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AMA Submission to the Senate Community Affairs Legislation Committee Inquiry into the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018*

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The AMA has significant concerns about the proposed trial to drug tests welfare recipients. Elements of the proposal are unnecessarily punitive and will increase stigmatisation among the most disadvantaged in the community. There is a widely agreed upon need to increase the capacity of the drug and alcohol treatment sector, which is often unable to meet demands. The proposal will increase demand for treatment services in the trial sites, and may result in delays in accessing treatment for those actively seeking it (independent of the trial).

In July 2017, the AMA lodged a submission to the Senate Standing Committee on Community Affairs Inquiry into *Social Services Legislation Amendment (Welfare Reform) Bill 2017*. Schedule 12 of the Bill contained the proposed trial. A copy of this initial submission is attached, and a summary of the AMA's key comments relevant to the trial is provided below:

- Substance dependence or addiction is primarily a health problem, and that those affected must be treated in the same way as other patients with serious health conditions;
- Random drug testing does not distinguish between those who are one off, or occasional drug users, and those with significant dependence or addiction problems;
- The demand for drug and alcohol treatment outweighs capacity to provide timely access to appropriate treatment and support;
- Referring individuals who test positive to treatment will increase demand on these services, resulting in less capacity to assist those individuals who are actively seeking treatment (independent of the trial);
- Individuals who test positive may not wish to engage in a program of treatment. These people could ultimately lose access to their welfare payment;
- Charging individuals for the cost of subsequent testing is not only unfair, but will be a disincentive to dispute testing results;
- Quarantining the welfare payments of individuals who return a positive drug test could feasible result in increased criminal activity and subsequent incarceration in the trial sites;
- Failure to provide any financial modelling or costing of the trial, including an indicative cost of each test (which recipients will be charged for) shows a lack of accountability. There also appears to be a distinct lack of compassion and insight into how the deductions will impact people accessing these payments; and
- Despite concerns being voiced by many health and other groups, there has been a lack of meaningful consultation around proposed trial. Significant concerns remain, particularly given that the international experience suggests that the approach will be costly and ineffective.

Serious concerns have been raised about the Bill. To address the concerns about the capacity of the treatment sector in the trial sites, the Government announced an additional $10 million to be shared across the three locations for the period of the trial. The reality is that increasing capacity in the drug and alcohol treatment sector is far more nuanced than just increasing funds. We must consider the training and development of a well-supported workforce, the needs for treatment facilities and spaces (recognising that not all people will need the same level of treatment and support), the need to facilitate links with other services in the community, as well as the need for timely access to specialist addiction medicine doctors for those individuals who require it.

Concerns about the capacity of the drug and alcohol treatment sector are not new. An outcome of the National Ice Action Strategy was to task Primary Health Networks (PHNs) with commissioning local responses to drug and alcohol treatment. The effectiveness of this approach is yet to be established, and some cautionary flags have been raised. For example, in a recent Senate Community Affairs Estimates discussion it was revealed that the funds available to PHNs to commission treatment and supports is being decidedly underutilised. We are also yet to see meaningful reporting on the effectiveness of the PHNs is delivering drug and alcohol treatment services in their local communities.

The current proposal, contained in the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018*, continues to have serious flaws. In addition to the concerns noted in the earlier submission, the AMA remains concerned that the current Bill contains:

An absence of a financial impact statement

Page 2 of the Explanatory Memorandum notes that the financial impact of the amendments is not for publication. This is simply a continuation of an approach that fails to recognise the importance of financial modelling and costing of the trial. Without this information being made available, the trial and its proponents lack any real accountability. Prior to any further debate about the trial, we must know how much the drug testing will cost, both the Government as well as those individual welfare recipients who will be paying for it. This information is vital and it must be clarified as a matter of priority.

A possible outcome of the trial is that some welfare recipients will lose access to welfare payments due to continued drug use. Forecasting should be undertaken in relation to the scenario, particularly as it will increase demand on crisis support services including housing, food, clothing and health care. Clear referral and support pathways for this potential outcome should be established before the trial proceeds.

The allocation of $10 million for treatment services in the trial sites is really the only figure available to public. The failure to provide basic information about the cost hinders any meaningful discussion about the trial. It also raises the question about whether there is an unstated goal of reducing the number of people accessing New Start and Youth Allowance payments across the trial sites.

Lack of clarity around drug testing procedure

No information about the drug testing procedure is provided in subsection 32 (b) of the Bill. Initially, it was assumed that the testing would occur through the collection of saliva, similar to the preliminary tests conducted in road side drug testing. The current Bill references the possibility that testing may occur through the collection of urine and/or hair samples. Both of these tests are far more invasive. Hair testing is understood to provide much longer term information about drug and alcohol consumption. Such sensitive information is not required for the purposes of the trial. Hair testing procedure should be removed from the Bill.

It is also worth noting that urine collection can be particularly stressful for some individuals, and like hair testing will require significantly more resources. Australia already has a program of waste water testing that provides important insights into drug consumption are a broader level.

