

Att: Senator the Honourable Joe Ludwig
Minister for Human Services
Parliament House
Canberra ACT 2600
Email: Minister@humanservices.gov.au

25 February 2008

Dear Minister,

The Australian Injecting & Illicit Drug Users League (AIVL) welcomes the opportunity to provide the Australian Government with our views on how the *Job Capacity Assessment* and the *Job Capacity Account* services can better meet the needs of people who are experiencing barriers in accessing the current welfare support system.

Before outlining our specific views on the *Job Capacity Assessment* and the *Job Capacity Account* services however, we would like to briefly explain why AIVL has a unique and important voice to add to this review process and take the opportunity to place our comments in a broader 'system-wide' context.

Who does AIVL represent?

The Australian Injecting & Illicit Drug Users League (AIVL) represents issues of national significance for people who use or have used illicit drugs including people currently in drug treatment and is the national peak organisation for state and territory drug user organisations. AIVL and its members are 'peer-based' organisations which mean they are run *by* and *for* people who use/have used illicit drugs. Although AIVL and its members provide a range of programs, activities and services in relation to health, legal and social issues for people who use/have used illicit drugs, unlike other non-government organizations, AIVL and its members have direct experiences of many of the issues we seek to represent and in this sense, act as a 'voice' for people who use and have used illicit drugs in Australia.

The Need for Reform:

To achieve this, AIVL believes that along with the review of the JCA system, the Australian Government should also undertake a complete review of the current 'welfare' approach. Some of the most critical components of this review are:

- **A policy review of the fundamental principles and philosophy that currently underpin the Australian 'welfare' approach** – this would shift people's individual and collective experience of the system from one of fear, punishment and demoralisation to one of fairness, empowerment and social inclusiveness.
- **Removal of the direct link between income support stream and mutual obligation/job activity requirements** – no person should have their income support suspended for any period due to missed appointments or actions not taken in relation to job activity requirements. AIVL believes that a commitment to ensuring that all Australian citizens have access to a basic level of shelter, food, safety and health care is a matter of fundamental human rights. Currently this

commitment is routinely violated when people are breached and their welfare payments are suspended or stopped. In many cases, the decision making in relation to breaching is also arbitrary, unfair and discriminatory with inadequate provisions for appeal. Many of the most marginalised people AIVL represents experience extreme hardship when their benefits are removed, in particular people with young children. In discussions with people who use/have used illicit drugs in preparation for this submission a number of people shared with us the impact that 'being breached' has had on their lives including:

- Loss of housing and homelessness;
- Family breakdown;
- Violence and sexual assault;
- Not having food to eat for many days;
- Not being able to feed or house children;
- Forced to engage in criminal behavior to survive;
- Unable to pay for medication including: methadone or buprenorphine leading to withdrawal and re-engagement with illicit drug use;
- Having to walk long distances to access emergency services or job network appointments due to no money for transport;
- Exacerbation of existing health problems due to living under such harsh conditions including chronic depression.

Although there is an appeals process in relation to breaching decisions, AIVL believes this process is inadequate and does not sufficiently take into account that it is the most marginalised clients who are likely to be breached by the system. These same clients are often people who have experienced significant discrimination and poor treatment in other parts of the system and within other services. They are extremely unlikely to challenge a decision and instead often disappear from the system into a life of extreme hardship. A separation of the income support stream and job activity requirements would also lead to a more effective implementation of the Personal Support Program (PSP). Currently many of the most marginalised people are afraid to access the PSP for fear that such engagement will only lead to more onerous reporting and mutual obligation requirements. AIVL believes PSP should be available for any person who wishes to access a program of structured support and this access should be available regardless of their income support stream.

- **Review of the 'one-size-fits-all' approach** – which would allow for individualized support and assistance plans with the flexibility to trial job placements or educational courses, undertake regular volunteer work, a broadening the criteria for 'approved activities', etc. This will provide a system that values the full range of contributions that people can make to the community and does not only measure and assess people according to their economic value to the community.

