of Newstart allowance and Youth Allowance from 1 July 2018. The bill's explanatory memorandum states that the trial is a "reasonable and proportionate limitation on the right to privacy" under the International Covenant on Civil and Political Rights (ICCPR) "in order to achieve the objective of ensuring appropriate use of welfare payments and identifying people with drug misuse issues and assisting them to address those issues."²

This submission examines whether the bill is fit for its stated purpose:

*These changes will help people with drug abuse issues to get treatment, rehabilitate and get a job...The community has a right to expect that taxpayer-funded welfare payments are not being used to fund drug addiction...This trial is not about penalising jobseekers with drug abuse issues. It is about finding new and better ways of identifying these jobseekers and ensuring they are referred to the support and treatment they need.*³

Research suggests that random drug-testing and financial coercion will not help people overcome addiction or find work. Furthermore, the bill is likely to have costly adverse flow-on effects and pose significant implementation challenges for those charged with putting it into practice.

Recommendations to achieve the stated aims of this bill:

1. Detach punitive financial conditions from drug-testing and drug treatment for jobseekers.
2. Trial a coherent regulatory and funding regime that encourages and supports collective-action solutions and partnerships between employment services, drug and alcohol services, health services, education, housing, justice and complementary services to contain the social and economic costs of persistent unemployment in the trial regions.
3. Invest in dismantling structural barriers to work for marginalised jobseekers. Twenty-four years of mutual obligation and case management have not improved the prospects of these jobseekers finding and keeping a job.

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² Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 Explanatory memorandum p8

³ Second reading speech Minister Dan Tehan Wednesday 28 February 2018 House Hansard Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

Context

The government is progressively implementing a suite of measures “aimed at stabilising the lives of people with alcohol and drug abuse problems by encouraging them to participate in rehabilitation, counselling support or other appropriate treatment as part of their Job Plan.”⁴ One of these measures is to trial random drug-testing of new recipients of the Newstart Allowance and Youth Allowance in three locations, with the testing administered by a contracted third-party provider. Those who test positive will be placed on income management and referred to a contracted medical professional for assessment of their substance use issues and treatment options; those who refuse to comply with a test request will be penalised.

The trial locations - Canterbury-Bankstown in New South Wales, Logan in Queensland, and Mandurah in Western Australia – were announced in August 2017 by the Ministers for Social Services and Human Services, along with an announcement that a dedicated treatment fund of up to \$10 million would be established to support jobseekers in the trial across all three locations.⁵ This plan has since been confirmed by the Minister for Social Services.⁶ The Ministers’ comments flag drug abuse as a growing problem in each trial location, drawing on such evidence as “the Australian Criminal Intelligence Commission’s National wastewater drug monitoring program report; the AIHW’s 2013 National Drug Strategy Household Survey; state and territory government crime statistics in relation to drug use and possession; state and territory government hospitalisation data; and administrative data from the Department of Human Services.”⁷ However they make no mention of demand for labour in the trial locations – an interesting omission given the trial’s focus on substance abuse “creating significant barriers to employment.”⁸

Both the Minister for Social Services and the Prime Minister have stressed that the trial is “not about penalising jobseekers with drug abuse issues”⁹ but is intended to “make a change in people’s lives so they were not taking drugs, so they were not destroying their lives, so they were not destroying the lives of their families, so they were not making themselves unemployable.”¹⁰ Yet the trial runs counter to local and international evidence that drug-testing strategies are unlikely to produce these effects.¹¹ Substance abuse has far-reaching social and economic costs that impact on individuals, families and communities and the government’s commitment to tackle it is commendable, but the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018* is not the solution.

⁴ Australian Government. (2017) *Welfare Reform 2017 Budget*. Department of Social Services p2

⁵ Porter, C. and Tudge, A. (2017) ‘Canterbury-Bankstown first location for drug testing trial’ Joint media release dated 22 August 2017; Porter, C. and Tudge, A. (2017) ‘Logan to benefit from drug testing trial and access to new treatment fund’ Joint media release dated 23 August 2017; Porter, C. and Tudge, A. (2017) ‘Mandurah to benefit from drug testing trial and new \$10 million treatment fund’ Joint media release dated 27 August 2017; Porter, C. and Tudge, A. (2017) ‘Logan to benefit from drug testing trial and access to new treatment fund’ Joint media release dated 23 August 2017.

