



To the Committee Secretary, Senate Standing Committees on Community Affairs

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

The Australian Unemployed Workers Union (AUWU) is a national, volunteer organisation dedicated to advocating for and protecting the rights of unemployed, underemployed, un-waged workers', and all recipients of Social Security payments. The AUWU currently has over 15,000 members across every state and has no political affiliations.

The AUWU is run entirely by volunteers. The AUWU has extensive experience assisting – not only unemployed workers<sup>i</sup> within the jobactive system – and of all the other categories of Social Security System payments.

It is disappointing that the government has reintroduced this legislation when there has already been so much evidence that these drug testing measures will not alleviate unemployment. This trial has already been the subject of a Senate Inquiry in which much learned evidence and opinion was provided<sup>ii</sup>. By far the majority of submissions<sup>iii</sup> rejected the trial because it will not achieve the stated goal of reducing drug misuse amongst people who receive welfare payments; and it will not in any way contribute to improvements in the welfare of Newstart recipients or contribute towards their employability. Although this trial initially is only for Newstart recipients in the trial regions, it will almost certainly lead to a national expansion as this has been how most other federally tested programs have proceeded in the past.

The AUWU objects to this trial on human rights, constitutional and practical grounds as it manifestly will not lead to improvements in the welfare of people on Newstart with addictions. The drug testing trial should not proceed because it will be ineffective – drug testing does not work as a means towards addiction rehabilitation; and drug testing is a waste of money public money better spent on treatment services.

There are already sufficient provisions in place in the jobactive system to divert Newstart recipients to drug treatment were this has been identified as a barrier to employment. These 'reasonable excuse' provisions were introduced in July 2018 and directly draw on substance misuse as disclosed to the provider. This measure has already been introduced practices to divert claimants into treatment are already in place – recently the media quoted there has been 5000 treatment referrals in jobactive services. The AUWU believes these measures are sufficient for identifying jobactive clients whose drug or alcohol misuse has affected their employability.

We believe the government should be reforming welfare services so that they empower individuals and communities; rather than punishing the poor with more poverty that will further distance them from the goals of economic integration.

The remainder of this submission comprises evidence-based responses to the Terms of Reference illustrated by case studies drawn from AUWU volunteers and members<sup>iv</sup>. The AUWU is also responding to the Newstart Inquiry and we encouraged unemployed workers to make submissions. The quotes we use in this submission are from individuals who have provided permission for the AUWU to draw on them in our case studies for these inquiries,



Not compliant with article 17 of the ICCPR

The AUWU believes the legislation is not compliance with article 17 of the ICCPR which affords the right to protection against arbitrary or unlawful interference with their privacy, family, home or correspondence. The explanatory memorandum engages the argument that the drug testing trial is a 'reasonable and proportionate limitation on the right to privacy under the ICCPR in order to achieve the objective of ensuring appropriate use of welfare payments and identifying people with drug misuse issues and assisting them to address those issues'.

The AUWU does not believe the benefits of the drug testing measure are necessary and proportionate to the level of interference they entail. This is because drug testing does not increase employability and income support payments are being sanctioned for activity that is not directly related to receiving support for unemployment. The arguments against drug testing already heard by the Senate's last inquiry were overwhelming in the consensus that mandatory treatment would not assist people with drug misuse and addiction issues.

Further it will drive these people further away from support and increase their reliance on crime to meet basic needs such as rent and food. The levels of homelessness amongst this vulnerable population are likely to increase. This means that the effects of drug testing will not be proportionate with meeting the goal of ensuring welfare payments are spent appropriately.

There is also limited evidence that welfare payments are spent on drugs. The vast majority of unemployed workers are not drug users and they struggle to meet the costs of rent and other basics of survival already. It is not proportionate to test the entire trial region population when official data suggests that only 3.2% of welfare recipients are drug users.

#### *Recommendation*

The government's justification for the trials should be reviewed by the UN's Special Rapporteur for Human Rights.

#### *Constitutionality*

The AUWU believes there are reasons to question the Constitutionality of Drug Testing because it is not a service that assists the unemployed, as for example, is the argument for the existence of Mutual Obligations. The Parliament hardly needs reminding that the Constitution of Australia provides limited powers to the Commonwealth to legislate for the provision of social services (in fact as amended after World War II). Section 13A of the Constitution<sup>y</sup> is where the Commonwealth's powers are derived in relation to legislation for social services.

“(xxiia.) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances:”.

Our concerns about the constitutionality are based on our observation that drug testing because it is not a service that assists the unemployed. The drug testing measures requires citizens to agree to drug testing as a condition of welfare payments. If Newstart claimants do not agree to testing, they will not



get their payments. The requirement to agree to drug testing is an administrative arrangement but it is unclear what Constitutional power is invoked as it is not a social service. Furthermore, the legislation will require people who fail the first test to buy the second test from their own funds. Again, this is imposing an administrative requirement on applicants that we believe is not within the powers of the Commonwealth to legislate. Furthermore, the measure effectively conscripts people into receiving unwanted medical or psychological treatment in ways that have dubious Constitutional sources.