AIVL is not suggesting a system that has no accountabilities but rather a system that is flexible and responsive to individual need and brings a much greater likelihood of continued engagement with some of the most marginalised and disadvantaged.

- **Review the 'quota' system of the Job Network providers** – AIVL is extremely concerned about the impact of the 'quota' system on the quality of services provided by some of the job network services. Requiring job network providers to place individuals in 'employment' or 'study' for their funding installments has led to poor quality services and is not an appropriate service model for a welfare support system designed to address the needs of some of the most vulnerable in society.

Specific Issues and Recommendations in relation to the JCA System:

The stated goal of the Job Capacity Assessment (JCA) program is to assist people with barriers to work. It involves providing a "comprehensive work capacity assessment conducted by specifically trained allied health professionals" who are able to refer people directly to employment services, or other short term support services to become "work-ready". A program that is designed to assist people with barriers is an admirable goal, but the current JCA program falls short in a number of ways. In practice, the program falls well short of its aims when it comes to meeting the needs of people with complex vulnerabilities, particularly people who use/have used illicit drugs who also have co-morbidity issues. In particular, AIVL believes the JCA, as it sits within the current Welfare to Work system, cannot meet the government's social inclusion agenda because:

- it is tied to a system that relies on punitive measures;
- work capacity is rigidly defined and applied;
- it has a short-term focus when it comes to referring people to support services (through the Job Capacity Account), when in fact many people with work capacity problems have long term needs;
- it's sole focus is on economic inclusion; and
- assessors are poorly trained and ill-equipped to deal with people with complex vulnerabilities.

The remainder of this submission focuses on the above points and includes recommendations that AIVL believes would more fully meet the aims of social inclusion across the whole spectrum of life: economic, social, psychological and political.

A system that Relies on Punitive Measures:

Any review of the JCA program must take account of the broader context within which JCA operates - that of the Welfare to Work system. This is a system that, far from assisting in the transition to work for those who are willing and able, is based on a regime of punishment and financial penalty, promoting mistrust and fear. Because JCA operates in this same milieu, it serves to further perpetuate the fear and mistrust experienced by those encountering the system in general. For clients who request or are

referred for assessment, the JCA program is simply seen as a part of the system that is there to 'catch them out', not to assist them. This is exacerbated by:

- **JCA reporting** – under the JCA system clients are required to divulge highly sensitive personal information to a complete stranger who is in a position of influence over decisions relating to their income. There is a very real fear about who has access to these reports, and this can obviously impact on clients' willingness to openly and honestly discuss their barriers to working. Reports are sent to both Centrelink and employment (and other) services, yet clients must use Freedom of Information (FOI) legislation to get access to these reports. The FOI system is a complex, time consuming and often expensive process that is considered intimidating even by those with significant experience in advocating for basic rights. It is unlikely in the extreme that highly marginalised clients of the JCA system will even attempt, let alone file, a FOI application so they can see the contents of a report about them. This unlikely event is made even more remote by the very real fear on behalf of clients that they will be considered a 'trouble-maker' and potentially face further punishment if they were to attempt to enforce their right to access personal information through an FOI application.
- **Attendance at assessments are linked to penalties** - For people currently on Newstart Allowance, inability to attend their assessment interview results in a participation failure, which impacts on them financially. It is assumed that people receiving income support have nothing better to do (or no other demands on their time) than attend appointments that are often made without reference to the client. Clients are often sent letters informing them of date and time of their appointment, and they are (or can be) penalised for non-attendance. This ignores the reality of many people's lives, people who may be juggling legal, financial, medical and personal issues that prevent them from attending or changing their appointments. For example, clients simply may not have the money to either make a telephone call or physically get to their JCA appointment. Clients who are currently on an opioid substitution program may have a small window of time each day where they are required to attend a clinic for dosing and are not in the position to change these arrangements. Others have family and other responsibilities that require notice and planning to change.
- **A lack of transparency in how the JCA program works and its linkages to other programs** - particularly programs such as the Personal Support Program (PSP), which is also regarded with fear and suspicion. Unfortunately for many, the PSP becomes yet another set of 'hoops' the most vulnerable and marginal in society must jump through in order to get income support. Even for those who would like to access the PSP however, there is no direct referral process into PSP from the JCA program, but people must be referred by Centrelink. This currently acts as an unnecessary barrier to participation in PSP and to appropriate specialist support.

