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INFORMATION ANALYSIS ADVICE

## BILLS DIGEST

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# Social Services Legislation Amendment (Welfare Reform) Bill 2017

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**Date introduced:** 22 June 2017

**House:** House of Representatives

**Portfolio:** Social Services

**Commencement:** Various dates as set out in the body of this Bills Digest

**Links:** The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

**All hyperlinks in this Bills Digest are correct as at September 2017.**

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## The Bills Digest at a glance

This is a short-form Bills Digest relating only to Schedules 12–14 of the Social Services Legislation Amendment (Welfare Reform) Bill 2017. These Schedules relate to the proposed drug testing measures in the Bill. A Bills Digest covering all of the Schedules to the Bill will be published as soon as possible.

### Schedule 12 Drug testing trials

- Schedule 12 amends the [Social Security Act 1991](#) and the [Social Security \(Administration\) Act 1999](#) to enable the Government to run drug testing trials in three locations.
- From 1 January 2018 5,000 new recipients of unemployment payments will be asked to take drug tests as part of a trial to take place in three locations around Australia. Those persons who refuse to take the test may face penalties.
- People testing positive on the first test will be placed on income management. If they test positive on later tests they may be asked to accept drug treatment as part of their mutual obligation requirements.
- The drug testing trials have two objectives. To:
  - maintain the integrity of, and public confidence in, the social security system by ensuring that tax-payer funded welfare payments are not being used to purchase drugs or support substance abuse and
  - provide new pathways for identifying recipients with drug abuse issues and facilitating their referral to appropriate treatment where required.
- According to the Explanatory Memorandum, the trial will be evaluated and the results will inform decisions about extending the trial or rolling out drug testing more broadly. Currently there is little evidence about the effectiveness of drug testing as a welfare-to-work measure.
- There are a number of issues that may be of concern:
  - the Government did not consult with outside experts or service providers while developing the policy. Few welfare agencies, health professionals or drug treatment experts regard a combination of random drug testing and penalties for refusal to undertake treatment as a promising approach. A review of similar policy proposals in the United Kingdom did consult widely and did not recommend random drug testing or mandatory drug treatment
  - a number of policy experts and commentators have suggested that drug testing measures are more about signalling the government's disapproval of drug use than assisting problem drug users into employment
  - if the cashless debit card (or a similar card that is distinctive and readily identifiable) is used to income-manage recipients who test positive on a drug test may lead to stigma because it identifies card holders as drug users. The card used in the current cashless debit card trial sites has been featured in numerous media reports and is readily identifiable
  - the availability of drug and alcohol treatments in the context of national undersupply
  - the Department of Human Services (DHS) will engage contractors to administer the drug tests and determine that a person should be subject to income management.

### Schedule 13 Removal of exemptions for drug or alcohol dependence in participation requirements

- Schedule 13 amends the *Social Security Act* to:
  - establish a new category of income support recipient—a **declared program participant**—that is, someone who is a participant in an employment services program specified in a determination (an alcohol and/or other drug treatment program) and
  - remove exemptions from participation requirements for income support recipients who are dependent on alcohol and/or other drugs and refuse or fail to undertake treatment—that is, become a declared program participant.

### Schedule 14 Changes to reasonable excuse provisions

- Schedule 14 amends the *Social Security (Administration) Act* to enable the Secretary to determine by legislative instrument matters that he, or she, must not take into account in deciding whether or not a job seeker has a reasonable excuse for committing a compliance failure. The legislative instrument will provide

that a job seeker's abuse of, or dependence on, alcohol and/or other drugs will only be able to be used as a reasonable excuse once.

- The job seeker will not be penalised for the compliance failure, but will be given the option of participating in alcohol and/or other drug treatment. If the job seeker refuses to participate in treatment and fails to meet their mutual obligations again, then drug or alcohol dependency will not be considered a reasonable excuse, and sanctions may be applied.
- If job seekers feel they are being compelled to participate in treatment, this could have a negative impact on their treatment outcomes.
- Evidence suggests that existing demand for alcohol and other drug treatment services is not currently being met and the above measures could exacerbate this situation.
- While the evidence generally shows that rates of substance use are higher among the unemployed, it also suggests that substance use poses no more of a barrier to employment than other factors, such as poor health and a lack of relevant skills.

## Purpose of the Bill

The primary purpose of the Social Services Legislation Amendment (Welfare Reform) Bill 2017 (the Bill) is to amend social welfare statutes to:

- create a single job seeker payment
- establish a drug testing trial and
- remove existing exemptions for jobseekers experiencing drug or alcohol dependence.

## Structure of the Bill

The Bill has 18 Schedules as follows:

- Schedule 1 amends the [A New Tax System \(Family Assistance\) Act 1999](#) (FA Act), [Farm Household Support Act 2014](#), [Income Tax Assessment Act 1936](#) (ITAA 1936), [Income Tax Assessment Act 1997](#) (ITAA 1997), [Social Security Act 1991](#) (SS Act), [Social Security \(Administration\) Act 1999](#) (SSA Act) and the [Veterans' Entitlements Act 1986](#) (VEA) to create a single job seeker payment
- Schedule 2 amends the ITAA 1936, the ITAA 1997, the SS Act, the SSA Act, the [Social Security \(International Agreements\) Act 1999](#) (SS International Agreements Act) and the VEA to bring about the cessation of widow B pension
- Schedule 3 amends the FA Act, the [Child Support \(Assessment\) Act 1989](#), the ITAA 1936, the ITAA 1997, the SS Act, the SSA Act, and the VEA to bring about the cessation of wife pension
- Schedule 4 amends the ITAA 1997, the SS Act, the SSA Act, the SS International Agreements Act and the VEA to bring about the cessation of bereavement allowance
- Schedule 5 amends the [A New Tax System \(Medicare Levy Surcharge—Fringe Benefits\) Act 1999](#) and other social welfare statutes to bring about the cessation of sickness allowance
- Schedule 6 amends social welfare statutes to bring about the cessation of widow allowance
- Schedule 7 amends social welfare statutes to bring about the cessation of Partner allowance
- Schedule 8 contains a rule-making provision for the Minister
- Schedule 9 amends the SS Act to change the activity tests for persons aged 55–59
- Schedule 10 amends the SSA Act to alter the start day to some participation payments
- Schedule 11 removes the intent to claim provisions from the SS Act and the SSA Act
- Schedule 12 establishes the drug testing trial
- Schedule 13 removes the exemptions for drug or alcohol dependence
- Schedule 14 amends the SSA Act to bring about changes to the reasonable excuses
- Schedule 15 introduces a new compliance framework for mutual obligation requirements in relation to participation payments
- Schedule 16 streamlines the collection of tax file numbers
- Schedule 17 relates to information management and
- Schedule 18 amends the [Disability Discrimination Act 1992](#) to align the Social Security and disability discrimination law.

## Structure of this Bills Digest

As the matters covered by many of the Schedules are independent of each other the relevant background, stakeholder comments (where available) and analysis of the provisions are set out under each Schedule number.

## Committee consideration

### *Senate Community Affairs Legislation Committee*

The Bill has been referred to the Senate Community Affairs Legislation Committee for inquiry and report by 4 September 2017.<sup>1</sup>

### *Senate Standing Committee for the Scrutiny of Bills*

At the time of writing, the Senate Standing Committee for the Scrutiny of Bills had not commented on the Bill.

## Statement of Compatibility with Human Rights

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill's compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.<sup>2</sup>

### *Parliamentary Joint Committee on Human Rights*

At the time of writing, the Parliamentary Joint Committee on Human Rights had not commented on the Bill.

## Schedule 12—Establishment of a drug testing trial

### Quick guide to Schedule 12

The measures in Schedule 12 to the Bill provide for a two-year trial in three regions involving mandatory drug testing for 5,000 new recipients of Newstart Allowance and Youth Allowance (other).

### *Commencement*

The amendments in Schedule 12 to the Bill commence on 1 January 2018 if Royal Assent is before that date. Otherwise the amendments commence on the first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of two months beginning on Royal Assent.

### *Financial implications*

According to the Explanatory Memorandum to the Bill, the estimated impact on the fiscal balance over the forward estimates to 2020–21 of the measures in Schedule 12 is 'not for publication'.<sup>3</sup>

## Background

Drug testing has been part of the international welfare reform debate since the 1990s. Supporters have argued that drug testing has a number of benefits including preventing the misuse of taxpayer's money, sending a message that drug use is unacceptable, ensuring recipients are ready for work, saving money, and promoting recipient well-being. However, in many cases, policymakers do not make their goals explicit.

Proposals for drug testing income support recipients have been debated in Australia, Canada and the United Kingdom.<sup>4</sup> A number of American state governments have introduced drug testing schemes and the New Zealand Government has a policy that supports pre-employment drug testing by employers and training providers.<sup>5</sup>

According to a 2016 paper by the Congressional Research Service, there is little evidence about the effectiveness of drug testing measures in the United States. Part of the problem is a lack of clarity about what policymakers

1. Details of the terms of reference, submissions to the Senate Community Affairs Legislation Committee, and the final report (when published) are available at the inquiry [homepage](#).
2. The Statements of Compatibility with Human Rights can be found at page 136 of the Explanatory Memorandum to the Bill.
3. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 4.
4. E Wincup, 'Thoroughfares, crossroads and cul-de-sacs: drug testing of welfare recipients', *International journal on drug policy*, 25(5), 2014; P Berger, '[Science misapplied: mandatory addiction screening and treatment for welfare recipients in Ontario](#)', *Canadian Medical Association Journal*, 165(4), 21 August 2001.
5. Office of the Assistant Secretary for Planning and Evaluation (US), [Drug testing welfare recipients: recent proposals and continuing controversies](#), US Department of Health and Human Services, October 2011. Ministry of Social Development (NZ), '[Drug testing for beneficiaries with work obligations](#)', Work and Income New Zealand.

are trying to achieve.<sup>6</sup> The objectives could include restricting payments to those deemed worthy of support, punishing individuals for engaging in undesirable behaviour or deterring people from engaging in illicit drug use.<sup>7</sup>

The recent debate in the United Kingdom is the most relevant to Australia. As in Australia, United Kingdom policymakers justified drug testing measures in terms of helping income support recipients move into employment. The United Kingdom experience is discussed in more detail below.

### **Principled versus pragmatic considerations**

Many of the arguments for and against drug testing and compulsory treatment draw on ethical principles. For example, Katherine Bradley and Robert Rector of the Heritage Foundation argue:

Taxpayers should provide support to those in need, and recipients in return should engage in responsible and constructive behaviour as a condition of receiving aid. Requiring welfare recipients to stop using illegal drugs is a core element of reciprocal obligation.<sup>8</sup>

Other ethical principles include human rights such as the right to privacy.

As well as considerations of principle, there are pragmatic considerations. These have to do with providers' ability to implement the measures successfully and how effective the measures are at achieving objectives such as moving income support recipients from welfare to work.

Both internationally and in Australia, supporters of drug testing and compulsory treatment have relied heavily on ethical arguments about mutual obligation while medical professionals and drug treatment providers have relied on arguments based on human rights and pragmatic considerations.

According to evidence given during Senate Estimates hearings, the Department of Social Services (DSS) did not consult organisations representing medical professionals or drug treatment providers about the measure prior to its announcement in the 2016–16 Budget.<sup>9</sup>

### **Earlier Australian proposals**

During the 2007 election campaign the Coalition announced that, if the Government was re-elected, income support recipients convicted of criminal drug offences involving hard drugs would be placed on income management.<sup>10</sup> Then Prime Minister John Howard said: 'we take the view that it's not right that people should have control of taxpayer money when they have been convicted of such offences'.<sup>11</sup> The policy was not part of the Coalition's 2013 election campaign.

