

## Submission to the Senate Community Affairs Legislation Committee on the inquiry into the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2019*

### Introduction

The Accountable Income Management Network (AIMN) welcomes the opportunity to respond to the Senate Community Affairs Legislation Committee's inquiry into the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2019*.

The AIMN is a nation-wide group of community members; representatives of national, state and local non-government organisations and community bodies; academics; social researchers and public policy experts.

Our members have a strong commitment to social justice and human rights and are concerned about the provision of equitable and appropriate social security support to economically marginalised Australians. The AIMN is particularly concerned with issues raised by compulsory income management through such programs and trials as the BasicsCard and the Cashless Debit Card.

Our submission addresses three key concerns with the Bill: that it relies on harmful assumptions about substance use and people who receive income support, that it has significant potential to cause harm to people receiving income support, and that it is not the most appropriate intervention to address drug-related harm.

**The AIMN expresses our strong opposition to the Bill and urges the Committee to recommend that it be opposed.**

### Key Concerns

*The Bill relies on harmful and stigmatising assumptions about substance use and people receiving income support payments.*

According to the Bill's Explanatory Memorandum, 'substance use is a major barrier to social and economic participation and is not consistent with community expectations around receiving taxpayer funded welfare payments.'<sup>1</sup> The stated aims of the trial are to 'maintain the integrity of, and public confidence in, the social security system by ensuring that taxpayer funded welfare payments are not being used to purchase drugs or support substance use' and to 'provide new pathways for identifying recipients with drug abuse issues and facilitating their referral to appropriate treatment where required.'<sup>2</sup> The trial is to be implemented in the Canterbury-Bankstown (New South Wales), Logan (Queensland) and

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<sup>1</sup> Explanatory Memorandum, Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (Cth), p. 3.

<sup>2</sup> Explanatory Memorandum, Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (Cth), p. 27.

Mandurah (Western Australia) regions. All three of these locations are also subject to several Income Management programs.<sup>3</sup>

While the Bill was purportedly introduced to deter people who receive income support from using illicit drugs, we raise the following key concerns for the Committee's consideration:

- The use of drugs in Australia is widespread- it is both discriminatory and unfair to target persons receiving social security. According to the most recent National Drug Strategy Household Survey, 4 in 10 or 43 per cent of Australians had ever illicitly used a drug,<sup>4</sup> and 1 in 6 had done so within the last 12 months.<sup>5</sup> Drug testing of income support recipients in the United States has similarly not led to evidence that this cohort is the primary demographic struggling with substance use issues.<sup>6</sup>
- The selective stigmatisation of social security recipients on the basis of illicit substance use assumes that persons receiving income support from the government are by default 'irresponsible'. We reiterate the Centre for Excellence in Child and Family Welfare's concern that this Bill is highly paternalistic, suggesting that 'people receiving social security payments are an 'underclass' of citizens requiring behaviour monitoring and modification.'<sup>7</sup>
- Evidence from the United States suggests that drug testing persons receiving social security payments is linked to governments supporting the drug testing industry, which profits off the poor by tapping into the burgeoning market for the surveillance of income support recipients.<sup>8</sup>
- The language used in the Bill clearly indicates its discriminatory nature. For example, the Bill refers to a trial participant's non-attendance or lack of punctuality for a government-required appointment as a 'mutual obligation failure'.<sup>9</sup> There are also repeated references to 'substance abuse', which is undergirded with problematic assumptions about individual culpability and negative intent around substance use.<sup>10</sup>

*The Bill has significant potential to cause harm to income support recipients, regardless of whether they are struggling with substance use.*

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<sup>3</sup> [https://www.dss.gov.au/sites/default/files/documents/04\\_2019/location-map.pdf](https://www.dss.gov.au/sites/default/files/documents/04_2019/location-map.pdf)

<sup>4</sup> Australian Institute of Health and Welfare 2017, *National Drug Strategy household survey 2016: detailed findings*, AIHW, Canberra, p. 53.