Recommendation: The government should immediately remove the requirement for clients to use FOI to gain access to the reports written about them. Instead, Centrelink should be compelled to provide clients with a copy of their JCA report on request and without prejudice.

Recommendation: The government should immediately uncouple the JCA program from the penalty system and introduce more flexibility into how appointments are arranged. This is based on the need to separate income support needs from vocational support needs.

Recommendation: A “no wrong door” approach should be applied within the JCA program so that people needing access to other support programs (such as PSP) can do so no matter how they enter the system. The requirement that referral be made by Centrelink should be removed.

Recommendation: The government should consider providing incentives for people choosing to undertake certain activities in relation to increasing their capacity to work. As part of a social inclusion agenda, It is strongly recommended that the government re-focus on creating a system that provides incentives for participation rather than punishing people.

Rigid Definition and Application of Work Capacity:

Under the current JCA program, clients are assessed as either capable of working a proscribed number of hours per week (and are referred to a Job Network provider) or as not capable of working for the next 2 years due to disability, illness or injury (and hence qualify for a Disability Support Pension). Some of these people may find themselves in the Personal Support Program (PSP), usually via Centrelink referral. This rigid and inflexible approach to capacity leaves a large number of people to fall through the gaps and not receive the support they may need. Many people receiving income support experience a range of circumstances that impair or limit their real capacity to work. They do, however, have sufficient pride to want to present well, and will often over-estimate their own capacity to undertake work activities. Such people, in reality however, fit neither the criteria for full/partial capacity nor the current guidelines for the Disability Support Pension, as the following personal story illustrates:

- Jemma is a young person who injects drugs (21 years of age) who is currently receiving Newstart Allowance, having shifted from Youth Allowance on her 21st birthday. Jemma did not complete year 10 and she has court cases pending, related to her drug use. Jemma is on a good behaviour bond and is reporting to Probation and Parole. She has been on an opioid substitution program for approximately 6 months at a public clinic, but is not yet considered stable enough to transfer to the more flexible arrangements of community dosing at a local pharmacy (nor does she have the financial resources that would enable her to do so as the costs of dosing in this environment is carried by the consumer). Jemma does not enjoy housing stability, and is effectively homeless, although she maintains an address for Centrelink’s purposes. Jemma is unable to be honest about her housing situation for fear of losing some of her income support. She is currently sub-letting a small unit from a public housing tenant, but lives in a state of near-constant stress and anxiety over when this situation might suddenly change. Jemma has been assessed as having the capacity to work 15 hours or more per week, yet she struggles with even seemingly simple tasks, such as remembering her many appointments, getting to those appointments and making it to the clinic on a daily basis in order to be dosed. The reality of Jemma’s life is such that she is really not mentally or physically capable of working (if she could find an employer willing to hire her), nor of attending the range of current programs designed to make people work-ready in the short term. Despite the significant obstacles in her path, Jemma

has enrolled part time in a flexible learning Year 10 course to better her life. This is not an approved activity under Jemma's current activity agreement.

Recommendation: There needs to be an expanded definition of capacity, one that takes into account a large number of people whose capacity to work 15-29 hours per week is limited by the disadvantage they experience on a daily basis in their lives. People falling into this category need to have security of income support, and a measure of flexibility in terms of meeting their mutual obligations and activity agreements. For example, entering an opioid substitution program should be recognised as an approved activity, and should exempt clients from having to undertake other activities for a period of at least 6 months, with the possibility of extending this period should it be necessary. At the centre of this recommendation is the recognition that some (but by no means all) people who use or have used illicit drugs may have a complex range of needs that are not currently recognised in the system.