In 2012 Liberal National Party MP George Christensen (Member for Dawson) proposed that income support payments for the unemployed should be conditional on passing a drugs test.<sup>12</sup> However, Kevin Andrews, then Shadow Minister for Families, Housing and Human Services, stated that this was not Coalition policy.<sup>13</sup>

In 2013 the Australian National Council on Drugs (ANCD) published a position paper on drug testing. The paper concluded:

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.<sup>14</sup>

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6. M McCarty, G Falk, R Aussenberg, D Carpenter, [Drug testing and crime-related restrictions in TANF, SNAP, and Housing Assistance](#), Congressional Research Service, 28 November 2016, p. 28.

7. *Ibid.*, p. 1.

8. R Rector and K Bradley, '[Reforming the food stamp program](#)', *Backgrounder*, 2708, 25 July 2012.

9. Senate Community Affairs Legislation Committee, [Official committee Hansard](#), 31 May 2017, p. 64.

10. Liberal Party of Australia and the Nationals, [Tough on drugs](#), Coalition policy document, Election 2007, p. 2.

11. J Howard (Prime Minister), [Joint press conference with the Treasurer, the Hon Peter Costello](#), transcript, Sydney, 18 November 2007.

12. G Christensen (federal member for Dawson), [No drug test, no dole](#), media release, 31 May 2012.

13. B Packham, '[Drug test the unemployed before dole, says Coalition MP George Christiansen](#)', *The Australian*, (online edition), 31 May 2012.

14. Australian National Council on Drugs (ANCD), [Drug testing](#), ANCD position paper, August 2013, p. 2. The ANCD was formed to provide independent advice to government on national drug and alcohol issues.



The issue resurfaced in 2014 after the release of the interim report of the Reference Group on Welfare Reform (the McClure Report). The interim report referred to pre-employment drug testing requirements for jobseekers in New Zealand and there was speculation in the media that the Australian Government was considering introducing a similar measure.<sup>15</sup> While then Minister for Social Services, Kevin Andrews, appeared reluctant to completely rule the measure out, he said that the Government was unlikely to go ahead with it.<sup>16</sup>

In November 2015 Senator Jacqui Lambie asked the Attorney-General, Senator George Brandis, if the Government would support testing income support recipients for illicit drugs. The Attorney-General responded that 'the government has no present intention to legislate in that respect'.<sup>17</sup>

## United Kingdom experience

In the United Kingdom policymakers have considered similar measures to those proposed in this Bill. In 2009 the Brown Labour Government legislated to include drug testing as part of a broader plan to identify problem drug users and require them to accept treatment.<sup>18</sup> While there was some support in the media for a tougher approach to drug users, the proposal was harshly criticised by the Government's Social Security Advisory Committee and others.<sup>19</sup> The measures were later abandoned by the Cameron Coalition Government and the drug testing requirements were removed from legislation.<sup>20</sup>

## Welfare reform proposals

In 2008 the Brown Government released a green paper on welfare reform: *No One Written Off: Reforming Welfare to Reward Responsibility*. The green paper stated: 'Taxpayers cannot be expected to support a drug-dependent lifestyle, so where drug treatment is available and considered appropriate, then there should be an obligation that individuals will take it up'.<sup>21</sup> It suggested requiring benefit applicants to declare whether they are addicted to heroin or crack cocaine and backing this up by using information sharing with police and contracted-out drug testing (in a small number of cases) to identify those making misleading statements.<sup>22</sup>

The Social Security Advisory Committee criticised the Government's proposals, particularly the proposal to make income support conditional on accepting drug treatment:

We find the proposals in relation to those citizens who suffer from addiction to crack cocaine and opiates to be unconvincing, simplistic, and to present a number of issues that demand much more thought before they are taken further. The abuse of illegal drugs – just as with alcohol abuse – can be a major barrier to entering, and staying in, employment. However, we find little to commend the Government's proposed approach. It is our understanding that all the evidence points to drug rehabilitation programmes being most effective when the client actively wishes to engage in treatment.<sup>23</sup>

The proposals also attracted strong criticism from organisations involved in drug treatment. For example, Drugscope, an organisation representing treatment providers, suggested that 'compulsion and threats of benefit sanctions could do more harm than good, risking further marginalisation'.<sup>24</sup>

While the Government acknowledged that some groups had concerns, it decided to push ahead with the plan. In its white paper *Raising Expectations and Increasing Support: Reforming Welfare for the Future* the Government outlined a new regime for problem drug users. Income support recipients identified as problem drug users would be referred to a healthcare professional who would determine whether they should be referred to a

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15. S Maiden, 'Drug testing for the dole', *Sunday Mail*, 1 June 2014, p. 3.

16. C Uhlmann, 'Interview with Kevin Andrews', *AM*, Australian Broadcasting Corporation (ABC), 2 June 2014.

17. G Brandis, 'Answer to Question without Notice: Illicit Drugs', [Questioner: J Lambie], Senate, *Debates*, 24 November 2015.

18. [Explanatory Notes](#), *Welfare Reform Act 2009* (UK), Schedule 3.

19. L McKinstry, 'Welfare reform under a Labour government? it just won't happen', *Express*, (online edition), 21 July 2008; Social Security Advisory Committee (UK), [No one written off: reforming welfare to reward responsibility: the response of the Social Security Advisory Committee](#), Parliament of the United Kingdom, London, November 2011.

20. [Explanatory Notes](#), *Welfare Reform Act 2012* (UK), part 2, section 60.

21. Department for Work and Pensions (DWP), [No one written off: reforming welfare to reward responsibility: public consultation](#), Cm 7363, The Stationary Office, London, July 2008, p. 47.

22. *Ibid.*, p. 49.

23. Social Security Advisory Committee (UK), [No one written off: reforming welfare to reward responsibility: the response of the Social Security Advisory Committee](#), op. cit.

24. Drugscope, [DrugScope responds to publication of welfare reform green paper](#), media release, 21 July 2008.

program of support. The Government indicated that it was ‘exploring whether drug testing has a role to play in respect of claimants who fail to engage’.<sup>25</sup> While on the program, recipients would be required to agree to a rehabilitation plan and ‘make real efforts to make progress against it. If they fail to do so, without good cause, they will be subject to sanctions’.<sup>26</sup> The Government planned to pilot and evaluate these measures before any national rollout.<sup>27</sup>

## **Welfare Reform Act 2009**

The Brown Labour Government introduced provisions to support this new regime for problem drug users in the [Welfare Reform Bill 2009](#). According to legal academic Emma Wincup:

The ‘new regime’ for [problem drug users] was met with relatively little opposition in the early stages, sending out a powerful message that drug testing and the use of quasi-compulsory drug treatment for this group had become palatable to all political parties. It also provides evidence of a new cross-party ‘welfare settlement’ surrounding welfare-to-work policies, characterised by a common moralist or behavioural approach.<sup>28</sup>

Drug sector organisations and the organisations representing the medical profession continued to oppose the measures. For example, Drugscope argued:

Drug testing should not be introduced into the benefit system. It is an invasive procedure. A drug test can only reveal that a particular substance is present in somebody's body at a particular time. This means, for example, that test results can be identical for someone with a serious crack cocaine dependency and for a first time participant.

The Royal College of Psychiatrists supported Drugscope’s position and argued that sanctions may not improve compliance with treatment, could drive people deeper into poverty, and may undermine the relationship between clinicians and clients.<sup>29</sup>

According to Emma Wincup, a widely shared objection to drug testing was that it could breach Article 8 of the [European Convention of Human Rights](#).<sup>30</sup> Article 8 provides a qualified right to privacy. Drug testing and compulsory medical treatment fall under the cope of this article.<sup>31</sup>

The Joint Committee of Human Rights of the UK Parliament took the view that the Government had not provided evidence to support its position that the interference with individual rights was necessary and ‘that evidence to support the Government’s position should be sought during a pilot programme which could pose a significant risk to individual privacy rights’. The Committee recommended that drug testing and compulsory treatment should be removed from the Bill.<sup>32</sup>

## **Plans for a pilot scheme**

Despite concerns about drug testing and mandatory treatment measures, the Brown Government pushed ahead with plans for a pilot scheme. After the *Welfare Reform Act 2009* was enacted, the Government began consulting on regulations to enable a pilot scheme that included drug testing and mandatory referral to treatment.

The Government’s Social Security Advisory Committee continued to oppose the pilot arguing that there was little evidence that a mandatory approach to treatment would help problem drug users move towards the labour market. It also advised against drug testing stating:

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25. DWP, [Raising expectations and increasing support: reforming welfare for the future](#), Cm 7506, December 2008, p. 118.

26. Ibid., p. 118.

27. Ibid., p. 119.

28. Wincup, ‘Thoroughfares, crossroads and cul-de-sacs: drug testing of welfare recipients’, op. cit.

29. Royal College of Psychiatrists, Written evidence submitted to the Joint Committee on Human Rights, in: Joint Committee on Human Rights (UK), [Legislative scrutiny: welfare reform bill; apprenticeships, skills, children and learning bill; health bill](#), Fourteenth report of session 2008–09, The Stationary Office, London, 27 April 2009.

30. Wincup, op. cit.

31. U Kilkelly, [The right to respect for private and family life: a guide to the implementation of Article 8 of the European Convention on Human Rights](#), Directorate General of Human Rights Council of Europe, France, August 2003.

32. Joint Committee on Human Rights (UK), [Legislative scrutiny: welfare reform bill; apprenticeships, skills, children and learning bill; health bill](#), op. cit., p. 18–19.

... we believe that the introduction of drugs testing represents a step too far in increasing conditionality. We would very much like to see the use of mandatory drugs tests removed from the pilot.<sup>33</sup>

By the time the Committee's report reached the Secretary of State for Work and Pensions, an election had been held and the Government had changed. After receiving the Social Security Advisory Committee's report, the new Cameron Coalition Government announced that it would not proceed with the pilots.<sup>34</sup> The drug testing requirements were removed from legislation in 2012.<sup>35</sup>

### ***Income management proposal***

In a 2014 report, the Centre for Social Justice<sup>36</sup> proposed using cashless welfare cards for income support recipients who failed to engage with treatment:

For those with an entrenched alcohol or drug addiction who refuse treatment, who have not been in employment for a year and who have children, the use of welfare cash cards should be considered. Whilst this alone will not help addicts recover, evidence from similar successful initiatives in Australia has shown that such a scheme can protect addicts and their families by limiting the expenditure of their benefits to basic essentials such as food, clothing, travel etc. Beyond this, it will establish a principle that taxpayers' money should not go directly into the pockets of drug dealers and may restore faith in our welfare system. We recommend piloting the scheme in the first instance.<sup>37</sup>

The Centre for Social Justice supported the principles of the *Welfare Reform Act 2009* but argued that the Government would not have been able to implement them effectively. According to report, the major problem is that there are too few high quality abstinence-based treatment options available to people on income support. As a result, the pilots would have placed large numbers of problem drug users on methadone and this 'would simply lead to people substituting one addiction for another and, ultimately, not help them to become clean'. The report proposed phasing in reforms as new treatment capacity became available.<sup>38</sup>

### ***The Black Review***

By early 2015, the Cameron Government had broadened its focus beyond illicit drugs to include other treatable conditions that prevent income support recipients moving into work. These included alcohol dependency and obesity. The Government asked Professor Dame Carol Black to undertake a review.

