

SUBMISSION

TO | Senate Community Affairs Legislation Committee

TOPIC | *The Social Services Legislation Amendment
(Drug Testing Trial) Bill 2019*

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CONTACT

Susan Tilley

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1. About Uniting Communities

Uniting Communities is an inclusive not-for-profit organisation working alongside more than 30,000 South Australians each year as they strive for bright futures and great lives. We value diversity and are committed to providing respectful, accessible services to all.

Uniting Communities seeks to reduce inequality and improve wellbeing for all who are striving to overcome disadvantage – individuals, their families and communities – so that they can realise their potential and live the best lives they can. We do this in a way that is non-judgemental, generous and supportive; that embrace diversity; and that values and promotes fairness, justice and the benefits of strong communities. Our service delivery, advocacy and community-building activities are central to achieving this.

We offer more than 90 services to support the needs of both individuals and our community, across a range of areas. These include mental health and counselling; residential aged care and support for independent living; housing crisis and emergency support; disability services; services for Aboriginal and Torres Strait Island people; financial and legal; drug and alcohol counselling; family relationships; and respite and carer support.

2. Introduction and focus of this submission

Drug testing welfare recipients was originally proposed in 2017 but was not supported. It was again proposed in 2018 but was stalled in the Senate. This bill represents Government's third attempt at subjecting welfare recipients to drug testing – it reflects very minor differences to the earlier attempts: additional types of drugs to be tested i.e. the inclusion of heroin and cocaine; and substituting the requirement for welfare recipients to pay for positive test results with the requirement that recipients only pay if they themselves request a re-test and the result is positive.

The proposed two-year drug-testing trial would see 5,000 welfare recipients tested for drugs at three trial sites - Logan in Queensland, Canterbury-Bankstown in New South Wales and Mandurah in Western Australia. A welfare recipient who fails a drug test would be placed on income management with up to 80 per cent of their payments placed on income management. A second positive test would result in a referral to a treatment service or rehabilitation program.

This submission will primarily focus on: what the evidence and expertise in Australia and internationally tells us about the value or success of drug-testing programs; the proposed drug-testing trial's contradiction of the Commonwealth Government's own National Drug Strategy (2017 – 2026); the lack of sufficient and appropriate treatment services for the existing demand; the cost of drug-testing and social return on investment; the problematic link that is being made between drug-testing, substance use and income management; and the conditional and punitive nature of the proposed trial which also contradicts a number of human rights.

3. Commentary

What is the evidence and what do the experts say?

Uniting Communities offers a range of options to support people who would like to make long-term, sustainable changes to their use of alcohol and other drugs. Our organisation has been supporting people with issues related to drugs and alcohol since the 1930s. Currently, our *New ROADS* (Residential and Out-Client Alcohol and Drug Service) programs support more than 1,000 people every year. New ROADS offers a range of services, including residential

rehabilitation and counselling. Treatment options are designed to assist with a client's physical and mental health, as well as their connections to the community through various activities. Our services support families and individuals, including ex-service people.

Given Uniting Communities' long track record of providing alcohol and other drugs (AOD) treatment and support services, our AOD staff have developed a treatment framework and a detailed understanding and expertise about what is and is not effective when it comes to working with people with substance use issues. The Uniting Communities Service Manager for Streetlink and New ROADS highlights successful treatment options and the importance of avoiding coercive and mandatory measures:

Successful treatment options to address someone's problematic substance use must start with working to identify and support people's motivation for change. Coercive measures that mandate people into treatment often do no work. There are already huge numbers of people willing and able to undertake treatment who cannot do so because of the existing strain on our services. Our services work to be as flexible and nimble as possible to provide service access for our clients, but the right support is not always possible at the time when people need it and are motivated to engage.

According to the Australian Medical Association's (AMA) Federal Councillor and Chair of the Ethics and Medico-Legal Committee, Dr Chris Moy, the AMA has been opposed to drug testing from the start. He comments on the proposed drug testing of welfare recipients.¹

Basically, you've got a situation where we've got a witch hunt to make people feel better about the use of resources, but ultimately this will only divert scarce resources in the wrong direction ... Addiction is a condition - it's a medical condition. And the problem with this sort of policy is you're playing the person rather than the ball ... you'll get a situation where an individual who is maybe a one-off user will be identified as a drug user, and they'll be diverted to very, very scarce drug and alcohol resources. As a GP, I now can barely get somebody in there, and certainly not keep them in there long enough to actually get treatment. It would be much better policy to actually put those resources into drug and alcohol services, and in fact let us do the identification without all of the witch-hunt that may occur with this, so that we can actually get them into services and get it treated.

There is no evidence here or overseas that drug testing programs are working. And certainly there's no transparency with respect to how much resources are going to be put into this. Drug and alcohol testing is expensive, and again these resources could easily be put into treatment ... We need to treat people, and we don't need to get a situation where they are stigmatised. We are treating people and stigmatising them just to make - to some degree - people feel better about the fact that maybe the welfare payments may be used for this, but in fact they may have a condition, and we need to treat the condition.