Job Capacity Account – Short Term Focus:

Job Capacity Account funds allow for the provision of short term services to get clients "job ready". This part of the JCA program only caters to those with problems, issues or barriers that are able to be addressed in a very short time frame. Most typically, these will be issues that involve physical barriers and issues that are easily resolved. For those AIVL represents, however, services with a short-term focus are both inadequate and inappropriate, and can even be counter-productive in that failure to achieve success after attending such a service is both demoralising to the client, and can result in penalties in terms of their income support when they do not emerge "job ready" at the other end. Failure in this context benefits no-one and indeed often serves to simply reinforce poor self-esteem when people see themselves as 'failing' even when they are given apparently 'intensive' support. Far from being socially inclusive this approach just further marginalises people and can eventually force them out of the system altogether. The reality is that rather than being a demonstration of individual failure the short term focus of service provision for these clients is a case of the system failing individuals.

Recommendation: The government should consider expanding the Job Capacity Account to provide linkages (and funding) to appropriate medium and long term services for people with chronic and complex vulnerabilities. The range of qualifying services should be expanded to cover a diverse mix of service provision, particularly in the area of problematic drug and alcohol use and comorbidity issues.

Exclusive Focus on Economic Participation/Inclusion:

Whilst acknowledging that the JCA program is part of a system dedicated to workforce participation and necessarily has economic participation as a primary focus, it needs to be recognised that people are not merely productive economic units, and even that some people do not even wish to be predominantly defined in economic terms. The argument has been made that workforce participation is the pathway to social inclusion, and that by securing a job people are able to play a full role in Australian life, economically, socially, politically and psychologically. However, it can be just as strongly argued that inclusion in other spheres actually leads to economic inclusion. People who, for whatever reason, do not participate in the workforce must be supported (financially and emotionally) to determine other meaningful ways to participate in society. It should be acknowledged that some people may never be in

a position to participate in the workforce, but that they might make meaningful and valuable contributions to society in other ways.

Recommendation: As part of the assessment process, the JCA program needs to incorporate mechanisms by which people can be recognised for activities they undertake outside the economic sphere. Such activities would include anything that can demonstrably be shown to increase and maintain people's engagement and/or improve their capacity to participate more fully in life, with economic participation as one of a number of factors or criterion. This has important flow on effects to the wider community. When individuals are able to build their sense of value and self-worth by taking small steps with a range of activities not directly related to work, our society as a whole will benefit. Whilst economic participation through paid work might remain the ultimate goal, it should not be seen as the only acceptable short-term goal. The JCA program needs to feed in to a wider system of reform in this regard, particularly in relation to mutual obligation and what constitutes an approved activity.

JCA Provider Expertise – Lack of Qualified Assessors:

The issue of assessor expertise and qualifications is, quite possibly, the most serious of all the deficiencies within the current JCA program, and it certainly feeds back into the other issues mentioned above. Scrutiny of the list of providers on the Government's Human Services website (<http://www.humanservices.gov.au/jca/providers.html>) reveals not one (with the possible exception of Mission Australia) service with any expertise in alcohol and other drug (AOD) issues. Many, if not most, of the service providers are employment services, and a number specifically deal with physical disability and workplace injuries. There is, it must be said, at least the potential for a conflict of interest where employment service providers are assessing people's capacity to work, and where it might be argued there is a pre-disposition to find that people are capable of working. This is compounded when assessors have no knowledge of the complex vulnerabilities that those receiving income support quite typically face.