In February 2015 Prime Minister David Cameron said:

Too many people are stuck on sickness benefits because of issues that could be addressed but instead are not. Some have drug or alcohol problems, but refuse treatment. In other cases people have problems with their weight that could be addressed, but instead a life on benefits rather than work becomes the choice. It is not fair to ask hardworking taxpayers to fund the benefits of people who refuse to accept the support and treatment that could help them get back to a life of work.<sup>39</sup>

The Prime Minister asked Professor Black 'to consider whether people should face the threat of a reduction in benefits if they refuse to engage with a recommended treatment plan'.<sup>40</sup> Professor Black did not support this option in her 2016 report:

... we doubt whether mandation of treatment – one of the possibilities mentioned in our terms of reference – should be the first response to the evident problems for the cohorts under discussion. Further, there is a strong consensus that mandating treatment would lead to more people hiding their addiction than reveal it. We also heard

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33. R Tilt (Chairman, Social Security Advisory Committee), [Letter](#) to I Duncan Smith (Secretary of State for Work and Pensions), *Report of the Social Security Advisory Committee made under section 174(2) of the Social Security Administration Act 1992 on the Social Security (Welfare Reform Drugs Recovery Pilot Scheme) Regulations 2010*, 19 May 2010, p. 6.

34. M Miller, [Radical rethink on getting drug and alcohol users back to work](#), media release, 17 June 2010.

35. [Explanatory Notes](#), *Welfare Reform Act 2012* (UK), part 2, section 60.

36. The Centre for Social Justice is a think tank closely associated with the Conservative Party.

37. Centre for Social Justice, [Ambitious for recovery: tackling drug and alcohol addiction in the UK](#), Centre for Social Justice, London, August 2014, p. 26.

38. *Ibid.*, p. 75.

39. Quoted in: H Phibbs, ['Those on sickness benefit should accept treatment'](#), Conservative Home, 14 February 2015.

40. *Ibid.*

from health professionals serious concerns about the legal and ethical implications of mandating treatment and whether this would be a cost effective approach.<sup>41</sup>

The Black Report did not recommend using drug testing to identify problem drug users.

## Policy position of non-government parties/independents

### ***Australian Labor Party***

Labor members have expressed concern about the proposed drug testing trials. They note that similar measures in the United States have shown 'little evidence of achieving better outcomes for people with substance abuse issues' and that the Government has not provided evidence to show that the measures will lead to better health outcomes.

In 2014 Senator Kim Carr was asked to comment the idea of drug testing after Kevin Andrews, then Minister for Social Services, had ruled it out:

... it was a silly idea. We've seen these punitive measures being taken in a range of Government programs now. This is a Government that is quietly vicious in terms of the way it treats people, particularly our most vulnerable in the community.<sup>42</sup>

### ***Australian Greens***

The Australian Greens oppose the drug testing measure. In a media release Senator Rachel Siewert said:

Drug addiction needs to be treated as a health issue. Testing income support recipients has been a failed measure in the US and has been abandoned after proposals in the UK and Canada. It needs to be abandoned.<sup>43</sup>

### ***Nick Xenophon Team***

In a post Budget interview Senator Nick Xenophon said that he is a supporter of mandatory rehabilitation for people with severe substance abuse problems but said that it mattered how it was done. When asked whether he would oppose drug testing measures he said he wanted to see the detail.<sup>44</sup>

### ***Jacqui Lambie***

In 2015 Senator Jacqui Lambie proposed that income support recipients should be drug tested.<sup>45</sup> Asked about the drug testing measure in the Budget Senator Lambie said: 'By second-guessing which ones they're going to do rather than doing it full-on random, I'm not sure they'll get the result they want to achieve'.<sup>46</sup>

### ***Other independents***

According to a report in *The Australian* on 22 May 2017, Senators Derryn Hinch and Cory Bernardi are likely to support the drug testing measure.<sup>47</sup>

## How the drug testing trial will operate

The drug testing trial established by the Bill has two objectives. It seeks to:

- maintain the integrity of, and public confidence in, the social security system by ensuring that tax-payer funded welfare payments are not being used to purchase drugs or support substance abuse and
- provide new pathways for identifying recipients with drug abuse issues and facilitating their referral to appropriate treatment where required.<sup>48</sup>

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41. C Black, [An independent review into the impact on employment outcomes of drug or alcohol addiction, and obesity](#), Cm 9336, Department for Works and Pensions, London, December 2016, p. 14.

42. M Rowland, [TV interview with Michael Rowland: ABC News 24 Breakfast](#), ABC News 24, transcript, ABC, 2 June 2014.

43. R Siewert, [Labor sides with Government as motion to abandon drug testing income support recipients voted down](#), media release, 14 June 2017.

44. M Rowland and V Trioli, [ABC news breakfast](#), television interview, ABC News 24, ABC, 10 May 2017.

45. J Lambie, [Answer to Question without notice: take note of answers: illicit drugs](#), Senate, *Debates*, 24 November 2015, p. 8769.

46. Rowland and Trioli, [ABC news breakfast](#), op. cit.

47. R Lewis and A Burrell, [Senate wall traps \\$14bn in reforms](#), *The Australian*, 22 May 2017, p. 1.

The trial aims to test the effectiveness of these new pathways.<sup>49</sup> Officers of the DSS told the Senate Community Affairs Committee that the trial is designed to build evidence.<sup>50</sup>

The Government will select three sites for the trial. Over a two-year period, 5,000 new recipients of Newstart Allowance and Youth Allowance (other) will be required to undertake tests to identify whether they have used illegal drugs.<sup>51</sup> The Government plans to begin the trial in 1 January 2018.<sup>52</sup>

### **Selection of the three trial sites**

The Government announced in Augusts that the three locations of the drug testing trial would be Canberra-Bankstown (NSW), Logan (QLD) and Mandurah (WA)<sup>53</sup>. The Government targeted areas with a high incidence of drug use, identified based on data from:

- the Australian Institute of Health and Welfare's (AIHW) 2013 National Drug Strategy Household Survey
- state and territory government crime statistics on drug use and possession
- administrative data from the DHS on jobseekers that identify drug dependency issues
- the Australian Criminal Intelligence Commission's 2017 National Wastewater Drug Monitoring Program report.<sup>54</sup>

The Government will also consider the availability of treatment services.

When the drug testing measure was announced in the Budget, there was considerable media interest in the idea that the Government would use National Wastewater Drug Monitoring Program data to identify sites with high levels of drug use. However, it seems unlikely the Government will rely heavily on this data when selecting sites. While the Australian Criminal Intelligence Commission's report gives results for capital cities, it does not identify particular regional sites.<sup>55</sup>

**Item 1** of Part 1 in Schedule 12 to the Bill inserts the definition of **drug test trial area** into subsection 23(1) of the *Social Security Act* being an area prescribed by the **drug test rules**. **Item 3** of Part 1 in Schedule 12, inserts **proposed section 38FA** into the *SS Act* to empower the Minister, by legislative instrument, to make **drug test rules**. The rules provide for a range of matters including but not limited to:

- prescribing the drug test trial areas
- prescribing substances for the purposes of the definition of **testable drug**<sup>56</sup>
- giving and taking samples of persons' saliva, urine or hair for use in drug tests and the dealing with such samples
- carrying out drug tests and
- the giving of results of drug tests in certificates or other documents and the evidentiary effect of those certificates or documents.

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48. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 151.

49. *Ibid.*, p. 62.

50. Senate Community Affairs Legislation Committee, [Official committee Hansard](#), 31 May 2017, pp. 95–96.

51. The number of persons subject to drug testing is limited to 5,000 by the operation of **proposed subsection 63(4A)** of the *SSA Act* (inserted by **item 16** of Part 1 in Schedule 12 of the Bill).

52. Department of Social Services (DSS), ['Welfare reform'](#), 2017 Budget fact sheet, DSS, 2017, p. 3.

53. DSS, ['Drug testing trial'](#), DSS website, 27 August 2017.

54. S Ryan, ['Answer to a Question without notice: additional answers'](#), [Questioner: R Siewert], Senate, *Debates*, 20 June 2017, p. 4339.

55. C Dawson (Chief Executive Officer, Australian Criminal Intelligence Commission), [Evidence](#) to the Parliamentary Joint Committee on Law Enforcement, *Australian Crime Commission annual report 2015–16*, 14 June 2017.

56. **Item 1** of Part 1 in Schedule 12 to the Bill inserts the definition of **testable drug** into subsection 23(1) of the *Social Security Act* being: methamphetamine; methylenedioxy-methamphetamine; tetrahydrocannabinol; opioids or another substance prescribed by the drug test rules for the purposes of the definition.

## Selecting recipients for drug testing

The drug testing regime will only apply to recipients of Newstart Allowance and Youth Allowance (other) who make a claim after 1 January 2018. **Item 1** of Part 1 in Schedule 12 to the Bill inserts the definition of **drug test trial member** into the *SS Act*. A person is a **drug test trial pool member** at a time if all of the following are satisfied:

- that time is in the drug test trial period
- at that time the person's usual place of residence is in a drug test trial area and
- at that time the person is receiving Newstart Allowance or Youth Allowance (otherwise than on the basis that the person is a new apprentice or undertaking full-time study) as a result of a claim made in the drug test trial period.

Claimants will be required to acknowledge that they may be required to undergo drug testing as a condition of payment.<sup>57</sup>

The Government plans to use a two-step process to select individuals for testing. **First** it will identify a group of recipients who are at higher risk of drug misuse and **second**, it will randomly select individual recipients from this group.<sup>58</sup> According to the Minister of Social Services, Christian Porter:

We'll use a combination of data that we will help develop with Data61 and the CSIRO, our own internal data at DHS and DSS which looks at track records of clusters of people in terms of their compliance. We'll put all of that together and identify a broad group of people and then randomly select inside that broad group inside each of the three trial sites.<sup>59</sup>

The tests will be conducted by third party drug testing providers.<sup>60</sup> **Item 18** of Part 1 in Schedule 12 to the Bill inserts **proposed section 64A** into the *SSA Act*. This section empowers the Secretary to enter into contracts for the carrying out of drug tests.

## Recipients who fail the first test

**Item 24** in Part 1 of Schedule 12 to the Bill inserts **proposed subsection 123UFAA(1A)** into the *SSA Act* so that if an income support recipient tests positive they will be placed on income management for 24 months.

Recipients cannot avoid income management by moving off payment and reclaiming later. If they reclaim they will be placed on income management for the remainder of the 24 months.<sup>61</sup>

Recipients who test positive on the first test will be required to undertake further tests. According to the Explanatory Memorandum to the Bill, 'they will be required to undertake the next test within 25 working days of the first test'.<sup>62</sup> However, this time period is not specified in the Bill itself.

## Recipients who fail second or subsequent tests

If a recipient tests positive again during the 24-month period, they will be referred to a medical professional for assessment. If the medical professional recommends some form of treatment, these treatment activities will form part of the recipient's mutual obligation requirements.

Currently section 544A of the *SS Act* requires a person who is in receipt of Youth Allowance (with some specified exceptions) to enter into a Youth Allowance Employment Pathway Plan. Section 544B sets out the terms of the Employment Pathway Plan. Sections 605 and 606 of the *SS Act* contain provisions in equivalent terms in respect of recipients of Newstart Allowance.

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57. *SSA Act*, **proposed subsection 37(7A)**, inserted by **item 12** in Part 1 of Schedule 12 to the Bill.

58. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 155.

