



Australian Government
Department of Social Services

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Dear Ms Radcliffe

SUBMISSION TO SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Please find attached a submission by the Department of Social Services to the Senate Community Affairs Legislation Committee Inquiry into the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019.

Yours sincerely

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Social Services Legislation Amendment (Drug Testing Trial) Bill 2019
Submission from the Department of Social Services

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Introduction

This submission by the Department of Social Services (the department) provides information on the measure contained in the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019. The content of this Bill is substantively the same as the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 (which set out provisions for establishing a drug testing trial), with minor amendments to the list of testable drugs and the drug test repayment requirements.

Schedule 1 – Establishment of a drug testing trial

The amendments contained in Schedule 1 will establish a two year trial involving mandatory drug testing in three regions for 5,000 new recipients of Newstart Allowance and Youth Allowance (other) (referred to in this submission as job seekers). The drug testing trial will commence on the first: 1 January, 1 April, 1 July or 1 October that occurs not less than two months after the Bill receives Royal Assent.

Background

The drug testing trial is designed to identify job seekers who may have ongoing drug dependency issues and may benefit from pursuing treatment. The aim is to improve the capacity of job seekers with illicit drug use issues to find employment, or participate in relevant education or training, by assisting them to access appropriate treatment and overcome their barriers to work. The trial will test the effectiveness of drug testing as a means of detecting people with drug use issues, as well as intervention strategies, including Income Management and medical professional assessment and treatment.

The drug testing trial will be comprehensively evaluated, including during the trial period. The evaluation will consider all aspects of the trial, including the characteristics, experiences and outcomes of job seekers who participate.

Research and evidence

While there are some existing mechanisms in place for identifying job seekers who have substance use issues and assisting them to seek treatment, the trial will test new approaches. The trial is designed to direct people into treatment and support, including requiring treatment to form part of some job seekers' Job Plans and using Income Management to reduce access to cash that might otherwise be used to purchase illicit substances. This model has not been tested before in Australia or internationally. This is why comparable evidence for this approach does not exist and the measure is designed as a trial. The trial will assess the value of drug testing job seekers in the Australian welfare context as a way of helping identify where illicit substance use might be a barrier to work and using innovative ways of supporting people to undertake treatment. The evaluation of this trial will help to establish an evidence base for this type of intervention by testing new ways of encouraging job seekers into treatment.

Trial sites

The trial will be conducted in the local government areas of: Canterbury-Bankstown, New South Wales; Logan, Queensland; and Mandurah, Western Australia. These locations have been selected by considering a range of factors, including crime statistics, drug use statistics, social security administrative data and drug and alcohol treatment services. The trial locations are not in Community Development Program areas.

Selection of the trial sites was informed by identifying areas with varying factors and profiles based on available evidence and data.

The average inflow of new claimants of Newstart Allowance and Youth Allowance (other) was considered in the first instance. In order for drug testing to be random, sites needed to have sufficient claimant inflow to enable the testing of 5,000 new claimants across the sites while ensuring that not all new job seekers would be selected for testing.

Other factors considered included:

- the Australian Criminal Intelligence Commission's National Wastewater Drug Monitoring Program Report 2017;
- the Australian Institute of Health and Welfare's 2013 National Drug Strategy Household Survey;
- state/territory government crime statistics in relation to drug use and possession;
- state/territory government hospitalisation data;
- administrative data from Services Australia on job seekers with identified drug dependency issues; and
- drug and alcohol treatment services in locations.

This evidence and data was considered holistically during site selection, rather than hierarchically.

Stakeholder consultations

The department has consulted with officials in all state and territory governments as well as a range of drug and alcohol services and peaks, and related experts across the country.

In the trial locations, the department has met with relevant state government departments, state alcohol and other drug treatment agency networks, state councils of social services, Primary Health Networks and local councils.

The department has also consulted with local stakeholders in the trial sites, including treatment providers, social services organisations, employment services providers and members of the community.

Local reference groups will be established in each trial site as a vehicle for ongoing consultation as part of the implementation of the trial.

Drug testing

From the commencement of the trial, 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. If the claimant is a resident in one of the trial locations, their claim will not be granted if they have not acknowledged this in the claim form.

Job seekers who: claim and are granted Newstart Allowance or Youth Allowance (other) on or after the commencement of the trial; have acknowledged potential drug testing as part of their claim; and are residing in a trial location, may be selected randomly to undertake a drug test. Those selected will be notified to attend an appointment at their local Services Australia office, consistent with standard Services Australia appointment requirements. At the appointment, job seekers will be notified if they are required to undertake a drug test.

