

24 April 2018

Our ref: BDS-CrLC

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
GPO Box 1989
Canberra Act 2601

By email: natasha.molt@lawcouncil.asn.au

Dear Mr Smithers

Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

Thank you for the opportunity to provide comments on the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018. Queensland Law Society (QLS) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We lead a profession of over 13,000 members throughout Queensland. We are comprised of several specialist committees who provide policy advice to the QLS Council on law reform and areas of concern to the profession. This response has been compiled with the assistance of the Criminal Law Committee who have considerable expertise in this area.

The Society does not support the provisions of the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018.

Some of the proposed measures under the Bill include mandatory drug testing for certain Social Security recipients, cancellation of welfare payments if a job-seeker refuses to undertake a drug test without reasonable excuse and further, a four-week waiting period before that person can reapply for a payment. The Bill also provides for a person who returns a positive drug test to be placed on "income management".

The Society's view is that the diagnosis and treatment of drug and alcohol addiction is a health issue and a matter for an individual and their treating health practitioner. At a policy level, it is inappropriate to use job agencies and the unemployment safety net as a means of addressing individuals' drug use.

The Society also notes that there is not necessarily any relationship between a person's drug test results and their capacity for work.

The Criminal Law Committee of the Queensland Law Society makes the following further observations:

- There are potentially serious legal and privacy implications involved in administering such a program. Where a person returns a positive drug test result for an illicit drug,


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they are at risk of criminal sanction should such information be shared with criminal justice and investigative authorities. Such an outcome is incompatible with modern principles of procedural fairness and the presumption of innocence. The unfairness is exacerbated by the fact that the mandatory drug test occurs within the social services system without the safeguards that apply to mandatory drug testing within the criminal justice system;

- The procedural safeguards are inadequate because of the limited availability of appeal options. If the Bill is introduced, there needs to be a fulsome appeal process;
- There is a risk that the measures will lead to an increase in criminal prosecutions and convictions amongst those who test positive. Contrary to the Bill's stated aims, this will entrench disadvantage by making it even more difficult for a person to obtain employment;
- There is a risk that certain people will be "double punished" for instance, a person who is on probation and parole who returns a dirty urine test will experience separate consequences under the criminal justice and social security systems. The double punishment is disproportionate to the alleged breach.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Acting Advocacy Manager, Ms Binny De Saram on 07 3842 5895 or b.desaram@qls.com.au.

Yours faithfully



Ken Taylor
President