59. J O'Brien, 'Live cross to a press conference with Christian Porter, federal Minister for Social Services, Alan Tudge, Minister for Human Services, and Michaelia Cash, federal Minister For Employment', *Mornings*, ABC News, transcript, 11 May 2017. [Data61](#) is a data innovation group within the Commonwealth Scientific and Industrial Research Organisation (CSIRO).

60. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 62.

61. *Ibid.*, p. 63.

62. *Ibid.*, p. 63.

**Item 4** of Part 1 in Schedule 12 to the Bill inserts **proposed subsection 544B(1AA)** into the *SS Act* so that one of the requirements of the Youth Allowance Employment Pathway Plan in relation to a person must relate to undertaking treatment for the use of drugs if:

- the person is a drug test trial pool member
- the person has two or more positive drug tests
- the person has undergone a medical, psychiatric or psychological examination after the person has had those positive drug tests and
- the report of the examination given to the Secretary recommends that the person undertake treatment for use of drugs.

**Item 7** of Part 1 in Schedule 12 to the Bill inserts **proposed subsection 606(1AA)** into the *SS Act* in equivalent terms in relation to a Newstart Allowance Employment Pathway Plan.

Minister Porter explained that this treatment could take a number of forms:

... when people think about recovery and rehabilitation from drug abuse they often think of residential rehabilitation, which is probably at the very high end of the spectrum of treatments. The overwhelming—the largest percentage of treatment is usually counselling, and indeed assessment that leads to counselling.<sup>63</sup>

According to the Explanatory Memorandum, if treatment is not immediately available, ‘recipients will be required to take appropriate action such as being on a waiting list to satisfy part of their mutual obligation requirements’.<sup>64</sup> Recipients who are required to undertake drug treatment may also be required to undertake other activities such as job search.<sup>65</sup>

### ***Recipients to repay the cost of positive tests***

Recipients who test positive to a drug test other than the first test will have to repay the cost of the test.

**Item 11** in Part 1 of Schedule 12 to the Bill inserts **proposed Part 3.16C—Drug test repayment deductions** into the *SS Act*. The new Part provides that a drug test repayment amount arises for a person for each positive drug test, with some exceptions. The repayment amount is to be prescribed by a legislative instrument.<sup>66</sup> According to **proposed subsection 1206XA(7)** of the *SS Act*, in setting the amount ‘the Secretary must have regard to the lowest cost to the Commonwealth of any drug test that could be carried out at the time the legislative instrument is to commence’.

The cost of the test will be deducted from future income support payments at a rate of no more than 10 per cent (unless the recipient chooses to repay the cost more quickly).<sup>67</sup> The Secretary will be able to reduce the rate in cases of hardship.<sup>68</sup>

### ***Sanctions***

Currently section 63 of the *SS Act* sets out the circumstances in which the Secretary may require a person to attend the Department. **Item 15** in Part 1 of Schedule 12 inserts **proposed paragraph 63(4)(c)** into the *SSA Act* so that if the person is a ***drug test trial pool member***, the Secretary may require the person to give a sample of a particular kind at a particular place for a drug test to be carried out on the sample. Existing section 64 of the *SSA Act* operates so that where the Secretary gives a person a notice requiring the person to do a thing (and the

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63. O'Brien, ‘[Live cross to a press conference with Christian Porter, federal Minister for Social Services, Alan Tudge, Minister for Human Services, and Michaelia Cash, federal Minister For Employment](#)’, op. cit.

64. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 63.

65. Ibid.

66. *SS Act*, **proposed subsection 1206XA(6)**.

67. Ibid., **proposed section 1206XC**.

68. Ibid., **proposed section 1206XD**.

requirement is reasonable),<sup>69</sup> payment to the person is not payable if the person does not comply with that requirement.<sup>70</sup>

### Refusal to undertake drug test

If a person refuses to undertake a drug test, without reasonable excuse, they will be subject to a drug test refusal **waiting period** of 28 days starting on the day their payment was cancelled.<sup>71</sup> This means that if a person reapplies for payment, they will not be able to receive it for 28 days from the day their payment was cancelled.

In addition, a recipient who tests positive can request a re-test. However, if this test is also positive they will have to repay the cost of the test.<sup>72</sup>

## Key issues

### ***Lack of consultation during policy development***

The Government did not consult with outside experts while developing the policy.<sup>73</sup> A review of similar policy proposals in the UK consulted widely and did not recommend random drug testing or mandatory drug treatment.<sup>74</sup>

Ministers have said that the trial is designed to make income support recipients better off by helping them move off income support and into paid work:

The drug testing trial we are seeking Parliament's agreement to is not designed to stigmatise or penalise people. In fact our aim is the complete opposite; we want to identify those people with drug issues and help them so that they can ultimately enjoy the whole range of benefits that come from earning a living through work.<sup>75</sup>

However, the Government has not provided a clear explanation of how the drug testing regime will assist trial participants into employment and avoid stigmatising or penalising them. Few welfare agencies, health professionals or drug treatment experts regard a combination of random drug testing and penalties for refusal to undertake treatment as a promising approach (for example, see stakeholder comments below).

In the UK, Professor Carol Black's review consulted widely. The review did not recommend random drug testing or mandatory treatment (see above). It also cautioned against relying on drug treatment alone to achieve outcomes:

It is clear that providing treatment alone, without additional support like employment, housing and skills, has limited and inconsistent effects on employment. Increasing the proportion of people with a drug and/or alcohol dependence entering treatment would not, of itself, deliver the Government's desired improvement in job outcomes.<sup>76</sup>

The Black review recommended an integrated approach to services. In Australia the National Ice Taskforce recommended better coordination 'between community-based alcohol and other drug services, and support referral pathways between local health, support, employment and other programmes'.<sup>77</sup> It is not clear whether the Government has considered integrating employment and other services with drug treatment as part of the trials.

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69. **Item 17** in Part 1 of Schedule 12 to the Bill inserts **proposed subsection 64(1AA)** into the SSA Act to provide that a notice to undertake drug testing is not unreasonable.

70. Section 80 of the SSA Act provides that if a payment is not payable to a person, the Secretary is to determine that the payment is to be cancelled or suspended.

71. For Youth Allowance—**proposed sections 549EA and 549EB** inserted by **item 6**; for Newstart Allowance—**proposed sections 623C and 623D** inserted by **item 8**.

72. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 150.

73. Senate Community Affairs Legislation Committee, [Official committee Hansard](#), op. cit., pp. 95–96.

74. Black, [An independent review into the impact on employment outcomes of drug or alcohol addiction, and obesity](#), op. cit.

75. C Porter (Minister for Social Services), M Cash (Minister for Employment) and A Tudge (Minister for Social Services), [Welfare reform bill focuses on supporting people into work](#), media release, 22 June 2017.

76. Black, [An independent review into the impact on employment outcomes of drug or alcohol addiction, and obesity](#), op. cit., p. 9.

77. National Ice Taskforce, [Final report of the national ice taskforce](#), Department of the Prime Minister and Cabinet (PM&C), Canberra, 2015, p. 106.



## Questions about the Government's objectives

Some policy experts and commentators have suggested that drug testing measures are more about signalling the Government's disapproval of drug use than assisting problem drug users into employment.

In Australia Professor Peter Whiteford wrote: 'it's difficult to escape the conclusion that this proposal is symbolic, rather than designed to have a positive impact on the well-being of those to be tested'.<sup>78</sup> Former Coalition adviser Peta Credlin made a similar point in an interview on Sky News:

If it was a more substantial cohort of 5,000, I would say it is a serious policy. If it was built with the support of the welfare constituency, I'd say it was serious policy. I think this is again a shopping list out of the focus groups of things they wanted to include.<sup>79</sup>

Commentators have made similar comments about drug testing schemes overseas. For example, in 2011 *The Economist* suggested that a Florida drug testing program was designed primarily to signal the government's 'disapproval of poor people using drugs'.<sup>80</sup>

## Evaluation

Evaluation is a key part of the trial. Currently there is little evidence about the effectiveness of drug testing as a tool to move people from welfare to work.<sup>81</sup> According to the Explanatory Memorandum:

The trial will be subject to a comprehensive evaluation which will inform any decisions about extending the trial or rolling out drug testing more broadly.<sup>82</sup>

The Government has not provided any detail about how the evaluation will be designed and conducted. The design of the evaluation will be critical because a number of evaluations previously commissioned in the social services portfolio have produced only weak evidence about program impact. For example, the 98-page report of the evaluation of income management in the Northern Territory noted that the evaluation depended on the perceptions and views of stakeholders rather than objective indicators and conceded that 'the overall evidence about the effectiveness of income management was not strong'.<sup>83</sup>

## Privacy and stigmatisation

If the cashless card used to income manage recipients is readily identifiable, it may lead to stigma by allowing retailers and others to infer that card holders are drug users.

If an income support recipient tests positive to the first drug test, they will be placed on income management.<sup>84</sup> This will involve receiving a proportion of their payment on the BasicsCard. The BasicsCard is currently used in a number of income management sites around Australia. It has been featured in numerous media reports and is readily identifiable.<sup>85</sup>

Unless the drug testing trials are run in the same locations as income management trials, using the BasicsCard could identify a person as a drug user. It is likely to become common knowledge in trial sites that people are issued with a BasicsCard if they test positive on a drug test.

Initially it was not clear what kind of card the Government planned to use in the drug testing trial sites.<sup>86</sup> However, in a joint submission to the Community Affairs Legislation Committee, the Departments of Social Services, Employment, and Human Services stated that the trial would rely on the BasicsCard:

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78. P Whiteford, '[Budget 2017: welfare changes stigmatise recipients and are sitting on shaky ground](#)', *The Conversation*, 11 May 2017.

79. D Speers, '[Budget 2017 with David Speers](#)', *SKY News*, 9 May 2017.

80. JF Atlanta, '[Welfare and drug testing: signalling as policy](#)', *The Economist*, 2 September 2011.

81. Senate Community Affairs Legislation Committee, '[Official committee Hansard](#)', 31 May 2017, p. 64.

82. '[Explanatory Memorandum](#)', Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 155.

83. Australian Institute of Health and Welfare (AIHW), '[Evaluation of income management in the Northern Territory](#)', Occasional paper, 34, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, 2010, p. 16.

84. O'Brien, '[Live cross to a press conference with Christian Porter, federal Minister for Social Services, Alan Tudge, Minister for Human Services, and Michaelia Cash, federal Minister For Employment](#)', op. cit.

85. For example: M White, '[Back to basics](#)', *Today Tonight*, Prime, 9 July 2012.

86. Senate Community Affairs Legislation Committee, '[Official committee Hansard](#)', 31 May 2017, pp. 140–141.

The drug testing trial will adapt the existing Supporting People at Risk (SPaR) model of Income Management. Under this model, where a recipient has returned a positive drug test result, DHS will receive a referral for Income Management from the drug testing provider. Following this referral, the recipient will have an interview with [the Department of Human Services] to ensure they understand how Income Management works, to issue them with a BasicsCard, to discuss their priority needs and have Income Management deductions set up accordingly.<sup>87</sup>

The Supporting People at Risk (SPaR) measure of income management is used in the Northern Territory for people who have been placed into mandatory alcohol treatment.<sup>88</sup>

### ***The role of contractors***

The Bill empowers the Secretary of the DHS, on behalf of the Commonwealth, to engage contractors to administer the drug tests.<sup>89</sup>

**Proposed subsection 64A(3)** of the *SSA Act* provides that the drug test rules may require a contract to include provisions requiring the following:

- giving the Secretary written notice of the results of the drug test
- giving notice (in accordance with **proposed paragraph 123UFAA(1A)(c)**) that in the 24 months, or longer period (if any) before the test time, the contractor who carried out the test gave the Secretary a written notice saying that the person should be subject to the income management regime
- withdrawing or revoking a notice (in accordance with **proposed paragraph 123UFAA(1A)(d)**)
- giving notice (in accordance with **proposed subsection 1206XA(5)** of the *SS Act*) and
- any subcontracts to are to include the matters set out in those provisions.

