

The Kirby Institute ABN 57 195 873 179
For infection and immunity in society
Faculty of Medicine, UNSW
Wallace Wurth Building, Sydney NSW 2052
T+61 2 9385 0900 F+61 2 9385 0920
www.kirby.unsw.edu.au



UNSW
AUSTRALIA



Community Affairs Legislation Committee
Australian Parliament
Via email: community.affairs.sen@aph.gov.au

20 September 2019

Re: Submission to the Inquiry into the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

Thank you for the opportunity to comment on this Bill which provides for a two-year trial involving mandatory drug testing for 5,000 new recipients of Newstart Allowance and Youth Allowance in Canterbury-Bankstown, New South Wales; Logan, Queensland and Mandurah, Western Australia.

We continue to have grave concerns about the discriminatory and human rights impact of the proposed legislation and trial on people with problematic alcohol and other drug issues. There is no evidence that any of the proposed measures will directly achieve outcomes associated with reductions in alcohol or other drug use or related harms. Indeed they have the potential to create greater levels of harm, including increased stigma, marginalisation and poverty.

Under the proposed legislation, the government will penalise people with alcohol or other drug dependencies unless they participate in treatment. In 2013 the Australian National Council on Drugs reviewed the evidence on the impact of drug testing welfare recipients and concluded that:

There is no evidence that drug testing welfare beneficiaries will have any positive effects for those individuals or for society, and some evidence indicating such a practice could have high social and economic costs. In addition, there would be serious ethical and legal problems in implementing such a program in Australia. Drug testing of welfare beneficiaries ought not be considered.¹

As noted, there is no evidence that drug testing of social security recipients is an effective approach and cancelling income support payments where a job seeker refuses to undertake a drug test is punitive and unlikely to encourage people to seek or accept help.

Treatment for alcohol and other drug problems is highly cost effective² however the demand for treatment in Australia exceeds supply.³ We currently treat less than half of those who are indicated for and seek treatment in any given year.⁴ Increasing referrals to treatment will only be effective if

¹ ANCD Position paper: Drug testing <http://www.atoda.org.au/wp-content/uploads/DrugTesting2.pdf>.

² Ettner, S., Huang, D., Evans, E., Ash, D., Hardy, M., Jourabchi, M., et al. (2006). Benefit-cost in the California treatment outcome project: does substance abuse treatment "pay for itself"? *Health Services Research*, 41(1), 192-213.

Moore, T., Ritter, A., & Caulkins, J. (2007). The costs and consequences of three policy options for reducing heroin dependency. *Drug and Alcohol Review*, 26(4), 369-378.

³ Ritter, A. & Stooze, M. (2016) Alcohol and other drug treatment policy in Australia. *Med J Aust*, 204 (4): 138
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*, Final report submitted to the Commonwealth Department of Health. Sydney: Drug Policy Modelling Program, NDARC, UNSW. Available at: [http://www.health.gov.au/internet/main/publishing.nsf/content/FD5975AFBFD7013CA258082000F5DAB/\\$File/The-Review-of-alcohol-and-other-drug-treatment-services-in-Australia.pdf](http://www.health.gov.au/internet/main/publishing.nsf/content/FD5975AFBFD7013CA258082000F5DAB/$File/The-Review-of-alcohol-and-other-drug-treatment-services-in-Australia.pdf).

⁴ See Chapter 8: 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*, Final report submitted to the

additional resources are provided to ensure treatment is actually available. While it is noted that the availability of appropriate treatment will be taken into consideration in determining the requirements that should be included in a person's Job Plan and that job seekers will not be penalised if treatment is not available, this does not address the issue of mandatory treatment or indeed, the current treatment shortfall.

The Bill provides for recipients who test positive to the initial drug test to be subject to Income Management for a period of 24 months and a second drug test within 25 working days. Those who test positive to a second drug test during the trial will be referred to a "suitably qualified health professional" for assessment of their drug use and the recommendation of any treatment appropriate to the individual's circumstances. Based on the report from the medical professional, where appropriate, recipients will be required to complete one or more activities designed to address their substance abuse as part of their Job Plan, such as rehabilitation, counselling or ongoing drug testing. Those who do not attend for a drug test will, in the absence of a "reasonable excuse", have their payments cancelled.

The scientific literature on compulsory drug treatment indicates five different types of compulsory treatment approaches: 1) diversion programs which seek to divert offenders away from the criminal justice system and into a treatment/health care response; 2) civil commitment (involuntary commitment for health and safety reasons); 3) centre-based compulsory rehabilitation as practised in many Asian and South East Asian countries; 4) quasi-compulsory treatment provided in Europe; and 5) incarceration-based treatment (in-prison treatment programs). In Australia, we have comprehensive diversion programs, a number of civil commitment programs (such as the NSW IDAT program), and prison-based treatment. Despite the popularity of these models of compulsory or coerced treatment, the only one for which there is an evidence base is diversion programs.⁵ Indeed available evidence suggests that the other forms of compulsory treatment not only fail to achieve the outcomes being sought but may actually result in harm.