Although it is claimed that assessments are undertaken by "specifically trained allied health professionals", the fact that there are no specialist assessors with AOD expertise is alarming. JCA providers are currently assessing people's capacity to work in almost total ignorance of the kinds of issues people who use or have used illicit drugs have to cope with. For example, they are not skilled in drilling down to establish real capacity, they merely ask surface questions, and take responses at face value. It must be remembered that many people who use or have used illicit drugs are accustomed to withholding information that could be detrimental to them – this is imbued in their very existence, where they may be punished as a result of their drug use. It is very difficult for drug users (and people with problems generally) to be open and divulge personally sensitive information, particularly in a climate which is perceived as overwhelmingly punitive, and where the assessors have no empathy or understanding of their specific issues and barriers. Furthermore, it must be remembered that people who use or have used illicit drugs, just like other people, are also motivated by a sense of pride in themselves (no matter how much that sense has been eroded by constant negative encounters with the system). They may be reluctant to admit they don't have the capacity to undertake a minimum of 15 hours of work related activity per week. Indeed, they can often present as highly capable at interview, but a skilful questioning about day to day capacity to meet their obligations might paint a more realistic picture of the barriers that exist. People in this situation can present as 'capable' of more than 15 hours of work on one day but this does not mean that the same

assessment of their capacity would be reached on another occasion or that they will be capable of sustaining that capacity for ongoing employment in the short, medium or longer term.

A question also needs to be raised about the type and quality of the training that is currently provided to JCA assessors. How well does this training equip them for assessing and supporting people with complex vulnerabilities and chronic health problems? One of the ways this question could be answered is by examining whether training currently being provided to JCA assessors routinely involves people with complex vulnerabilities and chronic health issues acting as trainers. In the health sector, the role of 'consumers' in health care worker training is well recognized and respected. The reason for this is that it often improves the quality of the training and allows service providers to explore the reality rather than the theory of what it is like to be on the 'other-side of the counter or desk'. It can be invaluable for service providers to put themselves, even briefly, into the shoes of those receiving services as a way to improve the targeting and quality of service delivery. To AIVL's knowledge client or consumer participation in workforce training for JCA assessors and other staff within the broader welfare system is not currently undertaken.

Recommendation: It is strongly recommended that the JCA assessment process be made independent of employment service provision and that specialist assessors with a range of mental health and AOD sector experience be engaged to provide capacity assessments. The assessment instrument for capacity needs to be expanded to identify drug related/mental health issues that may hinder or limit a person's capacity to work. Such limitations must be recognised by the assessment process as legitimate barriers.

Recommendation: It is strongly recommended that inclusion of the client or consumer perspective within JCA assessor and other welfare system workforce development training be included as a matter of urgency and that this client participation be undertaken by current clients of the system with support from appropriate consumer representative organisations such as AIVL.

Conclusion:

AIVL would once again like to thank the Australian Government for the opportunity to provide some insights and recommendations from the perspective of people who use/have used illicit drugs on the Australian welfare system and the JCA in particular.

Given the unique perspective that AIVL brings and the potential impact that any changes to the current system will have for the people we represent, AIVL would be very pleased to organise one or more focus groups with people who use/have used illicit drugs to discuss any of the issues we have raised in more detail.

AIVL is based in Canberra and can, in partnership with our local member organisation, co-ordinate a focus group at reasonably short notice. AIVL also auspices a local Indigenous youth organisation: *The Connection* which is run by and for young Indigenous people who use or have used illicit drugs. Given the specific issues for Indigenous young people in relation to the welfare support system, *The Connection* would also be keen to be part of any focus group organised. As we also have member organizations in each state and territory of Australia we can possibly also organise focus groups in other jurisdictions if timeframes and resources permit.

We are aware that the timeframe for the review of the JCA system is very tight to allow findings from this process to inform upcoming tender processes. If a focus group is not possible within this timeframe, one or two representatives from AIVL would welcome the opportunity to meet with you and your staff and/or other members of the Government to discuss the issues we have raised in relation to the JCA and the system more broadly.

We look forward to discussing our submission with you and want to thank you for your consideration of this matter.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read 'Annie Madden'.

Annie Madden
Executive Officer

Cc: Minister for Employment Participation

Cc: Minister for Families, Housing, Communities and Indigenous Affairs