Drug testing of selected job seekers will be administered by a qualified third party drug testing provider contracted for this purpose and will be carried out on either Services Australia premises or at the drug testing provider's premises. If travel is required, the job seeker will be given sufficient time and reasonable assistance, if necessary, to get to the drug test appointment.

The drug test will be performed by appropriately trained persons engaged by the contracted provider in a private setting.

A legislative instrument setting out Drug Test Rules is allowed for in the Bill and will include the protocols for conducting the drug tests, including safeguards to ensure that the testing is conducted appropriately and in accordance with relevant standards. The department tabled an exposure draft of the Drug Test Rules on 30 August 2017 during the Social Services Legislation Amendment (Welfare Reform) Bill 2017 public hearing for consideration by the Committee.

The department is also undertaking consultation with key stakeholders. The expert advice of the drug and alcohol sector will be taken into account in developing these protocols and safeguards. The exposure draft of the Drug Test Rules may therefore be subject to change based on these considerations, with the Rules finalised once legislation has passed.

The drug testing trial is focused on the use of illicit drugs and is not intended to capture job seekers who may be taking legal medications or medical cannabis. Job seekers undergoing a drug test will be questioned by the drug testing provider to account for any legal medications that they are taking which may cause a positive result. If a job seeker provides evidence that they are taking legal medications, such as a valid prescription, the drug testing provider will take this into account in recording the test result and may therefore record a negative result.

First positive drug test

Job seekers who test positive to the initial drug test will be placed on Income Management for a 24 month period. If the job seeker's initial test is negative they will not be placed on Income Management.

The use of Income Management is intended to help job seekers identified through the trial as using illicit drugs to manage their drug use by restricting the amount of their welfare payment that will be available to them as cash.

If the job seeker leaves payment during the 24 month period and they later reclaim, they will return to Income Management for the remainder of the 24 months.

In addition to being placed on Income Management, job seekers who test positive to the initial drug test will be subject to further tests during the trial period, the first of which will occur within 25 working days of the initial positive test. Subsequent testing is intended to identify those job seekers who may have more serious, ongoing drug use issues and may need further intervention to pursue treatment where appropriate.

Income management

Income Management will be the method of welfare quarantining applied to job seekers who return a positive drug test under the drug testing trial. Income Management is an established method of welfare quarantining applied to help vulnerable job seekers and is currently operating in a number of locations across Australia.

The drug testing trial will adapt the existing Supporting People at Risk (SPaR) model of Income Management. Under this model, where a job seeker has returned a positive drug test result, the drug testing provider will notify Services Australia of the result and, as a consequence, the job seeker will be subject to Income Management. The job seeker will have an interview with Services Australia to ensure they understand how Income Management works, to issue them with a BasicsCard, to discuss their priority needs and have Income Management deductions set up accordingly.

Once on Income Management, the job seeker will have access to a range of support services. These services include the Income Management phone line and the ability for job seekers to check their Income Management and BasicsCard balance via a range of channels including online, phone or in person. Financial support services and referrals are also available. These arrangements are consistent with existing Income Management measures.

Under Income Management, Services Australia makes Income Management payments to businesses through a number of mechanisms. Merchants can be approved for BasicsCard which allows them to accept payment through their standard EFTPOS facilities. Currently, more than 16,700 merchants accept the BasicsCard nationwide. If a merchant cannot accept the BasicsCard, DHS can make a payment to them in a number of other ways. Income Management Third Party Organisations are businesses that generally do not have EFTPOS

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to support BasicsCard activation. They include service providers receiving fortnightly payments without the customer needing to attend the business, as is the case for BasicsCard. Income Management Third Party Organisations also include a large number of private landlords that cannot be paid by BasicsCard. Using the Services Australia system, a payment can be made to a contracted or un-contracted third party's nominated bank account without the need for manual processing.

The Bill provides that under the drug testing trial a person may be taken off Income Management if it is assessed that being on Income Management may seriously risk the person's mental, physical or emotional wellbeing. Where required, this assessment would be undertaken by a Services Australia Social Worker based on all the facts, which may include documentary evidence provided by suitably qualified professionals.

Second positive drug test

Job seekers who test positive to more than one drug test in the 24 month period will be referred to a medical professional for assessment. The medical professional will be a person with expertise in drug and alcohol treatment. Services Australia will conduct a procurement process to engage medical professionals who can conduct assessments in each trial site.

The assessment will consider the extent of the job seeker's substance misuse or dependency and the impact of this on their capacity to work.