In effect, the Bill empowers the contractor to give the Secretary a written notice saying that the person should be subject to the income management regime—rather than giving the Secretary notice of the outcome of the person’s drug test and leaving it to the Secretary to determine, on that evidence, that payments are no longer payable.

The Explanatory Memorandum is silent about the rationale for this provision. It may well be that it relates to the privacy of recipients—that is, by merely stating that the person should be subject to the income management regime rather than stating the nature and amount of testable drug which is detected, that information will not become part of the recipient’s file. These matters will be clearer when the relevant drug test rules are made.

## **Schedule 13—Removal of exemptions for drug or alcohol dependence**

### Quick guide to Schedule 13

The amendments in this Schedule:

establish a new category of income support recipient—being a **declared program recipient**—that is, someone who is a participant in an employment services program specified in a determination (an alcohol and/or other drug treatment program) and

removing exemptions from the mutual obligation requirements where the reason for the exemption is wholly or predominantly attributable to the person’s dependence on alcohol or another drug, unless the job seeker is a participant in an employment services program to be specified in a determination—that is, an alcohol and/or other drug treatment program.

### ***Commencement***

The amendments in Schedule 13 to the Bill commence on 1 January 2018 if Royal Assent is before that date. Otherwise the measures commence on the first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of two months beginning on Royal Assent.

87. DSS, Department of Employment, and Department of Human Services, [Submission](#) to the Senate Community Affairs Legislation Committee, Inquiry into the Social Services Legislation Amendment (Welfare Reform) Bill 2017, 4 August 2017, p. 21.

88. DSS, [‘Supporting people at risk measure of income management’](#), DSS website, 10 December 2013.

89. *SSA Act*, **proposed section 64A**.

## Financial implications

According to the Explanatory Memorandum to the Bill, the estimated impact on the fiscal balance over the forward estimates to 2020–21 of the measures in Schedule 13 is an expense of \$28.8 million.<sup>90</sup>

## Background

Schedule 13 gives effect to one of the measures that was announced as part of the 2017–18 Budget.<sup>91</sup>

### Mutual obligation requirements

Under the *SS Act*, job seekers who are in receipt of an activity-tested income support payment must meet various mutual obligation requirements.<sup>92</sup> These requirements are imposed to ensure that job seekers who are able to do so are actively looking for work and participating in activities intended to help them into employment.

Where a job seeker is experiencing special circumstances that are beyond their control (such as a major personal crisis or homelessness) or temporarily incapacitated due to sickness or an accident they may gain an exemption from their mutual obligation requirements for a given period. These special circumstances, sickness, or accidents may be primarily a result of the job seeker's dependence on or misuse of alcohol and/or other drugs. Currently, there is no obligation for job seekers who gain an exemption from their mutual obligation requirements to attempt to address their alcohol and/or other drug dependency. The Government claims that the number of job seekers with an exemption related to alcohol and/or other drug dependency increased from 2,920 to 5,256 in the five years between September 2011 and 2015.<sup>93</sup>

Before the DHS is able to impose a penalty on a job seeker for failing to meet their mutual obligation requirements, it must first determine whether or not the job seeker had a reasonable excuse for doing so. Under the reasonable excuse provisions, a job seeker's alcohol and/or other drug dependency is one of the matters that must be taken into account in determining whether or not they had a reasonable excuse for their compliance failure.<sup>94</sup> Currently, there is no limit on the number of times that a job seeker may use as a reasonable excuse for non-compliance their alcohol and/or other drug dependency.

The Government has argued that the current arrangements, outlined above, enable job seekers to avoid their mutual obligation requirements and penalties for failing to meet these requirements by using their alcohol and/or other drug dependence as an excuse, without making any effort to address their dependency.

The measure in Schedule 13 seeks to deal with these perceived failings.

It does so by removing exemptions from the mutual obligation requirements where the reason for the exemption is 'wholly or predominantly attributable to the person's dependence on alcohol or another drug', unless the job seeker is a participant in an employment services program to be specified in a determination—that is, an alcohol and/or other drug treatment program.

## Key provisions

**Item 1** in Schedule 13 to the Bill inserts the definition of a **declared program participant** into the dictionary at subsection 23(1) of the *SS Act*. According to this definition, a declared program participant is a participant in an employment services program specified in a determination made under section 28C of the *SS Act*.

**Item 2** inserts **proposed section 28C** into the *SS Act* to allow the Secretary to make a determination, by legislative instrument, in relation to participants in a specified employment services program.

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90. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 4.

91. See Australian Government, Budget measures: budget paper no. 2: 2017–18, 2017, pp. 91–91; Porter, Cash and Tudge, [A fairer welfare system that supports more people into work](#), op. cit.; and M Cash (Minister for Employment), [Helping more Australians into jobs](#), media release, 9 May 2017.

92. Newstart Allowance (other), Youth Allowance (other), Special Benefit and Parenting Payment recipients must meet activity test or participation requirements in order to qualify, and remain qualified, for payment. Generally speaking, these requirements demand that job seekers are actively looking for work, accepting offers of suitable work, and improving their chances of gaining employment.

93. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 159.

94. The matters that must be taken into account are detailed in [Social Security \(Reasonable Excuse—Participation Payment Obligations\) \(DEEWR\) Determination 2009 \(No. 1\)](#).

Currently, the *SS Act* allows for job seekers to be exempted from their mutual obligation requirements if the Secretary is satisfied that they are unable to meet these requirements due to illness, accident or special circumstances.<sup>95</sup> **Items 3–12** in Schedule 13 to the Bill do two things:

- **first** they remove these exemptions for recipients of Disability Support Pension, Parenting Payment, Youth Allowance (other), Newstart Allowance and Special Benefit whose illness, accident or special circumstance is determined to be primarily a result of their dependence on or misuse of alcohol or another drug
- **second** they provide that the exemptions will remain for job seekers who are **declared program participants**—that is, participating in alcohol and/or other drug treatment.

The Explanatory Memorandum indicates that remote job seekers participating in the Community Development Program, a majority of whom are Indigenous, and many of whom are disadvantaged, will be included in the declared program participant category.<sup>96</sup> It goes on to suggest that this exemption is justified on the grounds that ‘the Community Development Program is specifically designed to reflect the unique labour market conditions that job seekers face in remote Australia’, and, to the extent that CDP participants will be treated differently to participants on other employment services programs, ‘this is reasonable and proportionate to the objective of the Community Development Program’.<sup>97</sup>

The Explanatory Memorandum notes that Indigenous Australians ‘statistically experience higher levels of alcohol or drug dependency compared with the Australian population generally’.<sup>98</sup> As such, the change is likely to impact disproportionately on those Aboriginal and Torres Strait Islander job seekers who fall outside the Community Development Program. This is acknowledged in the statement of compatibility with human rights.<sup>99</sup>

The Explanatory Memorandum states that for those job seekers who are declared program participants and participating in treatment, ‘participation in this treatment will reduce, or in some circumstances fully meet, their mutual obligation requirements’.<sup>100</sup> However, the basis on which this decision is to be made is unclear.

It is to be assumed that the arrangements will be similar to those that apply under the drug testing trial. Under these arrangements, job seekers are required to complete one or more treatment activities as part of their Employment Pathway Plan. However, where treatment is not immediately available, they will be ‘required to take appropriate action such as being on a waiting list to satisfy part of their mutual obligation requirements. Recipients with a drug treatment activity in the plan may still be required to undertake other activities, including job search depending on their circumstances’.<sup>101</sup> This may be at the discretion of the *jobactive* employment services provider.

## Schedule 14—Changes to reasonable excuses

### Quick guide to Schedule 14

Schedule 14 amends the *Social Security (Administration) Act 1999* to enable the Secretary to determine by legislative instrument matters that he, or she, must not take into account in deciding whether or not a job seeker has a reasonable excuse for committing a compliance failure.

### Commencement

The amendments in Schedule 14 to the Bill commence on the later of Royal Assent and 1 January 2018.

95. For Disability Support Pension the exemption are in subsections 94C(1) and 94F(1); Parenting Payment—subsections 502F(1) and 502H(1); Youth Allowance (other)—subsections 542A(1) and 542H(1); Newstart Allowance—subsections 603A(1) and 603C(1); Special Benefit—subsections 731E(1) and 731K(1).

96. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 81; PM&C, ‘[The Community Development Programme \(CDP\)](#)’, PM&C website.

97. *Ibid.*, p. 162.

98. *Ibid.*

99. *Ibid.*

100. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 85.

101. *Ibid.*, p. 63.

## Financial implications

According to the Explanatory Memorandum to the Bill, the estimated impact on the fiscal balance over the forward estimates to 2020–21 of the measures in Schedule 14 is an expense of \$4.3 million.<sup>102</sup>

## Background

Schedule 14 gives effect to one of the measures that was announced as part of the 2017–18 Budget.<sup>103</sup>

The material set out under the heading ‘Background’ to Schedule 13 above also applies to this measure.

## Key provisions

Division 3A in Part 3 of the *SSA Act* contains the compliance framework which applies to recipients of participation payments. Currently the Division empowers the Secretary to determine, by legislative instrument, that certain matters may be taken into account in deciding whether or not a job seeker has a reasonable excuse for committing a compliance failure. The relevant failures relating to Newstart Allowance, and for some people, Youth Allowance, Parenting Payment and Special Benefit are:

- no show no pay failures<sup>104</sup>
- connection failures<sup>105</sup>
- re-connection failures<sup>106</sup>
- serious failure for refusing or failing to accept an offer of suitable employment<sup>107</sup>
- non-attendance failures.<sup>108</sup>

The matters that must be taken into account are those spelled out in a legislative instrument made under section 42U of the *SSA Act*.

**Items 1–5** in Schedule 14 to the Bill amend notes in each of the relevant sections so that whilst the Secretary will continue to be able to take certain matters into account, the Secretary may be prohibited from taking other matters into account. The relevant notes create a cross-reference to section 42U.

**Items 6 and 7** amend existing section 42U so that the section will explicitly list those matters that are to be taken into account and those that are not. **Proposed subsection 42U(3)** of the *SSA Act* empowers the Secretary, by legislative instrument, to determine matters that are not to be taken into account in determining whether a job seeker has a reasonable excuse for committing a compliance failure.

These changes are to give effect to the Government’s commitment that, where a job seeker’s abuse of, or dependence on, alcohol and/or other drugs has been used once as a reasonable excuse for a compliance failure, it must not be taken into account for a second or subsequent compliance failure.

According to the Explanatory Memorandum to the Bill, it is intended that the existing reasonable excuse provisions will continue to apply if alcohol and/or other drug treatment is unavailable or inappropriate, including where the job seeker:

- is ineligible or unable to participate;
- has already participated in all available treatment;
- has agreed but not yet commenced in treatment; or
- has relapsed since completing treatment and is seeking further treatment.<sup>109</sup>

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102. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 4.

103. See Australian Government, Budget measures: budget paper no. 2: 2017–18, 2017, pp. 91–91; Porter, Cash and Tudge, [A fairer welfare system that supports more people into work](#), op. cit.; and Cash, [Helping more Australians into jobs](#), op. cit.