⁶ Second reading speech Minister Dan Tehan Wednesday 28 February 2018 House Hansard Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

⁷ Second reading speech Minister Dan Tehan Wednesday 28 February 2018 House Hansard Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

⁸ Australian Government (2017) *Welfare Reform 2017 Budget*. Department of Social Services p2

⁹ Second reading speech Minister Dan Tehan Wednesday 28 February 2018 House Hansard Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

¹⁰ Turnbull, M. 2017. *Press conference St Vincent’s Hospital 12 May 2017*

¹¹ Australian National Council on Drugs (2013) *ANCD POSITION PAPER Drug Testing August 2013*. ANCD Secretariat: Canberra; Covert, B (2015) ‘What 7 states discovered after spending more than \$1 million drug testing welfare recipients’ *Think Progress Center for American Progress Action Fund*: Washington DC; Macdonald, S, Bois, C, Brands, B, Dempsey, D, Erickson, P, Marsh, D, Meredith, S, Shain, M, Skinner, W and Chui, A (2001) ‘Drug testing and mandatory treatment for welfare recipients’. *International Journal of Drug Policy* 12(3):.249–257; Wincup, E (2014) ‘Thoroughfares, crossroads and cul-de-sacs: Drug testing of welfare recipients’ *International Journal of Drug Policy* 25(5): 1031-1037; Whiteford, P (2017) ‘Budget 2017: welfare changes stigmatise recipients and are sitting on shaky ground’ *The Conversation*, 11 May 2017; Arthur, D (2017) ‘Drug testing for welfare recipients’. Budget Review 2017–18 Index. Parliament of Australia; Royal Australasian College of Physicians (2017) *RACP submission to Senate Inquiry into the Welfare Reform Bill (2017): July 2017*. *Social Services Legislation Amendment (Welfare Reform) Bill 2017* Submissions: Number 20 RACP and its Australasian Chapter of Addiction Medicine; Olney, S (2017) ‘Should Love Conquer Evidence in Policy-Making? Challenges in Implementing Random Drug-Testing of Welfare Recipients in Australia’, *Australian Journal of Public Administration* <http://dx.doi.org/10.1111/1467-8500.12297>

Evidence

There is no evidence that random drug-testing of unemployed people is an effective strategy to help people overcome addiction or find a job. Conversely, research suggests it is likely to adversely affect both the wellbeing and the employment prospects of those tested and generate significant flow-on costs in terms of testing, enforcement, treatment, crime, emergency relief, housing stress, mental health and further stigma of the long-term unemployed in the job market.¹² Punitive responses to test refusal or positive test results risk driving drug users towards “even more dangerous ways of living.”¹³ Income management may make it harder for unemployed people to buy drugs with their welfare payments, but research suggests they will find other ways to fund addiction, ranging from trading sanctioned purchases for cash at a loss, to intimidation of family members and crime.¹⁴ More broadly, the approach does not distinguish between substance abuse as a *cause of welfare dependency* and substance abuse as a *consequence of structural labour market exclusion* – problem definitions calling for very different policy responses. Treatment for drug and alcohol abuse is not a guaranteed pathway from welfare to work while over 800,000 Newstart and Youth Allowance recipients and over one million underemployed workers willing and able to work more hours are competing to fill fewer than 200,000 job vacancies.¹⁵

Significantly, the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018* overlaps the existing obligations of employment services providers without acknowledging structural weaknesses in the welfare-to-work model. Since 1994 employment services providers have been contracted by the Australian Government to provide every person receiving unemployment benefits with assistance and support, either directly or through referral to specialist services, to help them move from welfare to work. Employment services providers are already contractually obliged to refer jobseekers to specialist services if substance use is preventing them from finding employment, and to enforce compliance with activity requirements. This bill infers dereliction of that duty, but the issue is more complex. The bulk of income for employment services is generated by job outcomes. There are tiered incentives in place for employment services providers to move hard-to-place jobseekers into work, but there are long waiting lists for drug treatment in areas with high incidence of substance abuse, coupled with fierce competition for available work and discrimination against some jobseekers.¹⁶ It is unsurprising in this context that jobseekers who need time and high levels of effort and investment to compete in the mainstream labour market with a low probability of success are relegated to the sidelines of the employment services system, making no real progress towards employment.¹⁷ The *Social Services Legislation Amendment*

¹² Bray, J, Gray, M, Hand, K, Bradbury, B, Eastman, C and Katz, I (2012) *Evaluating New Income Management in the Northern Territory: First Evaluation Report* Canberra: Australian Government Department of Families, Housing, Community Services and Indigenous Affairs; Buckmaster, L and Ey, C (2012) ‘Is income Management Working?’ *Background Notes 2011-2012* Parliament of Australia.; Australian National Council on Drugs 2013; Reynolds, A (2017) ‘Drug testing is not the solution to a complex set of social problems’ *Croakey* 6 June 2017 <https://croakey.org/drug-testing-is-not-the-solution-to-a-complex-set-of-social-problems/>; Lintzeris, N (2017) ‘Helping drug users get back to work, not random drug testing, should be our priority’ *The Conversation* 15 May 2017 <http://theconversation.com/helping-drug-users-get-back-to-work-not-random-drug-testing-should-be-our-priority-77468>; Trimmingham, T and Vumbaca, G (2017) ‘Drug Testing The Dole Queue Won’t Help Make It Shorter’ *Huffington Post* 10 May 2017; Whiteford, P (2017) ‘Budget 2017: welfare changes stigmatise recipients and are sitting on shaky ground’ *The Conversation*, 11 May 2017; Wodak, A (2017) Radio interview: ‘Experts question plan to test welfare recipients’ *ABC News: The World Today* 10 May 2017

