

16 April 2018

Committee Secretary  
Senate Standing Committees on Community Affairs

By email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Dear Committee Secretary,

**NSSRN submission in relation to the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018**

1. The National Social Security Rights Network (NSSRN) is a 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 social security and family assistance payments. The NSSRN draws on this front line experience in developing its submissions and policy positions.
2. The Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 ("the Bill") reintroduces the legislative framework for the Government's proposed two year trial of mandatory illicit drug testing of 5000 new claimants of Newstart Allowance and Youth Allowance (other) in three regions.<sup>1</sup> This Bill 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.
3. A point of difference between this Bill and the original Schedule 12 is that this Bill explicitly identifies the three trial locations. These are Canterbury-Bankstown in New South Wales, Logan in Queensland and Mandurah in Western Australia. We note that the infrastructure for income management is already supported in these trial sites.
4. We acknowledge that the Government has recently committed to \$10 million in increased funding of drug and alcohol treatment services in the trial locations to support the passage of the Bill.<sup>2</sup> This is in addition to the Government's commitment to direct \$685 million over four years to "reduce the impact of drug and alcohol abuse on individuals, families and communities."<sup>3</sup>
5. While welcoming these increases in funding, the NSSRN remains opposed to the drug testing trial. We reiterate our concerns raised in our submission to the original Welfare Reform Bill.<sup>4</sup> In summary, the drug testing proposal raises the following issues:
  - The proposal is an expensive measure that will have little positive impact on those who are drug tested;

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<sup>1</sup> This measure was originally introduced in the Welfare Reform Bill but removed from that Bill in late 2017.

<sup>2</sup> Commonwealth, Parliamentary Debates, House of Representatives, 28 February 2018, 2198-2200, (Dan Tehan), 2198.

<sup>3</sup> Ibid.

<sup>4</sup> 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.

- It diverts funding away from drug and alcohol treatment centres, and other support agencies which work to address the issues underlying substance abuse;
- The Bill does not explicitly exclude Youth Allowance (other) recipients who are children aged 16 or 17 years old;
- It triggers income management if the person fails one drug test, despite this being a poor indicator of substance abuse disorder or dependence;
- The scheme carries harsh payment cancellation penalties for refusing a drug test, however there is little consideration as to the consequence of these penalties. Payment cancellations may cause a person's circumstances to worsen without income, leading to dangerous or criminal behaviour and affect their families and communities.
- The scheme compels individuals to consent to unwanted medical treatment and runs contrary to recognised international human rights, such as the right to health and control of one's body.

### **An expensive measure with no positive gain**

6. The measure proposed in this Bill has attracted widespread criticism from community organisations, addiction medicine specialists and drug and alcohol treatment services. There is expert agreement that drug testing trials of welfare recipients is not an effective method to address the complexities of substance abuse. The Australian National Council on Drugs has previously 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."<sup>5</sup>
7. The measure is unlikely to assist those with substance abuse issues, and also unlikely to identify many participants with substance abuse issues. Other jurisdictions have spent considerable resources trialing similar schemes, with little benefit. For instance, New Zealand drug tested approximately 8001 welfare recipients at a total cost of \$1 million. Only 22 people tested positive.<sup>6</sup> The targeting of illicit drugs, when alcohol has a far greater impact on workforce participation, demonstrates how ill conceived this measure is. The overwhelming majority of new social security claimants do not use drugs, however will be subject to unwanted drug testing to receive financial assistance necessary to meet basic living costs.
8. Despite our Government also expecting very low rates of positive results<sup>7</sup>, they continue to argue that "*the community has a right to expect that taxpayer-funded welfare payments are not being used to fund drug addiction and that jobseekers do all they can to find a job.*"<sup>8</sup> This statement grossly discounts the lived experience of most people on income support payments. Many of these individuals live below the poverty line, receiving income support payments that are not sufficient to meet the basic standard of living cost.<sup>9</sup> These individuals must also comply

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5 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>

6 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>

7 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.

<https://thewest.com.au/news/wa/controversial-plans-to-drug-test-welfare-recipients-in-mandurah-could-result-in-no-more-than-15-people-diverted-into-treatment-ng-b88640215z>

8 Commonwealth, Parliamentary Debates, House of Representatives, 28 February 2018, 2198-2200, (Dan Tehan), 2198.

9 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).

with onerous mutual obligation activities to retain these payments, including Work for the Dole schemes and job search activities. The drug testing trial represents an intrusive and punitive scheme for those who experience the greatest financial hardship and disadvantage in our society.

9. The cost of the scheme has not been stated by Government.<sup>10</sup> In our view, the money spent establishing and conducting this trial would have a more positive impact if it were used to fund drug and alcohol support services for the broader population.

#### **Youth Allowance (other) recipients aged 16 or 17 years**

10. 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).
11. The NSSRN calls 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. We oppose the proposal to drug test children, and note that little consideration has been given to issues of consent.