104. *SSA Act*, section 42C.

105. *Ibid.*, section 42E. For an explanation of connection and re-connection failures see: DSS, [‘3.1.13.30: participation payment suspensions, connection failures, non-attendance failures, reconnection failures and penalties’](#), *Guide to social security law*, version 1.235, DSS website, 14 August 2017.

106. *Ibid.*, section 42H.

107. *Ibid.*, section 42N.

108. *Ibid.*, section 42SC.

That is, the job seeker will be able to continue to have their abuse of, or dependence on, alcohol and/or other drugs taken into account in relation to compliance failures.

The Government has indicated that the legislative instrument will provide that a job seeker's abuse of, or dependence on, alcohol and/or other drugs will only be able to be used as a reasonable excuse **once**.<sup>110</sup> The job seeker will not be penalised for the compliance failure, but will be given the option of participating in alcohol and/or other drug treatment. If the job seeker refuses to participate in treatment and fails to meet their mutual obligations again, then drug or alcohol dependency will not be considered a reasonable excuse, and sanctions may be applied. However, this will not be certain until the relevant legislative instrument is made.

## Key issues

The proposed measures raise a number of issues.

### Whether the treatment is 'voluntary'

While job seekers are said to be given the option of voluntarily undertaking treatment for alcohol and/or other drug use or dependency, it is open to question just how free this choice is. Given that the alternative is for job seekers to no longer have their alcohol and/or other drug use or dependency taken into account in considering whether they had a reasonable excuse for compliance failure, and the prospect of future financial penalties, some job seekers are likely to feel that they are effectively being coerced into treatment. This has implications for the prospective outcomes of any treatment entered into.

A number of meta-analyses (or systematic reviews) of general research on mandatory drug treatment have been undertaken in recent years.<sup>111</sup> Each of these indicates that the empirical evidence for the effectiveness of mandatory treatment is inadequate and inconclusive. While there is some evidence that coercion improves treatment entry and retention in treatment relative to voluntary treatment, the evidence does not support the view that coercion has positive impacts on treatment outcomes.

With regard to the mandatory treatment of income support recipients in particular, the evidence is limited. This is largely because mandatory drug treatment for income support recipients appears to be confined to some United States (US) jurisdictions.

### Availability of treatment

The success or otherwise of the new measures—in terms of increasing participation in treatment of job seekers with alcohol and/or other drug issues—hinges on the availability and effectiveness of alcohol and other drug treatment services.

State and territory governments are largely responsible for the funding and provision of alcohol and/or other drug treatment services. Among other things, state and territory governments provide public sector health services and fund community-based organisations to furnish drug prevention and treatment programs within their jurisdictions.

The Federal Government provides indirect support for alcohol and other drug treatment services through various means, including funding for Medicare, subsidised private health insurance, medication provided through the Pharmaceutical Benefits Scheme (PBS) and allied health services. The Federal Government also directly funds the delivery of treatment services through the Substance Misuse Service Delivery Grants Fund, the

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109. [Explanatory Memorandum](#), Social Services Legislation Amendment (Welfare Reform) Bill 2017, p. 86.

110. *Ibid.*, p. 85.

111. D Werb, A Kamarulzaman, M Meacham, C Rafful, B Fischer, S Strathdee and E Wood, '[The effectiveness of compulsory drug treatment: a systematic review](#)', *International Journal of Drug Policy*, 28, February 2016, pp. 1–9; S Klag, F O'Callaghan and P Creed, '[The use of legal coercion in the treatment of substance abusers: an overview and critical analysis of thirty years of research](#)', *Substance Use and Misuse*, 40(12), 2005, pp. 1777–95; A Stevens, D Berto, V Kersch, K Oeuvray, M van Ooyen, E Steffan et al, '[Quasi-compulsory treatment of drug dependent offenders: an international literature review](#)', *Substance Use and Misuse*, 40(3), 2005, pp. 269–283; T Wild, '[Social control and coercion in addiction treatment](#)', *Addiction*, 101, 2006, pp. 40–49; M Broadstock, D Brinson and A Weston, '[The effectiveness of compulsory residential treatment of chronic alcohol or drug addiction in non-offenders: a systematic review of the literature](#)', Health Services Assessment Collaboration (HSAC), University of Canterbury, March 2008; KA Urbanoski, '[Coerced addiction treatment: client perspectives and the implications of their neglect](#)', *Harm Reduction Journal*, 7(13), 2010.

Substance Misuse Prevention and Service Improvement Grants Fund and the Non-Government Organisation Treatment Grants Program.

In 2015 the Federal Government provided around \$300 million over four years towards a package of measures that make up the National Ice Action Strategy. A substantial proportion of this funding—\$241.5 million—has been allocated to the 31 Private Health Networks for the purpose of boosting the alcohol and other drug treatment sector.

In 2012, the former Minister for Mental Health and Ageing, Mark Butler requested that the Department of Health and Ageing conduct a review of the drug and alcohol prevention and treatment services sector. This review was undertaken by a team from the National Drug and Alcohol Research Centre (NDARC) at the University of New South Wales, headed by Professor Alison Ritter. The final report was submitted to the Government in 2014.

As a part of the study, the researchers undertook a gap analysis to estimate the ‘the number of individuals who would be suitable for, likely to seek and benefit from AOD treatment in any one year but who are not being accommodated in the current service system’.<sup>112</sup> They found that while Australia provides comprehensive alcohol and other drug treatment services across a range of client groups, treatment types and locations, and probably has one of the lowest rates of unmet demand in the world, there is nevertheless greater demand for services than current supply.

It was estimated that ‘between 200,000 and 500,000 more people would be in treatment if demand were to be fully met’.<sup>113</sup> The study also identified some specific gaps, suggesting that there is a need for more alcohol treatment services; services that cater for young people, families and women with children and Aboriginal and Torres Strait Islander people; and, residential rehabilitation, residential withdrawal, pharmacotherapies and counselling.

As such, the measures are likely to exacerbate existing levels of unmet demand, in the absence of increased services and better matching of services to client need and geographic location. As noted above, funding for alcohol and other drug treatment services is primarily the responsibility of the states.<sup>114</sup>

### **Whether substance use and abuse is a barrier to employment**

Representative national population survey data show that rates of substance abuse are almost uniformly higher in unemployed samples than employed samples. Unemployed people are more likely to consume excessive amounts of alcohol, and to use illicit and prescription drugs. They are also more likely to smoke and develop dependence on alcohol and illicit drugs.<sup>115</sup>

Latest available detailed findings from the National Drug Strategy Household Survey, conducted by the AIHW, indicate that in 2013 use of illicit drugs in the past 12 months was more prevalent among the unemployed.

Unemployed Australians were 1.6 times more likely to have used cannabis, 2.4 times more likely to have used meth/amphetamines, 1.8 times more likely to have used ecstasy, 1.6 times more likely to have misused pharmaceuticals and 1.4 times more likely to have used cocaine than people who were employed.<sup>116</sup> A similar

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112. A Ritter, L Berends, J Chalmers, P Hull, K Lancaster and M Gomez, *New horizons: the review of alcohol and other drug treatment services in Australia: final report*, Drug Policy Modelling Program, National Drug and Alcohol Research Centre (NDARC), UNSW, Sydney, 2014, p. 164.

113. The criteria for fully meeting demand was based on a pre-existing decision-support tool for systems planning—the Drug and Alcohol Service Planning Model for Australia (DA-CCP). This was determined to be the equivalent of only treating 35 per cent of all people who meet diagnostic criteria. It is important to note, here, a distinction between unmet need and unmet demand for drug and alcohol treatment services. In the DA-CCP, need is defined as the population prevalence of alcohol and other drug disorders, and demand as a proportion of that total prevalence, based on expert judgement. The expert judgement is an assessment of the proportion of people who seek treatment but are unable to access it. A Ritter, J Chalmers and M Sunderland, *Planning for drug treatment services: estimating population need and demand for treatment*, Drug Policy Modelling Program, NDARC, UNSW.

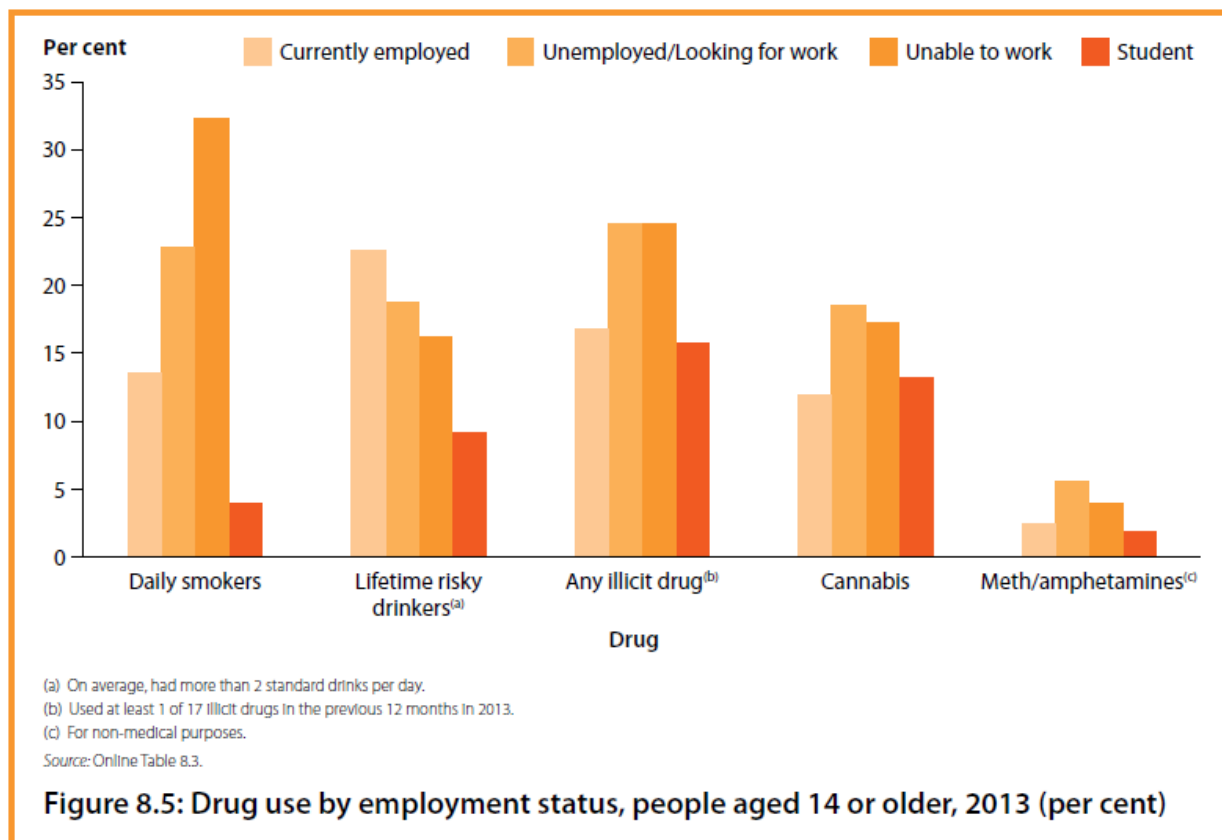
114. As a part of the abovementioned review of the drug and alcohol prevention and treatment services sector, the NDARC researchers sought to clarify Australian drug and alcohol treatment funding. They estimated total spending on alcohol and other drug treatment in Australia by all jurisdictions’ health departments in 2012–13 at \$1.26 billion. The states and territories contributed the largest share of total funding (49 per cent) with the Commonwealth providing 31 per cent. A majority of the overall funding went towards alcohol and other drug treatment services (39.6 per cent), followed by public hospitals (15 per cent), private hospitals (11 per cent) and Commonwealth alcohol and other drug treatment grants (10 per cent). Ritter et al, *New horizons*, op. cit., pp. 66–67.

