

26 September 2019

## Submission to Senate Community Affairs Legislation Committee

### Re: Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

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#### summary

cohealth welcomes the opportunity to provide comment to the Senate Community Affairs Legislation Committee inquiry regarding the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2019*.

With a long history of delivering alcohol and drug services, cohealth is committed to drawing on the available evidence and working directly with communities to design and deliver evidence-based and effective responses to reduce the potential harms from alcohol and drug use. Applying this lens, cohealth is deeply concerned that provisions in this Bill have no basis in best practice evidence, will do little to support people dealing with alcohol and drug use, and will subject income support recipients to greater poverty, stigma and marginalisation. Drug and alcohol use is best responded to through public health measures, not welfare compliance.

These measures also have the potential to exacerbate economic inequality, thereby directly contributing to health inequity. In turn, this will negatively affect the health outcomes of individuals and families in economic hardship and ultimately result in greater costs to society as a whole.

#### recommendation:

**That the Committee recommends Parliament reject the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2019*.**

## about cohealth

cohealth is one of Australia's largest not-for-profit community health services, operating across nine local government areas in Victoria. Our mission is to improve health and wellbeing for all, and to tackle inequality and inequity in partnership with people and their communities.

cohealth provides integrated medical, dental, allied health, mental health and community support services, and delivers programs to promote community health and wellbeing. Our service delivery model prioritises people who experience social disadvantage and are consequently marginalised from many mainstream health and other services. This includes people who are experiencing or at risk of homelessness, people who live with serious mental illness, vulnerable families, Aboriginal and Torres Strait Islanders, refugees and asylum seekers, people who use alcohol and other drugs, recently released prisoners and LGBTIQ communities.

cohealth has extensive experience working with people who use alcohol and other drugs (AOD). We have provided AOD treatment, counselling, health promotion and community education services for more than 20 years. Specifically, we provide the following programs for people who use drugs:

- Needle and syringe programs across seven metropolitan locations and an after-hours call out service
- Operate two Specialist AOD Primary Health Services
- Non-residential withdrawal services supporting people to safely withdraw from alcohol and/or other drug use
- Drug and alcohol counselling from our community-based treatment services for adults and young people aged 16 to 18 and, when appropriate, their families, either as individuals or in groups. Priority access is given to clients assessed as having complex needs as well as those transitioning to and from residential services.
- Community education to address the stigma and discrimination faced by people who use drugs that can ultimately perpetuate harm
- Auspice the Yarra Drug and Health Forum
- Operate the North West Melbourne Pharmacotherapy Network to support the community based Opioid Replacement Therapy system

## Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

5,000 new recipients of Newstart Allowance and Youth Allowance (Other) in three locations - Canterbury-Bankstown, NSW; Logan, Qld; and Mandurah, WA - will be required to undertake random drug tests for illegal drugs. The trial is intended to commence on 1 July 2020 and is expected to run for 2 years. Recipients who test positive to an initial test will be placed on compulsory income management for 24 months, where 80% of their social security payment will be quarantined for two years using the cashless debit card. Those who test positive to more than one test in a 24 month period will be required to undertake assessment and, if recommended, one or more treatment activities.

This trial has been presented by the Government as one that will support the capacity of income support recipients to find employment through assisting them to address drug use. However, cohealth does not see any grounds for this assertion, and shares the concerns of the many experts condemning the scheme, including academics, medical and public health professionals, AOD and mental health experts, lawyers and human rights advocates. The most significant factor in people being unable to find employment is a demonstrated lack of jobs, and these measures will do nothing to address this.

We support the principle of assisting people who use drugs to reduce or cease their usage (and have assisted many people to do so over many years) and to improve the prospects for employment for those who receive income support. However, there is no basis in evidence that the random testing of income support recipients will achieve this end. Of note, the *National Drug Strategy 2017-2026*<sup>1</sup> emphasises the importance of using evidence informed approaches. Nowhere does it propose the coercive approaches presented in this Bill. Implementing legislation and policy with no basis in evidence, relying instead on stereotyping, would be an abrogation of the role of sound government.

cohealth has many serious concerns about this proposal, from human rights impacts to practical considerations, including:

- **Lack of need.** Evidence from Australia and internationally indicates that drug use is not a major cause of reliance on income support. As a Canadian study determined regarding drug testing of welfare recipients in that nation 'the whole process is expensive and will likely result in a very marginal increase in employment because drug dependence is not a major barrier to employment.'<sup>2</sup>

The majority of people receiving income support payments do not use drugs, but this Bill makes an implicit assumption that they do. As Charmaine Crowe from ACOSS has stated, 'It's particularly demeaning to have to provide a urine sample

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<sup>1</sup> <https://www.health.gov.au/resources/publications/national-drug-strategy-2017-2026> accessed 17 Sept 2019

