



Western NSW Community Legal Centre Inc

27 September 2019

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senators

RE: Submission on the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

Introduction

The Western NSW Community Legal Centre (**WNSWCLC**) is grateful for the opportunity to make a submission on the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (**Drug Testing Trial Bill**).

WNSWCLC is a community-based, not-for-profit organisation that provides free legal services to people in the Orana/Central West region in NSW. WNSWCLC provides legal advice, ongoing casework, referrals and representation, and offers outreach services to rural and remote towns, servicing an area of approximately 200,000 square kilometres, including Bourke, Lightning Ridge, Walgett and Cobar. WNSWCLC also engages in community legal education, law reform and offers media comment on issues of importance.

WNSWCLC's service is designed to make legal services accessible to people who experience social, economic and/or geographic disadvantage. A significant proportion of WNSWCLC's clients are welfare recipients receiving the Newstart Allowance, Disability Pension, Aged Pension and/or a Carer's Pension. For many of these clients, their Centrelink payment is their sole source of income.

Based on its experience providing frontline legal services to vulnerable Australians, including welfare-dependant clients, WNSWCLC strongly believes that the Drug Testing Trial Bill is an inappropriate method of addressing the social barriers faced by vulnerable job seekers because it heightens the stigmatisation of welfare within Australian society and compounds the social exclusion experienced by welfare recipients. In Part 1 of this submission, WNSWCLC explores how singling out Newstart and Youth Allowance recipients as a group

susceptible to drug-use, and subjecting them to mandatory drug-testing, will make it harder for jobseekers to reintegrate into working society. The Drug Testing Trial Bill is therefore unfit for its stated purpose of “breaking down barriers that prevent people from getting a job”¹ and the WNSWCLC calls on the Senate Standing Committee on Community Affairs (**Committee**) to recommend that it be abandoned.

Part 2 of this submission explores Australia’s international commitment to the promotion and protection of the special rights and vulnerabilities of children and considers how the Drug Testing Trial Bill inadvertently undermines this commitment. In the event that the Drug testing Trial Bill is not abandoned, WNSWCLC calls on the Committee to recommend amendments to the Drug Testing Trial Bill to exclude children (aged 16-17) in receipt of Youth Allowance from the trial.

Part 1 – Stigmatisation, discrimination and social exclusion of welfare recipients

In Australia, unemployment and the receipt of welfare is highly stigmatised because of the high societal value attached to work, and the role of employment as a key mechanism for economic and social integration.² As a result, distinctions are indiscreetly drawn between the “deserving” and “undeserving” poor, and welfare recipients are frequently and publicly admonished for being “bludgers”. The Drug Testing Trial Bill singles out Newstart and Youth Allowance recipients for mandatory drug testing and, in doing so, perpetuates the stigma attached to welfare by linking it with drug usage.

Whilst WNSWCLC recognises that some welfare recipients do use drugs, not all drug-users are welfare recipients. In fact, a 2008 report on Drug Use in the Australian Workforce found that drug use was “significantly more prevalent among those in the paid workforce compared to those not in the paid workforce”.³ It found that people in the paid workforce were 20% more likely to report drug use over their lifetime and approximately 5% more likely to report drug use in the last 12 months than people not working.⁴ By only addressing the use of drugs by Newstart and Youth Allowance recipients and not introducing any provision to address drug use by working Australians, the Drug Testing Trial Bill makes a public policy statement that drug-use is only a problem for the unemployed. The public association of welfare with drug use perpetuates the characterisation of welfare recipients as unproductive members of society, undeserving of support, heightens the social exclusion, shame and lack of self-worth already felt by many welfare recipients, including clients of the WNSWCLC, and increases the social divide between those who work and those who do not.

¹ Commonwealth, *Parliamentary Debates*, Senate, 11 September 2019 (Mr Ben Morton, Assistant Minister to the Prime Minister and Cabinet), 14.

² See generally: Manuel Castells, *The Rise of the Network Society – The Information Age: Economy, Society and Culture Volume 1* (Wiley-Blackwell, 2nd Ed, 2000).

³ Ken Pidd et al, *Drug Use in the Australian Workforce – Prevalence, patterns & implications* (Flinders University, January 2008) [available at: <http://nceta.flinders.edu.au/files/8212/6317/9671/EN404.pdf>] p.2.

⁴ Ibid.