¹³ Ezard, N (2017) quoted in Holman, J. ‘Drug testing for welfare recipients slammed as ‘cheap, populist nonsense’ in Victoria’ *ABC News* 13 June 2017 <http://www.abc.net.au/news/2017-06-13/victorian-government-rejects-federal-welfare-drug-testing-plan/8613482>

¹⁴ Bray, J, Gray, M, Hand, K, Bradbury, B, Eastman, C and Katz, I (2012) *Evaluating New Income Management in the Northern Territory: First Evaluation Report* Canberra: Australian Government Department of Families, Housing, Community Services and Indigenous Affairs p229

¹⁵ Whiteford, P (2017) ‘Social Security and Welfare Spending in Australia: Assessing Long-Term Trends Part 2’. *Austaxpolicy: Tax and Transfer Policy Blog* 28 July 2017 <http://www.austaxpolicy.com/social-security-welfare-spending-australia-assessing-long-term-trends-part-2/>; Australian Bureau of Statistics (2017) *6202.0 - Labour Force, Australia, Jun 2017, Table 24*; Australian Bureau of Statistics (2017) *6354.0 - Job Vacancies, Australia, May 2017*

¹⁶ Olney, S. 2016. *False economy: New Public Management and the welfare-to-work market in Australia*. University of Melbourne p218-219

¹⁷ Considine, M., Lewis, J.M., & O’Sullivan, S (2011) ‘Quasi-Markets and Service Delivery Flexibility Following a Decade of Employment Assistance Reform in Australia’ *Journal of Social Policy* 40(4):811-833; Olney, S and Gallet, W (2016) ‘Issues in Market-Based Reform of Human Services: Lessons from Employment Services’ in *Social Service Futures and the Productivity Commission* (eds) P. Smyth, E. Malbon and G. Carey UNSW Canberra & Power to Persuade

(Drug Testing Trial) Bill 2018 fails to acknowledge that no amount of preparation, prodding or incentives can push these jobseekers into non-existent jobs, or force employers to choose them to fill vacancies over preferred candidates. Ignoring the demand side of the labour market, the bill links 'unemployability' to substance abuse¹⁸ and shifts the focus of government intervention from managing a socioeconomic problem to treating an individual 'medicalised' condition,¹⁹ with little prospect of public benefit.

Implementation challenges

Evidence gathered over the last twenty-four years of employment services shows that substance use is not the only barrier to work jobseekers targeted by this bill face.²⁰ Projections in the Australian Government's latest quinquennial Intergenerational Report, which assesses the long-term sustainability of current Government policies and how changes to Australia's population size and age profile may impact on economic growth, workforce and public finances over the next 40 years, assume a constant rate of unemployment of around 5 per cent over the period 2015-2055 - a rate sustained to avoid interest rate rises to combat inflation.²¹ Consequently, how the impact of this bill will be measured and the rules surrounding drug-testing determined by the Minister will have a crucial impact on how it is implemented.²² Given the complexity of the issue at hand and evidence that it is unlikely to achieve its stated aims of helping people overcome addiction and find employment, it is reasonable to assume in this case that what is measured will drive what gets done.

The core issue ignored in this bill is that these jobseekers are a workforce of last resort in a flooded labour market. Their relationship with the employment services system has been reduced to an obligation to meet activity requirements for income support by moving around government-funded services and programs, facilitated and monitored by their employment consultant. There is no evidence that drug-testing and income management will change that, either by reducing substance abuse or by increasing employment outcomes, and it carries a high risk of unintended and expensive consequences across government and the community. The draft National Drug Strategy 2016-2025 stresses that responses to alcohol, tobacco and other drug use must be informed by evidence to be effective.²³ The government may believe that tough love can divert the unemployed away from drugs and into work, but evidence suggests the funding for this policy would be better spent on dismantling structural barriers to work for the long-term unemployed. Those implementing the new policy will struggle to achieve its stated aims and to contain the flow-on social and economic costs of imposing further obligations for income support on already marginalised citizens in the current labour market.

¹⁸ Australian Government (2017) *Budget 2017-2018: Ensuring that the Government lives within its means*
<http://budget.gov.au/2017-18/content/glossies/means/download/Budget2017-18-Balancing-the-budget.pdf>

¹⁹ Holmqvist, M (2009) 'Medicalization of unemployment: individualizing social issues as personal problems in the Swedish welfare state', *Work, Employment & Society*, vol. 23, no. 3, pp. 405-421

²⁰ Parliament of Australia 2012, Senate Standing Committee on Education Employment and Workplace Relations: Questions on Notice DEEWR Question No. EW1027_12, Australian Government, Canberra

²¹ Australian Government (2015) *2015 Intergenerational Report Australia in 2055*
<https://treasury.gov.au/publication/2015-intergenerational-report/> p47

²² *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018*

²³ Intergovernmental Committee on Drugs (2015) *National Drug Strategy 2016-2025 Draft: For public consultation*
Australian Government
<http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/draftnds>