115. D Henkel, ‘Unemployment and substance use: a review of the literature (1990–2010)’, *Current Drug Abuse Reviews*, 4(1), 2011.

116. AIHW, *National drug strategy household survey: detailed report: 2013*, AIHW, Canberra, 2014, p. 91.

general pattern was seen among people who were unable to work. Unemployed people were, however, less likely to drink alcohol at risky levels. See figure below.

**Figure 1: drug use by employment status, people aged 14 or older, 2013 (per cent)**



Source: AIHW, [National drug strategy household survey: detailed report: 2013](#), AIHW, Canberra, 2014, p. 92.

While the exact nature of the relationship between unemployment and substance use/disorders is not entirely clear, the evidence shows that problematic substance use increases the likelihood of unemployment and decreases the chance of people finding and holding down a job. The reverse also holds true; unemployment is a significant risk factor for substance use and the subsequent development of substance use disorders. Unemployment has also been found to increase the risk of relapse after alcohol and other drug addiction treatment.<sup>117</sup>

It should be noted that while severe substance abuse or dependence is likely to impede employability, a substantial proportion of the research evidence indicates that drug use *per se* is not a major barrier to employment.<sup>118</sup> Most drug users are employed. And, while the above AIHW data show that the overall prevalence of illicit drug use is higher among unemployed people than employed people, they do not tell us how many unemployed people are abusing or dependent on drugs.

Scott MacDonald et al note that ‘many factors such as physical and mental health problems, lack of job skills, perceived discrimination, and lack of transportation are major barriers for employment’.<sup>119</sup> They go on to argue that ‘a disproportionate emphasis on drug use as a factor for not obtaining employment could be ineffective if these other factors are not addressed as well’.<sup>120</sup>

117. Henkel, *op. cit.*, pp. 4–23.

118. S Macdonald, C Bois, B Brands, D Dempsey, P Erickson, D Marsh, S Meredith, M Shain, W Skinner and A Chiu, ‘Drug testing and mandatory treatment for welfare recipients’, *International Journal of Drug Policy*, 2001, p. 4; L Metsch and H Pollack, ‘Welfare reform and substance abuse’, *The Milbank Quarterly*, 83(1), 2005.

119. Macdonald et al, *op. cit.*, p. 4–5.

120. *Ibid.*, p. 5.



Based on a review of the evidence related to substance use among a cohort of income support recipients in the US, Lisa Metsch and Harold Pollack reach similar conclusions. They found that broad trends of substance use among Temporary Assistance to Needy Families (TANF) recipients appeared to parallel trends in the general population, and that widespread substance use was not a major cause of TANF recipients' continued economic dependence:

Although substance use disorders attract widespread attention, they appear to be no more common, and are no more important to employment and welfare receipt, than are concerns [such] as poor physical health, poor academic skills, psychiatric disorders, transportation difficulties, and more general concerns such as racial minority status, language barriers, and immigration concerns.<sup>121</sup>

## Stakeholder comments

A majority of stakeholder comment has been in relation to the proposed drug testing trials, introduced under Schedule 12 to the Bill.

### ***Think tanks—The Centre for Independent Studies***

Peter Saunders of the Centre for Independent Studies has argued for drug treatment as a mutual obligation activity. Although Dr Saunders has not commented on the measures in this Bill he has made comments in the past. In a 2013 paper, *Re-Moralising the Welfare State*, he makes an ethical case for measures such as mandatory drug treatment:

It is an ethical mistake when people on the Left repeatedly reject the distinction between 'deserving' and 'undeserving' cases, for while it can be difficult to draw this distinction in practice in every case, the attempt to do so lies at the heart of the fairness ethic. Those who have paid into the system (through taxes or other contributions) should have entitlements that others have not earned, and those whose irresponsible behaviour has contributed to their neediness should expect behavioural conditions to be attached to payments from which other recipients should be exempted.<sup>122</sup>

Dr Saunders cites a British survey that found 89 per cent of respondents were in favour of requiring 'people addicted to drugs such as heroin and crack cocaine to declare their problem and seek treatment if they are to continue receiving benefits'.<sup>123</sup>

### ***Drug and alcohol groups***

#### **National Drug and Alcohol Research Centre**

The National Drug and Alcohol Research Centre (NDARC) argues that the drug related measures in the Bill (Schedules 12, 13 and 14) are 'ill-placed, ineffective and damaging' and:

There is no evidence that any of these measures will directly achieve outcomes associated with reductions in alcohol or other drug use or harms, and indeed have the potential to create greater levels of harm, including increased stigma, marginalisation and poverty.<sup>124</sup>

NDARC argue that drug testing 'will not be able to distinguish between those who have clinically significant drug problems and those people who use drugs recreationally and do not require treatment services'. They argue that this will contribute to the stigmatisation of people with substance dependencies.<sup>125</sup>

The NDARC submission warns that some drug users may switch from better known drugs to lesser known (and potentially more dangerous) drugs in an effort to avoid being caught by drug tests:

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121. Metsch and Pollack, op. cit., p. 71.

122. P Saunders, [Re-moralising the welfare state](#), CIS occasional paper, The Centre for Independent Studies, Sydney, 2013, p. 23.

123. YouGov, [YouGov / Daily Telegraph survey results](#), fieldwork 23–25 July 2008, YouGov, London, 2008.

124. NDARC, [Submission](#) to Senate Community Affairs Legislation Committee, *Inquiry into the Social Services Legislation Amendment (Welfare Reform) Bill 2017*, 26 July 2017.

125. Ibid.

Testing technology cannot keep up with the number of new drugs on the market. So, if Schedule 12 goes ahead, and some welfare recipients pre-empt the drug tests by switching to lesser known psychoactive substances, it is probable that greater harms will result.<sup>126</sup>

The submission also expresses concern about the reliance of ‘contracted medical professionals’ who may not have adequate clinical expertise to make recommendations about treatment.<sup>127</sup>

NDARC notes that while treatment is highly cost effective there are not enough treatment opportunities to meet the current level of need and that there is a lack of evidence about the effectiveness of compulsory drug treatment.<sup>128</sup>

### **Queensland Mental Health and Drug Advisory Council**

At a meeting on 16 June 2017 The Queensland Mental Health and Drug Advisory Council:

... expressed concern over the potential for greater stigmatisation of people living with problematic alcohol and other drug use, and the lack of clarity about how the referrals to treatment and support will be managed.<sup>129</sup>

### **Australian National Council on Drugs (ANCD)**

The Australian National Council on Drugs (ANCD) has not commented on the drug testing measure in the 2017 Budget (ANCD was defunded in 2014), however, it did address the issue of drug testing of welfare beneficiaries in a 2013 position paper. The ANCD argued:

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.<sup>130</sup>

The paper draws on international research and experience and concludes: ‘The small amount of (direct and indirect) evidence available seems to indicate that it is more likely to increase harms and costs, both to welfare beneficiaries and the general public, than it is to achieve its stated aims’.

### **Victorian Alcohol and Drug Association (VAADA)**

The Victorian Alcohol and Drug Association (VAADA) has expressed concerns about the drug testing measure:

This proposal does not have an evidence base and is likely to engender greater harm to the community.

These types of ill-considered measures, while popular among a number of cohorts, displace a highly complex drug using market and contributes to increasing stigmatisation toward individuals who consume illicit substances specifically as well as welfare recipients generally.

Media reports on this policy indicate that individuals who [provide two] positive drug tests over a 25 day period will be corralled into the already overburdened alcohol and other drug treatment.<sup>131</sup>

Sharon O’Reilly, acting executive officer of VAADA says that the alcohol and other drugs treatment sector is already overburdened. O’Reilly warns that the trial:

... may generate a shift in consumption patterns among cohorts who consume illicit substances, to consuming substances which cannot be detected through standard drug testing means, such as new and emerging

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126. Ibid.

127. Ibid.

128. Ibid.

129. Queensland Mental Health and Drug Advisory Council (QMHDAC), [Communique](#), QMHDAC Meeting, Brisbane, 16 June 2017.

130. ANCD, [ANCD position paper: drug testing](#), op. cit.

131. Victorian Alcohol and Drug Association, [Drug testing welfare recipients a false positive](#), media release, 10 May 2017.

psychoactive substances or shifting onto various prescription drugs. This will likely create unknown harms and further complexities for our treatment services and emergency departments.<sup>132</sup>

She also suggests that some people experiencing dependency may avoid seeking engaging with treatment services so that they are not penalised by Centrelink.<sup>133</sup>

### **Western Australian Network of Alcohol and other Drug Agencies (WANADA)**

[WANADA has expressed concerns](#) about the drug testing and other welfare reform measures:

**Service Demand.** Alcohol and other drug treatment services across the nation are not currently resourced to meet the existing demand. In Western Australia, services must effectively more than double in the next few years to match community need. The announced reforms, while recognising treatment as a legitimate step toward employment, have failed to recognise or address the increased resourcing required to meet any increase in service demand pressure due to this reform.

**Consultation.** There has been no prior consultation with the alcohol and other drug service sector to inform the development of these reforms. As a result, these reforms do not take into account: the complexity of addressing alcohol and other drug use issues; the readiness of the sector to respond to the welfare reform changes by July 2017; and the existing capacity of services to meet demand.

**Service and Welfare complexities.** It is currently not clear how some residents will cover their contribution to rehabilitation if they're found to be ineligible for Youth Allowance or Newstart payments, or if their allowances are suspended. There is also no clarity on the degree to which treatment will go towards meeting 'mutual obligations'. All these factors have the potential to impact on the provision of services.

**Clarity.** There is currently insufficient information publically available to ascertain the full impact on the alcohol and other drug service sector.

**Stigma and Discrimination.** The reforms have the potential to further stigmatise those with alcohol and substance use concerns and do not effectively reflect the complex social, health and personal issues that contribute to substance use. If implemented, the largely punitive nature of these reforms have the potential to further discintentivise [sic] people from acknowledging they have an alcohol or other drug issue and seeking help.

### **Penington Institute**

In a post-budget media release, the Penington Institute argued that linking income support eligibility to drug testing was likely to result in an increase in crime and homelessness. Chief Executive Officer John Ryan said:

In Australia there is a real lack of funding for drug treatment services – including medically supported drug treatment. The Government would have been better off making stronger investments there rather than attacking the vulnerable.<sup>134</sup>

### **Alex Wodak and GetUp**

President of the Australian Drug Law Reform Foundation, Alex Wodak argues that random drug testing is 'a crude and problematic way of monitoring drug use'. He notes that it is 'more likely to identify use of longer acting drugs (such as cannabis) and less likely to identify shorter acting drugs (such as ice and ecstasy)' and that it 'fails to distinguish between drug consumption in functional people and problematic drug use'.

Dr Wodak argues that drug testing is unlikely to change behaviour or help income support recipients find work. He notes:

The drug treatment system in Australia is overloaded and underfunded. Unless that crisis is addressed, these people will go to the back of an already long queue.<sup>135</sup>

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132. Ibid.

133. Ibid.

134. Penington Institute, [Increase in crime likely with drug testing budget announcement](#), media release, 9 May 2017.