#### **A poorly targeted measure reliant on harsh income management regimes**

12. If a person tests positive to their initial drug test, they will become subject to income management for a 24 month period, regardless of whether they have an ongoing substance use problem. Income management requires that 80% of a person’s income support payment is quarantined to a Basics Card and can only be spent on ‘priority needs’. The person will only be able to access 20% of their social security payments in cash.
13. In our original submission on the drug testing trial in the Welfare Reform Bill, we queried why the Government had not considered 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. In our view, there is no basis for the Commonwealth operating a parallel income management process which overlaps with this, particularly when many people referred to income management will not have an ongoing substance use issue and are not the purported target of this scheme.
14. The NSSRN has expressed strong opposition to income management in a number of public submissions, including our recent Federal Pre-Budget Submission 2018-19. Increasingly, research has demonstrated that income management has had a negative impact on the health and wellbeing of communities. Research has shown that income management schemes in the Northern Territory adversely impacted on the birthweight of children<sup>11</sup> and school attendance rates<sup>12</sup>. We also note that all income management schemes in Australia disproportionately target Indigenous communities: an overwhelming 79% of people on income management are Indigenous.<sup>13</sup> In consideration of these issues, we do not support any policy that utilises income

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10 Explanatory Memorandum, *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 (Cth)* p2

11 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.

12 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>>.

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

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

management.

15. The Bill proposes that a person who fails a second or subsequent drug test will be referred to a contracted medical professional for assessment. If treatment is recommended, this treatment will be included in a person's employment pathway plan. If a person fails to comply with this plan, they will be subject to penalties or payment suspensions. A person who fails a second or subsequent test is also required to pay the costs of the test by deduction from their payment.
16. These measures dismiss the complex reasons behind why a person may fail multiple drug tests, or fail to attend treatment when directed. The Bill does not take into account the reality of the difficulties faced by individuals who have a severe substance abuse disorder or have suffered a relapse.

#### **Failure to properly consider the consequence of payment cancellations**

17. There are significant consequences for people who refuse to agree to be tested, or refuse a test when randomly selected. These people will have their payment cancelled and be precluded from payment for four weeks. The effects of this payment cancellation period may be severe.
18. Dr Alex Wodak, a leading Australian expert in the treatment and response to substance abuse, has argued that an addict is by definition someone who will continue to consume a substance despite severe adverse consequences. As a result, he concludes that "[p]eople cannot be coerced or punished into treatment and [t]here is a good chance that they will commit more crime or even be pushed into suicide."<sup>14</sup>
19. There should be rigorous consideration of the impact of canceling payments or withholding income support from people for a four week period before such a measure is introduced.

#### **Human Rights implications**

20. The drug testing trial runs contrary to Australia's international human rights obligations. The trial infringes the recognised right to health and control of one's body.<sup>15</sup> It also undermines the rights of individuals to social security<sup>16</sup>, privacy<sup>17</sup>, equality and non-discrimination (particularly racial non-discrimination)<sup>18</sup>. The infringements of these rights are not justifiable.
21. Article 12 of the International Covenant on Economic, Social and Cultural Rights sets out the right to health and control of one's body. As discussed by the UN Committee on Economic, Social and Cultural Rights:

*"The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body... and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation."*<sup>19</sup>

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14 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>>

15 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 10 April 2018] art 12.

16 International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 9.

17 Ibid art 17.

18 International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 2 and 5.

19 Office of the High Commissioner for Human Rights, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, <<http://www.refworld.org/pdfid/4538838d0.pdf>>, p3

22. Australian law recognises that all adults, who have capacity to make decisions, can consent to and refuse medical treatment. 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. We do not consider this to be the expression of informed consent.<sup>20</sup> If a person is randomly selected for the drug test and refuses to consent to the drug test, they will have their payments suspended for 28 days. In many instances, individuals will feel coerced into consenting to the drug test, and to subsequent treatment, to avoid losing their income support. This raises significant concerns as to whether individuals are giving informed and willing consent. For these reasons, the drug testing trial runs counter to Article 12.
23. Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, has identified similar issues. He has argued that the drug testing trial is coercive and will stigmatise social security recipients.<sup>21</sup>
24. The right to social security is not dependant on an individual's behaviour or conduct. The social security system is intended to ensure that all individuals have access to basic needs and is closely connected to the right of individuals to have an adequate standard of living.<sup>22</sup>
25. The drug testing trial will disproportionately impact on Indigenous communities, contrary to the right to racial non-discrimination. We do not agree with the argument set out in the Explanatory Memorandum that *"to the extent that certain cohorts may be more likely to test positive, this constitutes legitimate differential treatment and does not discriminate on the basis of race or disability"*.<sup>23</sup> The indirect discrimination caused by the drug testing trial is not justifiable.
26. We call on the Government to cease trialling new welfare strategies on Indigenous communities, and instead fund services to address inadequate health care and lack of education and employment opportunities.
27. A genuine human rights model approach ensures that individuals are empowered to participate in decisions affecting their human rights. However, the Government has not consulted with those who will be most impacted by this measure.

## Conclusion

28. 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 poorly targeted and will predominantly affect new social security claimants who do not use drugs. It is a punitive measure that will push some people with no substance use 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.
29. There is expert agreement that drug testing welfare recipients is not an effective method to address substance abuse issues and may in fact exacerbate them.
30. For the reasons set out in this submission, the Bill should be opposed.

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<sup>20</sup> We also note that a person may consent to medical treatment but subsequently withdraw that consent.

<sup>21</sup> 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>

<sup>22</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 10 April 2018] art 11(1)

<sup>23</sup> Explanatory Memorandum, *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 (Cth)* p7

**Contact for this submission**

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

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