The AUWU is also concerned about the impact of the measure on people who are already working part-time and receiving part-rate Newstart payments. If they refuse a drug test, and are already working, their part-rate Newstart (job seeker payment) will be cancelled. This reinforces the point that drug testing is an administrative requirement that does not have any bearing on getting people into work. Rather it will be legislated as a condition of the claim for payment and imposes unwanted medical or psychological treatment in ways that have dubious Constitutional sources.

#### *Recommendation*

Before proceeding with the trials, it is important that the Senate takes advice as to the Constitutionality of the provisions and makes this scrutiny available to citizens.

#### Discrepancies in compliance framework

Changes to compliance framework (i.e. the compliance with notices) section requires recipients to attend Services Australia appointments for drug testing, and suspends payments without back pay (without reasonable excuse). This introduces variations to the Targeted Compliance Framework (TCF) that don't involve the accrual of demerit points rather it uses provisions from the previous compliance framework 'suspend until they attend and no back pay' provisions. This is effectively a more draconian approach than the demerit system because financial penalties are immediate. These 'sudden death' provisions were removed from the TCF because it was recognised that there was a level of inadvertent 'participation failures' that should not be punished with financial penalties. The return to sudden death arrangements is likely to disproportionately affect those who are the most vulnerable such as the homeless and is inconsistent with recent public policy on job seeker compliance.

#### *Recommendation*

If the government proceeds with the drug testing trials, the use of the TCF demerit system should be evoked instead of the 'suspend until they attend and no back pay' model.

#### Empowering the unemployed

The AUWU is concerned about the impact of drug testing on unemployed workers who are already suffering from reduced self-efficacy, low self-esteem and poor mental health. These measures will do nothing to empower unemployed workers and will further lead to further stigmatisation through income quarantining. Further, Newstart recipients who do not take the tests will be sanctioned and will have payments cancelled. This kind of payment conditionality will not result in behavioural change. Recent evaluation of welfare conditionality in the UK reinforced evidence that such measures actually 'distance people from support; causing hardship and even destitution; displacing rather than resolving issues such as street homelessness and anti-social behaviour; and negative impacts on "third parties," particularly children'.



### Recommendation

If the government wishes to provide help for people experiencing addiction, these should be provided through sensitive community outreach. Funding for the drug trials should be diverted to community agencies with expertise in outreach, and to increase the availability of treatment beds and therapeutic communities.

### Direct quotes from unemployed workers

Our observations in this submission are supported by quotes we collected recently from unemployed workers for the Newstart Inquiry. These quotes show the extent to which Newstart recipients are struggling to get by and the humiliation they are already exposed to.

*People pushing walking frames and others who can't even physically carry their groceries out the door. They aren't drug addicts and gamblers that the government would have you believe, which is nothing but a smoke screen to deflect the press away from the real plight of how the hell can anyone live existing on stuff all? - Mature aged man*

*IMHO the Government needs to accept that the vast majority of people on Newstart aren't there because they want to be! I can't see how anyone could afford to buy drugs, cigarettes or alcohol and still pay rent, bills and buy food and clothing on \$250 a week? – Mature aged man*

*who used have hope of things getting better but have now excepted their lot in life and have given up and just sit around waiting till the end comes none of us do drugs or drink we keep to our self and are polite but it does not matter if you are a good person or not . – Young man*

*Living frugally is a thankless task. Despite spending less on indulgences than the rest of the population, poor people on Newstart are reminded of how much they are distrusted and that they might someday need to move onto a cashless welfare card or urinate in a jar for fear they have too much financial freedom. Is it really so scary to imagine poor people making their own decisions? Or being mature adults? Do they really need to be supervised all the time like children? Young man in 20s*

### Conclusion

The AUWU believes it is a waste of public money to impose drug testing on Newstart recipients as it will not work and it will subject those involved to unfair levels of surveillance that will add to the disempowerment of unemployment.

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<sup>i</sup> The AUWU uses the expression unemployed workers because the term 'job seeker' reinforces a deficit stereotype that devalues caring responsibilities, unpaid labour, and does not recognise structural unemployment.

<sup>ii</sup> APH Drug testing for welfare recipients: accessed from

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201718/WelfareRecipients](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201718/WelfareRecipients)

<sup>iii</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/DrugTestingTrial/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DrugTestingTrial/Submissions)

<sup>iv</sup> With permission and anonymised for confidentiality.

<sup>v</sup>

[https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/~link.aspx?id=AFF6CA564BC3465AA325E73053DED4AA&z=z#chapter-01\\_part-05\\_51](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~link.aspx?id=AFF6CA564BC3465AA325E73053DED4AA&z=z#chapter-01_part-05_51)