Expansion of the drugs that are being tested for

Subsection 23(1) of the Bill flags that participants will be tested for methamphetamine, methylenedioxy-methamphetamine, tetrahydrocannabinol and opioids, but it also contains an additional clause that essentially allows trial participants to be tested for other substances. Similar to the uncertainty about the testing procedures, it is also vitally important that participants in the trial have a clear understanding of what substances they are being tested for.

It is also worth noting that a program of testing for certain illicit substance may increase demand for other substances. One particularly concerning area is synthetic drugs. These drugs have largely been developed to avoid positive drug tests, but pose an equal if not higher risk if consumed. Monitoring demand for synthetics in trial sites should be undertaken over the two year period of the trial.

Is there meaningful employment available at the three trial site locations?

Unemployment data reveals that the trial sites have higher than average unemployment (Canterbury-Bankstown 7.17 per cent; Logan 6.54 per cent, and Mandurah 6.82 per cent). While the goal of Youth Allowance and New Start is to assist recipients to find employment, this may be more difficult and hence more punitive if trial occurs in an area of high unemployment. There seems to be little consideration given to whether the people involved in the trial will have access to meaningful employment.
The lack of such training and employment opportunities may contribute to drug use (particularly where disadvantage is generational). Investing in training and identifying realistic career opportunities might be a better way of addressing disadvantage in communities with high unemployment.

Drug testing payment deductions

Part 3.1C of the Bill deals with the process of deducting the cost of drug test from welfare payments. It appears that much thought has been given to ensuring that welfare recipients are billed for the cost of testing as often as possible. There continues to be significant disincentives for questioning the results of a test, with any subsequent testing to be paid for by the welfare recipient. This is also particularly concerning for individuals who return two positive tests as the Bill highlights the intention to subject these individuals to a program of regular ongoing testing. For these individuals, the impact of the related deductions on their payments could easily become problematic, making the disclosure of the test cost fundamental.

The evidence base for the proposal

The AMA is not alone in questioning the evidence about compulsory drug testing of welfare recipients. The approach has been undertaken overseas, and was found to be costly and ineffective. Further, a number of nationally significant inquiries and reports have not made any recommendation that such a trial be undertaken in Australia.

The final report of a comprehensive *Parliamentary Inquiry into the Crystal Methamphetamine* was recently released. Of the fifteen recommendations contained in the report, not one referred to the need for, and potential benefits of, random drug testing welfare recipients (or subsequent moves such as quarantining payments, or cancelling payments entirely).

The National Ice Action Strategy was developed in consultation with the community about how to deal with the problems created by crystal methamphetamine. The Strategy focuses on the importance of provided the right treatment and support at the right time. The Strategy does not provide any support

for the proposal to drug testing of welfare recipients. Similarly, the *National Drug Strategy – 2017 – 2026* is also silent on drug testing welfare recipients.

Alongside the lack of supporting evidence, it is dangerously simplistic to believe that serious disadvantage (and related behaviours) can be addressed through financial penalties. The argument fails to recognise that the determinants of health and wellbeing are complex, often residing outside of the health sector. Many of these broader factors will play a significant role in determining the likelihood of problematic drug use. At a very basic level the trial will stigmatise people with drug dependence. An unfortunate, but realistic possibility is that the trial will also increase incarceration among drug users.

No one supports the notion that welfare funds should be spent on illicit substances. However, we must also recognise that there is no compelling evidence in Australia or overseas that drug testing, income management or coerced treatment results in improved outcomes for those accessing welfare payments.

The AMA urges Parliament not to debate the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018* until the significant uncertainties have been addressed. Proper financial modelling on the costs of the trial must be undertaken. There must also be clarification about the testing procedure, the substances being tested for and the cost of the test which welfare recipients will be charged for. It is impossible to have any informed discussion about the merits of the trial without this information.

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This submission primarily refers to the following Schedules of the *Social Services Legislation Amendment (Welfare Reform) Bill 2017:*

- Schedule 12 – Establishment of a drug testing trial
- Schedule 13 – Removal of exemptions for drug or alcohol dependence
- Schedule 14 – Changes to reasonable excuses
- Schedule 15 – Targeted compliance framework

As the peak professional organisation representing medical practitioners in Australia, the Australian Medical Association (AMA) welcomes the opportunity to provide a brief submission on aspects of the *Social Services Legislation Amendment (Welfare Reform) Bill 2017*.

The AMA has previously written to the Minister for Social Services voicing concern about the proposal to introduce random drug testing for 5,000 Newstart Allowance and Youth Allowance recipients in three trial sites from 1 January 2018. The AMA also expressed its concerns about the removal of exemptions for drug and alcohol dependence [Schedule 14], and changes to reasonable excuses [Schedule 15].

The AMA considers substance dependence to be primarily a health problem, and those affected should be treated in the same way as other patients with serious health conditions. This approach includes access to treatment and supports to recovery. Currently, services for people with substance dependence are severely under-resourced in terms of equitable and sustainable funding, and personnel and geographical reach.

