



Law Council
OF AUSTRALIA

19 April 2018

Senator Brock Slademan
Chair
Senate Standing Committees on Community Affairs
Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Senator Slademan

Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

1. The Law Council is pleased to provide a submission to the Senate Community Affairs Legislation Committee's (**the Committee**) inquiry into the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 (**the Drug Testing Trial Bill**).
2. The Law Council is grateful for the assistance of the Law Society of New South Wales in the preparation of this submission.
3. The Law Council notes that the Drug Testing Trial Bill is substantially identical to Schedule 12 of the Social Services Legislation Amendment (Welfare Reform) Bill 2017 (**Welfare Reform Bill**). Schedule 12 proposed to establish a pilot scheme where, in three selected areas, recipients of Newstart and Youth Allowance would be 'randomly' picked via a 'data driven profiling tool' that would identify 'relevant characteristics that indicate a higher risk of substance abuse issues' to undergo drug testing.¹
4. However, a key difference is that the Drug Testing Trial Bill stipulates three locations to be drug test trial areas – being Canterbury-Bankstown (NSW), Logan (QLD) and Mandurah (WA) – whereas the Welfare Reform Bill did not specify the drug test trial areas, leaving them to be defined by the rules.
5. The Law Council made a submission to the Committee on the Welfare Reform Bill dated 11 August 2017, a copy of which is **enclosed** for convenience. In that submission, the Law Council expressed its concern that that the approach taken in Schedule 12 of the Welfare Reform Bill 'had not been demonstrated to be a necessary or proportionate response to dealing with alcohol and drug dependency issues within the welfare system'.² The Law Council was of the view then, as it is now, that these issues are complex and require nuanced policy responses.
6. Given the Drug Testing Trial Bill is substantially identical to Schedule 12 of the Welfare Reform Bill, the Law Council reiterates the concerns it raised in its submission on the Welfare Reform Bill. In particular, in the event that the Drug Testing Trial Bill proceeds, the following changes should be made:

¹ See Law Council of Australia, Submission No 42 to Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Welfare Reform) Bill 2017*, 11 August 2017 [5].

² *Ibid* [7].

- a. given that the Government intends that testing be random, the Drug Testing Trial Bill should refrain from using personal and sensitive information (particularly if initially collected for other reasons) and other data-driven profiling tools in determining the drug test trial areas, and in determining individual participants;
 - b. participation in the scheme, particularly the income management aspects of the scheme, should be on a voluntary basis;
 - c. recipients of Youth Allowance who are children should be exempt from the scheme;
 - d. obtaining consent for participation in the trial should be separated from seeking to claim Newstart or Youth Allowance to ensure that individuals are in fact able to provide voluntary and informed consent;
 - e. consideration should be given to removing provisions that may compound disadvantage, such as requiring individuals to bear the cost of second and subsequent drug tests, waiting periods, involuntary and indefinite income management;
 - f. limit the use of subsequent legislative instruments and, instead, provide detail on the operation of the scheme in the primary legislation;
 - g. provide for a clear and independent appeal process in respect of the validity of drug test results, and for referrals to income management;
 - h. there should be a mechanism for monitoring and evaluating the efficacy of the scheme; and
 - i. the Drug Testing Trial Bill not be passed until it is assessed by the Parliamentary Joint Committee on Human Rights (**PJCHR**) and any concerns raised by the PJCHR have been addressed.
7. In relation to [6.i) above, the Law Council notes that the concerns raised by the PJCHR regarding Schedule 12 of the Welfare Reform Bill have not been addressed in the Drug Testing Trial Bill. Commenting on the Drug Testing Trial Bill, the PJCHR reiterated the concerns it raised in relation to Schedule 12 of the Welfare Reform Bill, specifically that, 'the proposed mandatory drug testing trial was likely to be incompatible with the right to privacy, the right to social security and right to an adequate standard of living, and the right to equality and non-discrimination'.³ The Law Council maintains that the Drug Testing Trial Bill should not be passed until these concerns raised by the PJCHR have been adequately resolved.

Thank you for the opportunity to provide these observations.

Should you have any queries, please contact Dr Natasha Molt, Deputy Director of Policy, Policy Division on (02) 6246 3754 or at natasha.molt@lawcouncil.asn.au .

Yours sincerely



Jonathan Smithers
CHIEF EXECUTIVE OFFICER

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³ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report 3 of 2018* (27 March 2018) [1.414].