If the medical professional recommends treatment, the job seeker will be required to undertake the recommended treatment activities to address their substance use as part of their Job Plan. The medical assessment may recommend any type of drug or alcohol treatment that is appropriate for the job seeker's individual circumstances. Examples of treatment may include, but are not limited to:

- screening and brief intervention
- withdrawal management
- case management, care planning and coordination
- counselling
- day stay rehabilitation and other intensive non-residential programs
- residential rehabilitation
- aftercare / follow-up services
- post-treatment support and post-acute withdrawal support and relapse prevention, and
- pharmacotherapy, such as opioid substitution therapy (noting pharmacotherapy medications under \$100 are covered under the pharmaceutical benefits scheme).

Job seekers with a drug treatment activity in their Job Plan may still be required to undertake other mutual obligation activities, depending on their circumstances and the intensity of the treatment activity or activities recommended. Intensive treatment which precludes a job

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seeker from undertaking other activities, such as residential rehabilitation, would fully meet the job seeker's mutual obligation requirements.

As per the existing job seeker compliance framework, job seekers who fail to meet the terms of their Job Plan, including the requirement to engage with any drug treatment activity, may be subject to compliance action. Reasonable excuse provisions would continue to apply; however, not where the reason is wholly or substantially attributable to drug or alcohol misuse. Relapse is a common part of the recovery process. Where job seekers return further positive drug tests they will not be penalised so long as they continue to engage with case management and the treatment process.

Treatment Fund

As part of the trial, the Government is committing up to \$10 million to create a dedicated Treatment Fund. This fund will be able to provide additional treatment support in trial locations to meet any additional demand as a result of the trial. Where treatment is not immediately available, job seekers will need to take appropriate action, such as being on a waiting list.

The specific details of the Treatment Fund will be determined in consultation with the Department of Health, Primary Health Networks and the drug and alcohol sector before the trial starts.

Refusal of a drug test

Job seekers who refuse to take a drug test (whether it is the first or a subsequent test) will have their payment cancelled immediately. The job seeker will be advised upfront by Services Australia at the appointment of the consequences of refusing a drug test.

If the job seeker then makes a new claim for Newstart Allowance or Youth Allowance (other) following cancellation, a four-week waiting period will apply from the date of cancellation. Job seekers who subsequently return to payment after their waiting period will still be subject to the trial and be required to undergo random drug testing as a condition of their ongoing receipt of payment. The four-week waiting period only applies to job seekers whose payment was cancelled because of their refusal to take the drug test despite acknowledging that they may be subject to drug testing as part of their initial claim for payment.

Attendance is required at appointments

Job seekers who are part of the drug testing trial and fail to attend scheduled appointments without notice, reasonable excuse or rescheduling, with either Services Australia, the drug testing provider, employment services provider or anyone else required under the drug testing trial, will have their payment suspended until they attend a rescheduled appointment. This is consistent with existing arrangements for appointments, including with Services

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Australia or an employment services provider, and remains the same under the Targeted Compliance Framework for job seekers, which commenced on 1 July 2018.

When the job seeker attends a rescheduled appointment, their payment will be resumed and backdated from the date of suspension if the job seeker has a reasonable excuse for not attending the initial appointment, such as unforeseen caring responsibilities. If no reasonable excuse exists, their payment will be payable from the date of their attendance at the rescheduled appointment (meaning they will not be entitled to back-dated payments). If the job seeker has not attended a rescheduled appointment within 13 weeks from the date of suspension, their payment will be cancelled.

If the job seeker provides Services Australia with prior notice of a reasonable excuse for not being able to attend the appointment, such as work commitments, they will be able to reschedule their appointment and their payment will not be suspended as long as they attend the rescheduled appointment.

Re-tests

If a job seeker disputes the result of a drug test, they will be able to request a re-test. It is intended that when the initial sample for the drug test is taken, this sample will be split into two: an 'A' sample and a 'B' sample. This is consistent with arrangements for other forms of drug testing used in Australia. The initial test will use the 'A' sample. If the job seeker requests a re-test, this re-test will use the 'B' sample. A re-test does not mean that the job seeker can undertake the drug test on a different day or use a different drug test provider. If the re-test is positive, the job seeker will be required to repay the cost of the re-test through deductions from their fortnightly payments, as outlined below.

Repayment of an amount for re-tests

If a job seeker disputes the result of a positive drug test and the result of the analysis of their 'B' sample is also positive, they will be required to repay the cost of the re-test through a small percentage reduction of their future fortnightly payment. This is designed to discourage frivolous requests for re-testing.