<sup>5</sup> Australian Institute of Health and Welfare 2017, *National Drug Strategy household survey 2016: detailed findings*, AIHW, Canberra, p. 51.

<sup>6</sup> <https://www.forbes.com/sites/judystone/2015/02/17/the-sham-of-drug-testing-walker-scott-and-political-pandering/#7dea50df59be>

<sup>7</sup> Centre for Excellence in Child and Family Welfare September 2019, *Submission: Social Services Legislation Amendment (Drug Testing Trial) Bill 2019*, Centre for Excellence in Child and Family Welfare, Melbourne, p. 2.

<sup>8</sup> <https://www.forbes.com/sites/judystone/2015/02/17/the-sham-of-drug-testing-walker-scott-and-political-pandering/#7dea50df59be>

<sup>9</sup> Explanatory Memorandum, Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (Cth), p. 16.

<sup>10</sup> <https://www.thenationalcouncil.org/wp-content/uploads/2016/10/Substance-Use-Terminology.pdf>

We raise the following issues with respect to the potential of the Bill to cause harm to income support recipients:

- There are significant issues with compulsory drug testing of income support recipients, not least because ‘drug testing imposes a burden on those tested, in terms of their infringement on individuals’ bodily and information privacy.’<sup>11</sup> As noted by the Australian National Council on Drugs (ANCD) in their 2013 position paper on drug testing, ‘the proposal to drug test this group is of serious concern as an additional imposition upon a segment of society that already bears so many burdens, and is heavily monitored.’<sup>12</sup>
- The Australian Medical Association has asserted its emphatic opposition to the Bill, noting that the proposed legislation will only stigmatise and criminalise persons struggling with substance use.<sup>13</sup>
- The intention to cancel a person’s payment immediately for a period of 28 days if they refuse a drug test is highly problematic, and will subject people to undue further financial hardship, emotional distress and social stigma. The ANCD has outlined the serious consequences for individuals who lose benefits on the basis of a positive drug test, including increases in poverty, homelessness, health and social costs.<sup>14</sup>
- It is concerning that income support recipients will be required to pay for drug re-test from their social security payments for any requested re-tests that come back positive, and that these costs will continue to accumulate with every positive re-test that the recipient has requested.<sup>15</sup>
- It is disingenuous that there is a mechanism in place to provide the Secretary with discretionary powers to make sure that persons should not ‘suffer severe financial hardship’<sup>16</sup> because of drug test repayment when the rate of Newstart and Youth Allowance are both demonstrably below the poverty line.<sup>17</sup>
- The AIMN also notes that while the Department of Social Services advised that they have ‘been engaging with stakeholders from the health, alcohol and other drug, and welfare sectors’<sup>18</sup>, there is no indication that they have listened to the advice given or engaged in comprehensive consultation with persons subject to compulsory income management programs such as Income Management or the Cashless Debit Card or people experiencing drug dependence.

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<sup>11</sup> Australian National Council on Drugs (ANCD) 2013, *ANCD position paper: drug testing*, ANCD, Canberra, p. 1.

<sup>12</sup> Australian National Council on Drugs (ANCD) 2013, *ANCD position paper: drug testing*, ANCD, Canberra, p. 14.

<sup>13</sup> <https://ama.com.au/gp-network-news/drug-testing-welfare-recipients-“upside-down-policy”>

<sup>14</sup> Australian National Council on Drugs (ANCD) 2013, *ANCD position paper: drug testing*, ANCD, Canberra, p. 14.

<sup>15</sup> Explanatory Memorandum, Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (Cth), p. 12.

<sup>16</sup> Explanatory Memorandum, Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (Cth), p. 15.

<sup>17</sup> [https://melbourneinstitute.unimelb.edu.au/data/assets/pdf\\_file/0009/3121686/Poverty-lines-Australia-March-Quarter-2019.pdf](https://melbourneinstitute.unimelb.edu.au/data/assets/pdf_file/0009/3121686/Poverty-lines-Australia-March-Quarter-2019.pdf) p. 4.