For Newstart and Youth Allowance recipients who test positive to drugs, this stigmatisation becomes even more public and pronounced as they face having their welfare payments income managed. A significant criticism of previous income management trials around Australia (for example Cashless Debit Card trials) has been that the public act of using an income management card compromises welfare recipient's right to privacy and anonymity. The use of a Cashless Debit Card in an everyday transaction (for example, when buying groceries) publicly identifies the user as a welfare recipient who is not trusted to manage their own money, and in the trial areas where income management is not already in place, the use of a Cashless Debit Card will also identify the person as a drug-user exposing them to further unwarranted judgment and discrimination. Labelling jobseekers, who are already isolated and stigmatised for not contributing to society, as "drug-users", simply heightens their feelings of social exclusion making it harder for them to reintegrate into working society.

Under the *International Covenant on Economic, Social and Cultural Rights*, every person has an unconditional right to social security, free from discrimination of any kind.⁵ To fulfil its international obligations, the Australian government must implement a social security benefit system which offers a base level of financial support sufficient to satisfy its citizens' rights to health care, basic shelter and housing, water and sanitation, foodstuffs and the most basic forms of education.⁶ The right to social security therein exists as a mechanism to combat poverty and social exclusion.⁷ However, the Drug Testing Trial Bill does the opposite. The Drug Testing Trial Bill shames welfare recipients for failing to contribute to the work economy and, contrary to its stated purpose, heightens the barriers faced by jobseekers in reintegrating into mainstream society. WNSWCLC strongly believes that the scheme proposed by the Drug Testing Trial Bill will compound existing social, economic and mental barriers faced by welfare recipients and is therefore completely unfit for purpose.

Part 2 – Exclusion of children from trial on basis of special vulnerability

Under Schedule 1, clause 32 of the Drug Testing Trial Bill, "potential drug test trial member" is defined as a person, in the relevant trial period, in a drug test trial area, who has made a claim for Newstart allowance or for Youth allowance that is not based on the person being a new apprentice or undertaking full-time study. Whilst a person must be 22 years of age to be eligible for Newstart, a person is eligible for youth allowance when:

- a. they are aged 16 to 21 and looking for full-time work;
- b. they are aged 18 to 24 and studying full time;
- c. they are aged 16 to 24 and doing a full-time Australian Apprenticeship;
- d. they are aged 16 to 17 and independent or needing to live away from home to study;
- or
- e. they are aged 16 to 17, studying full time and have completed year 12 or equivalent.

⁵ *International Covenant on Economic Social and Cultural Rights*, opened for signature 16 December 1966, 9993 UNTS 3 (entered into force 3 January 1976), art 9.

⁶ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security*, 39th sess, UN Doc E/C. 12/GC/19 (4 February 2008), 59(a).

⁷ *Ibid* at [28].

Consequently, 16-17 year olds who are eligible for Youth Allowance on the basis that they are looking for full-time work or living away from home to complete study, other than full-time study, fall within the definition of "potential drug test trial member". WNSWCLC views this to be particularly problematic because subjecting children to the social stigma and exclusion referred to in Part 1 is a clear violation of Australia's commitment to the protection and promotion of children's rights.

By signing and ratifying the United Nations' *Convention on the Rights of the Child (CROC)*, along with other international treaties concerned with the special vulnerability of persons under 18, Australia has agreed that in all actions concerning children, the best interests of the child will be the primary consideration. Australia has further agreed to protect and promote the special rights of children to privacy, not to be discriminated against, to benefit from social security and to be protected against unlawful interference with their honour and reputation.⁸

WNSWCLC acknowledges that the Explanatory Memoranda to the Drug Testing Trial Bill contains a statement of compatibility with rights of children, including compatibility with the rights of family and children to special assistance and compatibility with article 3 of the CROC. However, these compatibility statements are solely concerned with the rights of children whose parents and/or guardians are subjected to drug-testing and the parents'/ guardians' ability to "find work and support themselves and their children".⁹ No consideration appears to have been given to the fact that the Bill could subject children (aged 16-17) who are in receipt of Youth Allowance to drug-testing and Australia's international obligations in protecting the special vulnerability of these children. Consequently, WNSWCLC believes that if the Drug Testing Trial Bill is to be enacted into law, provision must be made excluding all 16 and 17 year old Youth Allowance recipients from the definition of "potential drug test trial members" on the basis they are especially vulnerable and their rights require special protection.

Should you wish to discuss this please do not hesitate to contact the writer.

Yours faithfully

Western NSW Community Legal Centre Inc

Per:



Patrick O'Callaghan
Principal Solicitor

⁸ *Convention on the Rights of the Child*, see in particular, arts 2, 3, 16 and 26.

⁹ Explanatory Memoranda, Social Services Legislation Amendment (Drug Testing Trial) Bill 2019, 31.