<sup>2</sup>

[https://www.researchgate.net/publication/247245354\\_Drug\\_testing\\_and\\_mandatory\\_treatment\\_for\\_welfare\\_recipients](https://www.researchgate.net/publication/247245354_Drug_testing_and_mandatory_treatment_for_welfare_recipients) accessed 17 Sept 2019

just because you're unfortunate enough to have lost your job, even when you have been retrenched and have never touched drugs in your life'.<sup>3</sup>

- **Lack of effectiveness.** Where similar approaches have been taken internationally, the experience has been shown to be ineffective, particularly relative to the resources used. For example, New Zealand spent \$1 million on drug testing 8,001 income support recipients, with only 22 testing positive for illicit drugs.<sup>4</sup> As the New Zealand Drug Foundation Executive Director Ross Bell has stated 'With all the other countries that have rolled out the Australian model, it's cost millions of dollars with little gain and that's for this simple reason: people on welfare aren't all on drugs.'<sup>5</sup>
- **People who occasionally use drugs will be detected.** Random tests such as those proposed will not differentiate between someone who is an occasional user of the identified drugs as opposed to someone experiencing problems related to dependence. It's thus highly likely that occasional users, whose substance use does not impact on their ability to find work or engage in participation activities, will be subject to the punitive income management regime.

Forcing people who do not experience drug dependency into AOD treatment is a wasteful process that will direct resources away from those who need these services.

Replacing 'drug' with 'alcohol' helps to highlight the absurdity of this situation. Conducting a random alcohol test on income support recipients will only reveal how recently a person has consumed alcohol, not whether a person has a dependency on alcohol. Placing a person who may have consumed a single glass of wine at the end of the day on income management or mandatory treatment, when it could not possibly be argued that their alcohol intake has in any way inhibited their ability to search for or maintain work is clearly unreasonable and unnecessary.

- **Inconsistent with best practice drug treatment.** Established best practice takes a harm minimisation approach, acknowledging the likelihood of relapse, and the limited success of involuntary treatment.<sup>6</sup> Relapses should be met with support and encouragement, not punitive responses.
- **Income management is an overly punitive response.** Placing someone on income management for 24 months is stigmatising, removes autonomy, and has been found to be ineffective in changing behaviour, particularly when involuntarily applied.<sup>7</sup>

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<sup>3</sup> <https://www.smh.com.au/politics/federal/scott-morrison-says-he-s-puzzled-by-opposition-to-plans-to-drug-test-welfare-recipients-20190909-p52pn1.html>

<sup>4</sup> <http://www.acoss.org.au/budget-2017/social-security/> accessed 17 Sept 2019

<sup>5</sup> <http://www.9news.com.au/national/2017/06/15/19/42/government-forging-ahead-with-drug-testing-welfare-recipients-despite-fierce-backlash> accessed 17 Sept 2019

<sup>6</sup> <https://www.health.gov.au/resources/publications/national-drug-strategy-2017-2026> accessed 17 Sept 2019

<sup>7</sup> Bray, J. R., Gray, M., Hand, K., & Katz, I. (2014). *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (SPRC Report 25/2014). Sydney: Social Policy Research Centre, UNSW Australia.

- **Poor use of limited resources.** The cost of this measure has not been disclosed, but internal government documents suggest the trial will cost \$5.6m and the Australian Council of Social Service (ACOSS) says the testing is likely to cost between \$500-\$900 per person per test.<sup>8</sup> As part of the government's rationale for this measure is to counter the perceived mis-use of public funds by income support recipients, the lack of transparency about the cost of the trial seems incongruous.

In addition, as there is no evidence that this approach will be effective, and will take resources from already underfunded alcohol and drug services, this money would be better spent providing additional resources to services for which there is evidence. There are already unacceptably long wait times to access drug treatment for those genuinely seeking it, including in the proposed trial areas. Greater funding for demonstrably effective services for those who need and want them is a far more legitimate use of taxpayer money.

- **Risk of false positive results.** Drug testing is not 100% accurate, and can produce false positive results. With the significant distress, stigma and potential financial consequences such a result will cause for recipients, the risk of this is unacceptable.
- **Drug use displacement risk.** People may switch to using drugs that cannot be detected, carrying an increased risk of harm from using a substance with which they are unfamiliar.
- **Impact of stigma.** Emerging evidence<sup>9</sup> indicates that stigma is itself harmful, having a direct influence on the physical and mental health outcomes of people with specific characteristics, and in fact fueling addiction in many instances. People experiencing stigma may not seek care or support if they perceive providers to be unwelcoming or unsafe. As such it is a fundamental cause of health inequalities.

In addition to the increase in stigma and discrimination experienced by individuals targeted by this approach, this trial may act as a disincentive for people to talk about problematic drug use for fear that this may impact on their payment. This may have the perverse effect of preventing them from seeking or obtaining treatment at an appropriate time.