<sup>18</sup> Explanatory Memorandum, Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (Cth), p. 9.

- Income management has proven inconclusive at best and ineffective and harmful at worst when applied with the goal of reducing substance use.<sup>19</sup> Instead, it has caused further harm to and marginalisation of income support recipients.<sup>20</sup>
- The Bill's Explanatory Memorandum fails to recognise the shame and stigma associated with compulsory drug testing within problematic broader cultural perceptions about drug use, and how these will likely be reinforced through a coupling with the government's pathologisation of income support recipients.
- The Bill's Explanatory Memorandum does not include any analysis of how the trial will affect Aboriginal and Torres Strait Islander peoples or people from otherwise culturally and linguistically diverse backgrounds, who may have experienced significant trauma or challenging life circumstances (including refugees and asylum seekers). This Bill has potential to cause further shame, stigma and harm to people from culturally diverse backgrounds, and fails to acknowledge that supporting this cohort will mean additional requirements such as the need for interpreters and cultural awareness training for testers. Failing to address how this Bill will specifically affect Indigenous and culturally diverse communities is an oversight in assessing the potential harms associated with this legislation for groups that are already multiply disadvantaged.

*The Bill is not the most appropriate intervention to address drug-related harms.*

According to the ANCD, the drug testing of income support recipients should not be considered based on 'a faulty rationale and incorrect assumptions about people who use drugs, the nature of drug dependence, and the effects of drug testing'. The ANCD emphasises that 'drug testing welfare beneficiaries is legally and ethically questionable'.<sup>21</sup>

We concur with the ANCD's recommendation, and raise the following points in relation to the inappropriateness of the Bill to address drug-related harms:

- There is strong public support in Australia for decriminalisation approaches towards substance use and possession of illicit substances for personal use. In particular, *de jure* reform, which will involve the removal of criminal penalties for use and possession from the law, are considered a positive intervention to reduce harmful interactions between persons who use substances and the criminal justice system.<sup>22</sup>
- We reiterate our calls in previous submissions to Parliamentary inquiries on substance use and compulsory income management for the government to increase and sustain investment in community support services, including alcohol and other

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[https://www.dss.gov.au/sites/default/files/documents/08\\_2017/cashless\\_debit\\_card\\_trial\\_evaluation\\_-\\_final\\_evaluation\\_report.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2017/cashless_debit_card_trial_evaluation_-_final_evaluation_report.pdf)

<sup>20</sup> <https://accountableincomemanagementnetwork.files.wordpress.com/2019/05/aimn-submission-to-ohchr.pdf>

<sup>21</sup> Australian National Council on Drugs (ANCD) 2013, *ANCD position paper: drug testing*, ANCD, Canberra, p. 14.

<sup>22</sup> Hughes, C, Ritter, A, Chalmers, J, Lancaster, K, Barratt, M & Moxham-Hall, V 2016, *Decriminalisation of drug use and possession in Australia: a briefing note*, National Drug and Alcohol Research Centre, UNSW, Sydney.

drug counselling services and rehabilitation facilities. We note the current limited availability of drug treatment options in Australia for persons who require assistance. Conservative estimates put the number of people who both need and would seek treatment, but are unable to access it, at between 200,000 and 500,000 persons per year.<sup>23</sup>

- We advocate for greater community education with respect to responding to drug-related harms, and the necessity of a harm-reduction rather than zero-tolerance approach to substance use.

### Recommendation

The AIMN recommends that the Committee strongly opposes this Bill on the basis of both its stigmatising and punitive rationale, and its potential to cause significant harm to individuals and their families.

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<sup>23</sup> Ritter, A, Berends, L, Chalmers, J, Hull, P, Lancaster, K & Gomez, M 2014, *New horizons: the review of alcohol and other drug treatment services in Australia*, National Drug and Alcohol Research Centre, UNSW, Sydney, p. 13.