A number of organisations with expert knowledge – such as 360Edge, the Public Health Association of Australia and the Kirby Institute – have expressed concern about the lack of evidence to indicate that drug testing welfare recipients would assist them to address their

¹ <https://ama.com.au/media/dr-chris-moy-doorstop-drug-testing-welfare-recipients> 6th September 2019

substance abuse issues. The report by the Australian National Council on Drugs, in part, concluded 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 could have high social and economic costs.²

The National Drug and Alcohol Strategy for 2017 to 2026³, calls for ‘evidence-informed responses’ (p. 18) and an avoidance of stigmatising and criminalising drug and alcohol addiction. However, the Bill to drug test welfare recipients appears to contradict the National Strategy in that it tends to avoid the current evidence provided nationally and internationally and serves to exacerbate the marginalisation and stigma associated with being on income support and/or being a substance user.

*Approaches and policy responses aimed at reducing alcohol, tobacco and other drug harms in priority populations should be **informed by evidence** as it develops and should be reviewed regularly. It is also important that **any responses do not inadvertently or unintentionally further marginalise or stigmatise people** who are at higher risk of experiencing alcohol, tobacco and other drug related harm – National Drug Strategy.⁴*

Available treatment services, the cost of drug-testing, and social return on investment

No costings for the drug-testing program have been made available – the Financial Impact Statement, as set out in the Explanatory Memorandum to the Bill, does not provide any information and states that the estimated costs of such testing are ‘not for publication’.⁵

Albeit in the absence of any costings for the drug-testing program, the Government has indicated that it will be directing \$10 million towards a drug treatment fund to provide treatment services across the three trial sites. A number of key AOD services and experts in the field have stated that this amount is inadequate and have pointed to the existing expressed need for treatment services.

In response to the Government’s justification that the proposed drug-testing policy will identify people struggling with drug addiction, the Australian Injecting and Illicit Drug Users League’s (AIVL) Chief Executive, Melanie Walker, believes that this is a futile pursuit as there is already inadequate access to drug treatment services for those with an existing identified need:

There is substantial unmet demand within the AOD [alcohol and other drug] treatment sector across Australia, with an estimated 200,000–500,000 Australians each year unable to access treatment. Despite additional investment into drug support services in these [proposed] areas, AIVL is concerned that this will not be enough to adequately

² Australian National Council on Drugs, ANCD Position Paper—Drug Testing, August 2013, p. 2, <http://www.atoda.org.au/wp-content/uploads/DrugTesting2.pdf>

³ National Drug Strategy 2017 – 2026 <https://www.health.gov.au/resources/publications/national-drug-strategy-2017-2026>

⁴ National Drug Strategy 2017 – 2026 <https://www.health.gov.au/resources/publications/national-drug-strategy-2017-2026> p. 26

⁵ Explanatory Memorandum http://classic.austlii.edu.au/au/legis/cth/bill_em/sslattb2019556/memo_0.html p. 2

enhance system capacity and will displace those who voluntarily seek support for their drug use. In addition to being abusive and counter-productive, this trial is proposed without evidence of widespread drug use amongst people receiving income support or any indication that punitive compliance practices work.⁶

Uniting Communities echoes the views of AIVL, as outlined above, regarding the financial cost of administering drug testing and proposes that these available funds would be better directed towards treatment and support services for those who have already indicated a willingness to address their substance use issues and who are finding it challenging to access treatment services due to a lack of availability.

Appropriate levels of investment in prevention and treatment services can have a significantly positive impact and would be more beneficial than directing budget allocations to drug-testing. This is highlighted by research undertaken by the Drug Policy Modelling Program at the National Drug and Alcohol Research Centre at the University of New South Wales, AOD treatment is a good investment:

For every \$1 invested in alcohol or drug treatment, society gains \$7 (Ettner et al., 2006). AOD treatment has been shown to reduce consumption of alcohol and other drugs; improve health status; reduce criminal behaviour; improve psychological wellbeing; and improve participation in the community.

The savings which accrue to governments from AOD treatment occur largely through direct savings in future health care costs, reduced demands on the criminal justice system, and productivity gains. The well-being gained for individuals and families is immense, as clients reduce the harms from alcohol or drug use and achieve personal, social, and economic goals. Investment by government in evidence-based AOD treatment is therefore worthwhile and represents value for money.⁷

In terms of the additional cost incurred by individual welfare recipients who are subjected to drug-testing, the imposition of the cost of a recipient requesting a re-test onto the client themselves is unethical and is punitive. Social security payments such as the Newstart Allowance and Youth Allowance are already resulting in people living below the poverty line and most people who are reliant on social security payments are already experiencing extreme hardship.

Drug testing, substance use and income management

The Bill links drug-testing with income management. In the event that a Newstart or Youth Allowance recipient tests positive for a drug, they will be subjected to income management.

⁶ <https://www1.racgp.org.au/newsgp/clinical/are-drugs-or-poor-health-the-largest-barrier-to-ge> and <https://www.aadant.org.au/news/media-release-mandatory-drug-testing-welfare-recipients-pointless-given-absence-treatment>

⁷ New Horizons: The review of alcohol and other drug treatment services in Australia Final Report July, 2014. Alison Ritter Lynda Berends Jenny Chalmers Phil Hull Kari Lancaster Maria Gomez. <https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/New%20Horizons%20Final%20Report%20July%202014.pdf> p. 13.