The Explanatory Memorandum to this Bill posits that it is contrary to community expectations that people who 'abuse' substances receive welfare payments. This overlooks the health implications, and approaches substance dependence from a moral standpoint.

It is important to emphasise that the drug test proposed in this legislation will not provide any distinction between people with substance dependence and those who are occasional or one-off drug users. This means that welfare recipients who return a positive test will be subject to exactly the same response – income management, subsequent drug testing, mandatory treatment and ultimately cancellation of their payment – despite having very different needs. The AMA believes this approach will contribute to increased demand for treatment. Demand for treatment in Australia already outweighs availability of services.

Ideally, this proposal should have been complemented by additional funding commitments for drug and alcohol interventions for occasional and one-off users who are identified during the trial, as well as funding for treatment services for those welfare recipients who are found to have more serious substance dependence.

An outcome of the *National Ice Action Strategy* was to task Primary Health Networks (PHNs) with commissioning local responses to drug and alcohol treatment. This approach is in its infancy, and there is a very real risk that the trial sites will be overwhelmed. At best, this measure will increase the demand for treatment on an already overstretched sector; and at worst, it will divert opportunities for treatment away from those who are actively seeking it (to those who may engage in one-off or occasional use and who may only be seeking treatment to ensure continued access to welfare payments).

It will be important that any trial of random drug testing of welfare recipients also closely investigates the impact such a trial will have on policing and incarceration in the trial sites. It is feasible that physical withdrawal symptoms, and a lack of access to discretionary funds, may result in some people engaging in criminal activity. This could see an increase in criminal activity within the community. Another related concern is that individuals who need access to drug and alcohol treatment may be diverted into custodial settings. Such outcomes will not benefit anyone.

The draft *National Drug Strategy 2016 - 2025* affirms the need to divert people away from the criminal justice system and into appropriate treatment. While no one supports the idea that welfare funds should be spent on illicit substances, it is important for the Committee to recognise substance dependence as a serious health condition. Regardless of whether the proposal to drug test welfare recipients is consistent with public opinion, it is inconsistent with the draft *National Drug Strategy 2016 – 2025*. This proposed legislation contains punitive measures for people affected by a serious illness, and the risk of unintended consequences, such as increasing incarceration rates among people with substance dependence, is high.

It is problematic that no costing has been provided for these drug testing measures. For fully informed consideration of potential merits and likely problems, indications of the likely costs should be publicly available. Given that recipients are being made to pay for any secondary drug tests, or any subsequent testing when disputing results, it is vital that the cost of the drug test is made transparent, and also that the price of the test is achievable for a person receiving welfare payments.

The AMA is also concerned about the changes contained in Schedule 13 and 14, which effectively dismiss serious health implications of substance dependence. These proposed changes appear to put in place an approach that will, in effect, dismiss a treating medical practitioner's diagnosis and advice. While it is unfortunate that substance dependence may be detrimental to the point of a welfare recipient being unable to undertake mutual obligation responsibilities, such as searching for employment, in some instances this health problem will be sufficiently serious for this to occur. It is not acceptable that a medical practitioner's diagnosis can be disregarded by medically unqualified people or agencies.

Under the process set out in the Bill, a person who tests positive to a prescribed drug will be subject to income management for a period of at least two years, and they will also be subject to ongoing random drug tests. If a person tests positive for a second time they will be referred to a 'medical professional' for assessment and treatment. The term 'medical professional' is ambiguous. The Government must confirm that this work will be undertaken by medical practitioners, given their expertise in diagnosis and referral for treatment.

In correspondence between the AMA and the Minister for Health, the Hon Greg Hunt MP, the Minister recognised the importance of consulting with medical bodies, including the AMA, about how this measure will impact on medical practitioners and the health system more broadly. The Minister suggested that this consultation would be undertaken by the Department of Social Services prior to the implementation of the trial. However, as yet, the AMA has not been directly consulted.

Finally, this measure will essentially mandate drug treatment for some individuals. The efficacy of mandatory drug treatment in the medium and longer term has not yet been established. If the trial is to proceed, it must include some form of evaluation. With little accountability around the costs of the measure it is important that there is at least some accountability in terms of its effectiveness.

In summary, the AMA considers these measures to be mean and stigmatising. The AMA considers substance dependence to be a serious health problem, one that is associated with high rates of disability and mortality. The AMA firmly believes that those affected should be treated in the same way as other patients with serious health conditions, including access to treatment and supports to recovery. Treatment and support services for people with substance dependence are already under pressure; this Bill will inevitably result in increased demand.

The AMA is concerned that the approach could inadvertently result in increased incarceration for welfare recipients with a substance dependence. Moves to disregard or discount medical advice about the capacity of those with substance dependence is also problematic. In order to minimise the risk of unintended consequences associated with the Bill, thorough consultation and refinement of the Bill is recommended.

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