- **The testing is not random.** It will target recipients on the basis of profiling for particular characteristics. This is highly discriminatory, and potentially contravenes a range of national legislation and international obligations.

Drug testing income support recipients was first proposed in 2017 as part of the *Social Services Legislation Amendment (Welfare Reform) Bill 2017*, then again in 2018 in the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018*. Submissions to the

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<sup>8</sup> <https://www.theguardian.com/australia-news/2019/sep/10/the-coalition-want-to-drug-test-welfare-recipients-heres-why-experts-think-its-a-bad-idea>

<sup>9</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3682466/>

Senate Community Affairs Legislation Committee inquiries on both these bills overwhelmingly opposed the trial. Individuals and organisations expert in the health and alcohol and drug fields - including the Royal Australian and New Zealand College of Psychiatrists, National Drug Research Institute of Curtin University, National Drug & Alcohol Research Centre of the University of New South Wales, Royal Australian College of Physicians, Australian Medical Association and the Victorian Drug and Alcohol Association, to name a few, all rejected the measure, sharing our concerns outlined above.

cohealth is deeply concerned that the evidence of such a substantial number of individual and organisational experts continues to be ignored and that legislation for such a costly and harmful approach has once again been proposed in the current Bill.

Human rights reviews have likewise expressed deep concern about the proposed drug testing trial. The Parliamentary Joint Committee on Human Rights reviewed the measure and found that there is no evidence that using social security payments is an effective means to address the use of drugs or support substance abuse.

'It is unclear, for example, why encouraging treatment and investing in additional treatment and referral services is insufficient to encourage recipients to self-report drug dependency and seek treatment. It is also unclear why a positive test should automatically result in the application of income management without an individual assessment of whether the person has a drug dependency problem and whether income management is necessary or appropriate in the person's circumstances.'<sup>10</sup>

The Committee also found that the measure is likely to contravene a range of human rights provisions, observing that it is likely to be:

- 'incompatible with the right to privacy. While the measure is aimed at a legitimate objective, there appear to be other, less rights restrictive ways to achieve this objective.'<sup>11</sup>
- 'incompatible with the right to social security as it appears the measure is unlikely to be proportionate to the legitimate objective of the measure.'<sup>12</sup>
- 'incompatible with the right to equality and non-discrimination noting that the measure appears likely to have a disproportionate negative impact on particular groups and that it appears the measure is unlikely to be the least rights restrictive measure.'<sup>13</sup>

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<sup>10</sup> Parliamentary Joint Committee on Human Rights *Human rights scrutiny report*. Report 11 of 2017  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2017) p 160

<sup>11</sup> Parliamentary Joint Committee on Human Rights *Human rights scrutiny report*. Report 11 of 2017  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2017) p 160

<sup>12</sup> Parliamentary Joint Committee on Human Rights *Human rights scrutiny report*. Report 11 of 2017  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2017) p 167

<sup>13</sup> Parliamentary Joint Committee on Human Rights *Human rights scrutiny report*. Report 11 of 2017  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2017) p 170

The United Nations Special Rapporteur on extreme poverty and human rights has also written to the Australian Government strongly criticising the drug test trial. He notes that:

'the measures proposed seem by definition disproportionate, because they expose all benefit recipients to intrusive drug testing, even though the majority of those tested will not have used any drugs. Making every recipient undergo demeaning tests and raising the suspicion that they may have engaged in illegal behavior as a condition for receiving benefits is clearly disproportionate.'<sup>14</sup>

The vast majority of people in receipt of income support do all they can to obtain employment in a job market where the number of people looking for work far exceeds the available jobs. Despite this, the random nature of the drug testing trial potentially encompasses all recipients of the specified payments, conveying an implicit message that they are under suspicion of illicit drug use that impacts on their capacity to work. This is stereotyping in its purest form, and should not be the basis on which our social security system operates. As the Special Rapporteur observes:

'[social security] is not a charitable concession whose recipients should be demonised and subjected to further social exclusion. Societies can choose to address the structural causes of poverty and commit to providing all of their members with a decent rights-affirming existence. Or they can blame the poor for their own plight, take steps to further marginalise and stigmatize them, and make it ever more difficult for them to enjoy their right to social security. Australia appears to be in the process of opting for the second of these alternatives.'<sup>15</sup>

The proposed drug testing trial has significant costs – the undisclosed financial costs and costs to the wellbeing of income support recipients. Human dignity is seriously undermined by approaches that take away individual agency and overlook the systemic causes and drivers that result in people needing income support. The equity of society as a whole will suffer if random drug testing and compulsory income management is introduced, even on a trial basis.

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<sup>14</sup> Communication OL AUS 5/2017

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23386> p 29

<sup>15</sup> Communication OL AUS 5/2017

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23386> p 30

**recommendation:**

**That the Committee recommends Parliament reject the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2019*.**

For further information about this submission please contact:

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