The proponents of the Bill argue that being placed on income management will act as a deterrent to substance use.

However, evidence from a drug and alcohol treatment centre in Ceduna, South Australia – one of four trial sites of the Cashless Debit Card, since March 2016 – indicates that the Card is not reducing substance abuse, and that those who experience addictions will find a way to meet their needs. The Chief Executive of the South Australian Aboriginal Drug and Alcohol Council, Scott Wilson, who oversees the largest drug and alcohol centre in Ceduna (the Stepping Stones Drug and Alcohol Day Centre) said:

We haven't seen a decrease whatsoever in people coming. I keep hearing the rhetoric from the government about how successful these trials are. We've said from our point of view, people obviously still have access to alcohol. Those in the program still found a way to feed their drug and alcohol addictions. There are no jobs [in Ceduna] ... unless the jobs are available, it won't change.⁸

Increased conditionality and the right to social security and privacy

The Coalition Government's proposal to re-introduce a bill to drug test welfare recipients is an example of its explicit expansion of welfare conditionality – where welfare recipients are required to meet certain conditions or behave in certain ways in order to receive their income support payments.

This emphasis on conditionality and behavioural economics is undermining a rights-based approach to social security. It is clear from the Statement of Compatibility with Human Rights, included in the House of Representatives' Explanatory Memorandum⁹ to the Bill, that the preferencing of and emphasis on conditionality and behavior modification is used to justify the compromising of a number of human rights.

These include rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR), with specific reference to Article 9 of the ICESCR which recognizes the right of everyone to social security. The proposed Bill states that all people making a claim for Newstart Allowance or Youth Allowance (other) ... will be asked to acknowledge in the claim form, that they may be required to undergo drug testing **as a condition of payment**.¹⁰

In the event that recipients do not acknowledge the potential to be drug tested on their claim form they will be denied access to Newstart or the Youth Allowance. If a recipient refuses to comply with taking a drug test, they will have their payment cancelled. In both these scenarios, their entitlement to access social security is premised on a condition, which, if refused, will mean that they are not able to access social security, thereby denying them the right as set out in Article 9 of the ICESCR.

Similarly, article 17 of the Right to Privacy under the obligations sets out in the International Covenant on Civil and Political Rights (ICCPR), namely, the right to protection against arbitrary or unlawful interference with a person's privacy, which extends to protecting a person's bodily integrity against compulsory procedures, such as drug testing.

⁸ <https://www.smh.com.au/politics/federal/cashless-welfare-card-trial-not-working-drug-and-alcohol-centre-says-20190910-p52pv5.html>

⁹ Explanatory Memorandum http://classic.austlii.edu.au/au/legis/cth/bill_em/sslattb2019556/memo_0.html

¹⁰ Explanatory Memorandum http://classic.austlii.edu.au/au/legis/cth/bill_em/sslattb2019556/memo_0.html p. 28

The Statement of Compatibility in the Explanatory Memorandum justifies the objectives of mandatory drug testing in terms of its 'reasonable and proportionate limitation' on the rights to social security and to privacy and does so on the basis of an assumption about the unequivocal value of conditionality.

4. Conclusions and recommendations

Drug use needs to be viewed as a health concern, which may in some cases be beyond the control of the individual and is invariably the result of multiple health and socio-economic determinants. Uniting Communities opposes penalising people for their health issues through mandatory drug-testing and the mechanism of compulsory income management.

We do not support the Bill because its provisions for the mandatory and conditional drug-testing of people receiving income support will result in them being placed on a punitive system of income management, for which there is insufficient evidence regarding its efficacy; could potentially result in them further risking their health and wellbeing by trying other substances that are more difficult to detect through drug-testing; lead to a loss of agency; potentially lead to an increase in poverty, criminal activity and self-harming; and the undermining of people's existing rights.

Our organisation's work and expertise in the drug and alcohol services area informs us that problem substance use can only be thoroughly addressed or overcome if the individual comes to the realisation on their own terms and that they want and need to make changes. By enforcing coercive and punitive measures, people will be further marginalised and stigmatised. Furthermore, attempts to coerce individuals into compliance will have far-reaching and other-than-intended effects.

It is not the proper role of the Department of Social Services or Centrelink to 'police' individual's health care or to coerce them into obeying laws around substance use. The proper place for reducing the harms associated with drug and alcohol use over the long-term is through early intervention and prevention; the appropriate approach to initiate treatments of existing users is through non-punitive education, and through the health and community sector, not through social security measures.

We call on Parliament to remove punitive and coercive income support payment suspensions and cancellations that are based on the results of mandatory and intrusive tests. We also call on Parliament to redirect available funding towards the provision of appropriate treatment services – the expenditure on administering and monitoring drug testing regimens and the resultant administration of income management and/or payment suspensions and cancellations could be better used to provide for adequate and effective treatment services.