The amount to be repaid will be an amount determined by the Secretary of the Department of Social Services in an Instrument. This amount will be no more than the lowest cost option of the drug tests available to Services Australia under their contract with the drug testing provider (regardless of the testing method that was used in the job seeker's case). The cost will be deducted in instalments from the job seeker's future Newstart Allowance or Youth Allowance (other) payments at a percentage rate set by the Secretary. This amount will be no more than a maximum of 10 per cent. This is significantly lower than the standard rate for recovery of social security debts, which is 15 per cent. Services Australia will also be able to vary the person's repayment rate if they are experiencing financial hardship or to increase the rate at their request.

Extenuating circumstances

The drug testing trial is not intended to identify people who are taking legal medication (with prescription) or medical cannabis. The testing procedure will include safeguards to ensure circumstances that may result in a positive drug test, other than illicit drug use, can be identified and taken into account by the drug testing provider.

Job seekers selected for drug testing will have a pre-test interview with the drug testing provider to help identify any legal medications the job seeker may be taking, or other factors that may result in a positive drug test. Where the drug testing provider is satisfied there is sufficient evidence to determine a positive drug test result is invalid due to extenuating circumstances, such as a valid prescription for legal medication, the positive result would be withdrawn.

The Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 provides for subordinate legislation that will set out rules for drug testing, including rules related to providing evidence of a circumstance that may result in a positive drug test result. The department will undertake further consultation with key stakeholders and industry experts to finalise the Drug Test Rules to ensure appropriate safeguards are in place.

Evaluation

There will be a comprehensive evaluation of the trial to determine which aspects have been successful in addressing job seekers' substance abuse and barriers to employment. This includes establishing a performance measurement framework prior to commencement of the trial to assess results. The evaluation will commence in parallel with the trial to capture any unintended consequences of the trial, addressing them in real time, and assess the effectiveness of this kind of intervention in the Australian welfare context. In this way, the results of the evaluation will inform any decisions about the trial or rolling out drug testing more broadly.

In its report on the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018, the Senate Community Affairs Legislation committee recommended that the department:

- establish and publish the evaluation strategy for the Drug Testing Trial prior to the commencement of the Trial, and
- publish the outcomes of the Drug Testing Trial after it has been completed.

In the Government Response to the Senate Committee's Report, the department stated that:

- it will commission an independent consultancy to develop the evaluation strategy
- the evaluation strategy will provide the framework for the evaluation, and will be designed in conjunction with stakeholders through submissions and workshops in each trial location to facilitate local input
- it will establish an Evaluation Steering Committee to guide the work of the evaluation, including representatives with drug and alcohol expertise

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- it will commission an independent consultancy to conduct an evaluation in parallel with the trial
- it will publish the findings of the evaluation after the conclusion of the trial.

Privacy implications

The *Privacy Act 1998* regulates how personal information is handled and includes the 13 Australian Privacy Principles which apply to most Australian Government agencies. The Privacy Principles are designed to guide Government and large organisations to ensure their policies provide for the open and transparent management of the personal information they handle.

The Privacy Principles provide that personal information may be collected, used and disclosed where required or authorised under Australian law. The Social Security Law contains specific provisions regarding the protection of personal information. Personal information about social security recipients may be obtained or recorded, used or disclosed in limited circumstances in accordance with the confidentiality provisions in Division 3, Part 5 of the *Social Security (Administration) Act 1999*. This includes for the purposes of: administering the social security law; for research, statistical analysis or policy development; and where it has been certified as being in the public interest.

The results of a job seeker's drug test and any other information collected under the trial will be classed as protected information for the purposes of social security law. Protection of personal information is dealt with in section 202 of the *Social Security (Administration) Act 1999* and all standard recording, disclosure and usage provisions will apply.

The Bill provides for subordinate legislation that will set out rules for drug testing, including rules relating to the security of test results. The contract with the drug test provider will be for services to be delivered in accordance with these drug testing rules and will also contain contractual requirements specifically relating to the security of test results. Transmission of test results between the provider and the Government will be through a secure system.

The department is conducting a Privacy Impact Assessment in conjunction with Services Australia as part of the implementation of the drug testing trial. The Privacy Impact Assessment will be provided to the Office of the Australian Information Commissioner.

Conclusion

In summary, this Bill will establish a trial that enables the Government to test an innovative approach to identifying job seekers who have substance use issues, and assisting them to access treatment to help them address this barrier to finding work. This trial will be comprehensively evaluated in parallel with its implementation. The evidence that this trial produces is expected to give valuable insights into the efficacy of this model that can be used to inform future interventions for job seekers with substance use issues.