A systematic review of compulsory treatment Wild et al (2002)⁶ found that only two of eight studies found superior outcomes for clients receiving compulsory treatment compared with voluntary treatment, while the remaining six studies reported no difference in benefit. In a comprehensive review Broadstock et al. (2008)⁷ concluded that there was no reliable evidence of the effectiveness of compulsory residential treatment for people who are mandated purely on the basis of their alcohol use or illicit drug use. A recent systematic review by Werb et al (2016)⁸ concluded that "Evidence does not, on the whole, suggest improved outcomes related to compulsory treatment approaches, with some studies suggesting potential harms." On the basis of existing scientific evidence, coerced or compulsory treatment is not an effective or efficient use of scarce resources.

There are a number of other issues which undermine the feasibility of the proposed legislation. A fundamental problem is that drug testing is unable to distinguish between people who have clinically

Commonwealth Department of Health. Sydney: Drug Policy Modelling Program, NDARC, UNSW. Available at: [http://www.health.gov.au/internet/main/publishing.nsf/content/FD5975AFBFD7013CA258082000F5DAB/\\$File/The-Review-of-alcohol-and-other-drug-treatment-services-in-Australia.pdf](http://www.health.gov.au/internet/main/publishing.nsf/content/FD5975AFBFD7013CA258082000F5DAB/$File/The-Review-of-alcohol-and-other-drug-treatment-services-in-Australia.pdf).

5 Baker J and Goh D (2004) The cannabis cautioning scheme three years on: An implementation and outcome evaluation Sydney New South Wales Bureau of Crime Statistics and Research; Bright DA and Matire KA (2012) 'Does coerced treatment of substance-using offenders lead to improvements in substance use and recidivism? A review of the treatment efficacy literature' Australian Psychologist; Payne J, Kwiatkowski M and Wundersitz J (2008) Police drug diversion: A study of criminal offending outcomes Canberra Australian Institute of Criminology; Shanahan M, Lancsar E, Hass M, Lind B, Weatherburn D and Chen S (2004) 'Cost-effectiveness analysis of the New South Wales adult drug court program' Eval Rev 28(1) 3-27.

⁶ Wild TC, Roberts AB, Cooper EL. (2002) Compulsory substance abuse treatment: An overview of recent findings and issues. *Eur Addict Res*; 8:84-93.

⁷ Broadstock M, Brinson D, Weston A. (2008) The effectiveness of compulsory, residential treatment of chronic alcohol or drug addiction in non-offenders. In Health Technology Assessment Database: Health Services Assessment Collaboration (HSAC).

⁸ Werb, D. Kamarulzaman, A., Meacham, M.C., Rafful, C. Fischer, B., Strathdee, S.A., Wood, E. (2016) The effectiveness of compulsory drug treatment: A systematic review. *International Journal of Drug Policy* 28, 1–9

significant drug problems and those who use drugs recreationally, are not dependent and do not require drug treatment. The obligation to submit to drug testing contributes to the stigmatisation of people with substance dependencies and stigma is a known barrier to treatment-seeking.⁹ We also have concerns about the proposed referral of recipients who test positive to more than one drug test in the 24-month period to ‘contracted medical professionals’ who are not required to have any specific qualifications relevant to addiction medicine. The fact that these assessments could be undertaken without adequate levels of clinical expertise is of concern given compliance with an inappropriate recommendation would become mandatory for that person to continue to receive income support payments.

In Australia, as in many other high-income settings, poverty remains a major issue for people with alcohol and other drug dependence. Any policy that actually increases inequality reduces health outcomes. The removal of income support payments is precisely such a policy. There is no evidence that keeping people in poverty decreases the consumption of alcohol or other drugs or improves health. And while the proposed measures do not specifically target Indigenous Australians, data indicate that Aboriginal and Torres Strait Islander people are over-represented among those with alcohol and other drug problems relative to the general population. The proposed legislation has the potential to give rise to indirect differential treatment on the basis of race, further entrenching discrimination against, and poor health outcomes among, Indigenous Australians.

Finally, concerns about income support payments “funding drug dealers” are spurious and the selective policing of Newstart and youth allowance recipients undermines the capacity of this particular group of low-income Australians to make choices about spending. While behavioural conditionality associated with income support is increasingly popular, its selective and discriminatory application has the potential to exclude and further alienate vulnerable members of society. In our opinion, the measures proposed in the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 are ill-advised, unlikely to be effective and potentially harmful.

Please note that Professor Maher is travelling from London to Sydney on 2 October 2019 and regrets that she will be unable to give evidence in person.

Yours faithfully

Professor Lisa Maher AM
Program Head, Viral Hepatitis Epidemiology and Prevention Program
NHMRC Senior Research Fellow
Honorary Senior Principal Research Fellow, Burnet Institute

Dr Jennifer Iversen
Senior Lecturer and NHMRC Early Career Research Fellow
Viral Hepatitis Epidemiology and Prevention Program.

⁹ The effectiveness of interventions for reducing stigma related to substance use disorders: a systematic review. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3272222/>.