Dr Wodak has joined with activist organisation GetUp to launch a campaign against the proposed drug testing regime.<sup>136</sup>

## **Welfare sector**

### **Brotherhood of St Laurence**

Brotherhood of St Laurence Executive Director, Tony Nicholson, questioned the rationale for the drug testing measure:

Mr Nicholson said he was ... puzzled by the rationale for the proposed trial of American-style random drug testing for new welfare recipients, saying that in his experience any drug use was readily identified and dealt with appropriately as part of the task of preparing people for work. On the other hand, incorporating drug and alcohol rehabilitation programs into job plans as a valid step towards employment was welcome, he said.<sup>137</sup>

### **Australian Council of Social Service (ACOSS)**

ACOSS opposes the measure:

... the Budget continues to demonise people with a range of new welfare crackdown measures. No expert in drug and alcohol addiction has supported the random drug testing of social security recipients. Trials elsewhere have failed to achieve any positive results. ACOSS strongly opposes this measure.<sup>138</sup>

In their Federal Budget Snapshot ACOSS states:

It is unclear what these measures hope to achieve. They are highly unlikely to address people's addictions if they have them, and will lead to more people living in poverty. The drug testing trial will likely be expensive. New Zealand spent \$1 million on a drug testing program and of the 8,001 income support recipients tested, just 22 tested positive for illicit drugs (July 2014).<sup>139</sup>

### **National Social Security Rights Network**

[The National Social Security Rights Network](#) opposes the measure:

... in our view, this is a radical and unacceptable expansion of conditionality in the social security system. Job seekers have always been required to look for and accept suitable work or undertake activities to address employment barriers. This measure goes far beyond that. It requires job seekers to agree to random drug testing, a significant intrusion on privacy, as a condition of access to income support. It erodes the core purpose of our social security system, which is to provide a basic safety net for people in need.

The measure has the beneficial objective of seeking to connect people with substance abuse issues with appropriate treatment and engage them with employment services to address barriers to work. However, substance abuse is a complex individual and social problem. Many of our clients with substance abuse issues also have connected histories of trauma, abuse, family violence or mental health problems. We are very concerned that compelling people to submit to testing and, in some cases, undergo treatment may have unintended consequences which undermine the measure's objectives.

If recipients avoid or refuse testing they may lose access to income support. Rather than engaging recipients as intended, this would disconnect vulnerable people from the social security system. The burden may instead fall on their families, who may already be struggling to help them deal with addiction, and communities.

Making a treatment plan part of their Job Plan exposes recipients to the risk of financial penalties for failing to meet their mutual obligation requirements. This could affect people who are genuinely trying to address substance abuse

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135. A Wodak, [Federal budget: drug testing welfare recipients is ineffective policy](#), Australia21 website, 2017.

136. GetUP, *Govt ignoring experts: Dr Alex Wodak AM launches campaign against mandatory drug testing*, media release, 1 August 2017.

137. Brotherhood of St Laurence, [Mixed messages in new Turnbull budget](#), media release, 9 May 2017.

138. Australian Council of Social Service (ACOSS), [Federal budget snapshot: social security](#), ACOSS, Sydney, May 2017, p. 3.

139. ACOSS, [Federal budget snapshot: social security measures](#), ACOSS, Sydney, May 2017.

issues but struggle or relapse. We expect policy settings will seek to accommodate this reality, but they will be difficult to draft and even more so to administer as decision-makers will struggle to distinguish genuine attempts at compliance.

The administrative cost of this measure is unknown, given the commercial-in-confidence cost of the third party drug testing service. As with all public policy initiatives, however, it is important to ask what could be achieved by spending the money available for this measure in other ways. Social security law is an inappropriate tool to deal with complex individual and social problems like substance abuse. There are many alternative measures that could be trialled, which seem more likely to work and do not undermine the fundamental right to social security.<sup>140</sup>

### **Anglicare Australia**

In an interview with Pro Bono News, Anglicare Australia executive director Kasy Chambers said:

“Between drug testing, the demerit point proposal, and the leaked ‘welfare hotspot’ list, what we have seen in recent weeks is a concerted campaign to demonise people accessing the social safety net,” Chambers said.

“Anglicare’s Jobs Availability Snapshot shows that people are already trying their hardest to compete for jobs that just aren’t there. We should be helping them when they need it, instead of degrading them.

“There is no evidence that these tests work. This plan has been rejected in Britain, rejected in Canada, and it ought to be rejected here.”<sup>141</sup>

### **Catholic Social Services Australia (CSSA)**

Catholic Social Services Australia (CSSA) opposes the drug testing trial. CSSA’s CEO, Frank Brennan, said:

I am very sorry to see the government announcing ‘a two-year trial of random drug testing new welfare recipients across three locations’. This is arbitrary and capricious. If you’re going to drug test anyone, it should be for good cause, and with well-founded suspicion, and not because a citizen just happens to be in need of welfare assistance and just happens to be living in one of three locations in this vast land Australia.<sup>142</sup>

### **UnitingCare Australia**

UnitingCare Australia opposes the drug testing trial:

We believe this will unfairly vilify and humiliate unemployed people without assisting them into work. We have taken up this issue through the Senate Estimates process.

Our research into overseas experience shows that drug testing has little impact on drug dependence or helping people into work.

We also question how the Government will create the capacity for the increased service demanded by those forced into treatment. We believe that instead of this punitive measure, the government should focus on constructive support for people with drug and alcohol issues.<sup>143</sup>

### **Melbourne City Mission**

Melbourne City Mission has expressed concern about the measure:

That JobSeeker recipients who test positive will be “subjected to further tests and possible referral for treatment” is of great concern. We know that coercive measures are more likely to push people further to the fringes, increasing pressure on crisis services such as emergency relief and crisis accommodation, rather than effect long-term behaviour change. The 2017-18 budget papers also reference a “denying welfare for a disability caused solely by

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140. National Social Security Rights Network (NSSRN), [Budget 2017: trial of compulsory random drug testing for job seekers](#), NSSRN, Sydney, 2017.

141. W Williams, [‘Victoria applauded for refusing plan to drug test welfare recipients’](#), Pro Bono Australia website, 15 June 2017.

142. Fr F Brennan, [2017–18 budget overview](#), Catholic Social Services Australia, Canberra, 9 May 2017.

143. UnitingCare Australia, [‘Connecting: a fortnightly update from UnitingCare Australia’](#), UnitingCare Australia website, 8 June 2017.

their own substance abuse". These welfare reform measures ignore a strong body of evidence around underlying causes (including mental-health reasons) for drug use and abuse.<sup>144</sup>

### **Good Shepherd Australia New Zealand**

Good Shepherd is a Catholic charity founded by the Good Shepherd Sisters with a focus on women and girls. Good Shepherd opposes the measure:

Introducing drug testing for welfare recipients comes dangerously close to criminalising poverty. It makes basic human rights conditional on not only job-seeking requirements, but on the absence of addiction. This demonises people who are already struggling with health issues and reinforces the worst kind of ignorance and prejudice. Furthermore, drug-testing welfare compliance regimes trialled elsewhere have proved an expensive failure at getting people into work and in supporting people to recover from addictions. In fact, evidence shows it makes finding a job more difficult.<sup>145</sup>

### **Samaritans**

Samaritans is an Anglican charity operating in Newcastle and the Hunter Valley. Samaritans opposes the measure:

There is no value in playing the blame game for people who are struggling to overcome addiction. We see that there is no benefit in this solution; it is simply taking money off those who already are struggling.

There needs to be resources and funding attached to Centrelink payments for people to attend Alcohol and Other Drug programs, rather than taking away support payments with no recourse. These people need to be supported in overcoming their addiction, rather than being put in a situation of increased financial stress.

Drug addiction and no money could very well result a rise in the crime rate, suicide rate and the number of children not attending school or attending without food. This is a huge problem for society- and a costly one at that.

It's costly because the welfare sector and providers such as Samaritans will have to pick up the pieces when people are taken off their Centrelink. People we support will lose their housing which will increase the levels of homelessness. They will not be able to get to appointments including medical or therapy programs because they will have no money on their Opal Cards. They will be hungry and unable to feed children, which will result in increased demand in our Emergency Relief centres.

Drug replacement therapy costs between \$50-70 per week if the person is attending a pharmacy outside of the clinic—this is a necessary expense for someone trying to overcome a drug addiction and something which will be completely unaffordable if Centrelink payments are taken away. If a person overcoming a drug addiction does not get this medication, they will become really unwell and research and experience shows that they will return to using illicit drugs to suppress the addiction.<sup>146</sup>

## ***Professional bodies***

### **Australian Medical Association**

The Australian Medical Association (AMA) expressed a number of concerns about the drug related measures in the Bill. The AMA submission stresses that substance dependence should be seen as a serious health problem and suggests that it is inappropriate to approach the problem from a moral standpoint.<sup>147</sup>

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144. Melbourne City Mission, '[Federal budget 2017](#)', Melbourne City Mission website, 11 May 2017.

145. Good Shepherd Australia New Zealand, '[Federal budget's support of universal services undermined by divisive welfare approach](#)', Good Shepherd Australia New Zealand website, 11 May 2017.

146. Samaritans, '[Random drug testing for Centrelink recipients](#)', Samaritans, blog, 16 May 2017.

147. Australian Medical Association, '[Submission](#)' to Senate Community Affairs Legislation Committee, Inquiry into the Social Services Legislation Amendment (Welfare Reform) Bill 2017, 26 July 2017, p. 2.

The AMA submission stressed the importance of consultation, recommending thorough consultation and refinement of the Bill 'In order to minimise the risk of unintended consequences'. The AMA noted that they had not been directly consulted.<sup>148</sup>

The submission suggested that the trial would lead to an increased demand for treatment and noted that demand for treatment currently exceeds supply. The AMA expressed concern that the trial could divert treatment opportunities away from people who are actively seeking them and towards 'one-off or occasional' users who seek treatment in order to remain on income support.<sup>149</sup>

The submission also expressed concern about the compulsory nature of treatment noting that the 'efficacy of mandatory drug treatment in the medium and longer term has not yet been established'.<sup>150</sup>

The AMA is also concerned that the measures in Schedules 13 and 14 'will, in effect, dismiss a treating medical practitioner's diagnosis and advice'. In relation to drug testing, the submission notes that recipients who test positive a second time will be referred to a medical professional and argues:

The term 'medical professional' is ambiguous. The Government must confirm that this work will be undertaken by medical practitioners, given their expertise in diagnosis and referral for treatment.<sup>151</sup>

The submission also warns that drug testing could lead to an increase in criminal activity as income support recipients placed on income management attempt to obtain money for drugs. The AMA suggests that this could lead to increased incarceration.<sup>152</sup>

### **Royal Australasian College of Physicians**

The Royal Australasian College of Physicians (RACP) argues that compulsory drug treatment is likely to be ineffective:

"Research and experience has shown that drug testing has a poor record in modifying drug use. We know that forcing addicts into treatment is an ineffective way of combating illicit drug use," explained Dr Yelland.

"Addiction is a chronic relapsing and remitting health issue and Governments across Australia must think of it as a chronic healthcare issue moving forward," said Dr Yelland.

Dr Yelland said the RACP believes the solution to reducing the number of Australians suffering from addiction lies in adequately funding treatment and support services.

"We agree that more people suffering with addiction need to be referred for drug and alcohol treatment. However these plans for drug testing of welfare recipients are likely to be ineffective, expensive and could further negatively impact people's lives.

"Importantly, any approach to this issue must also include proper investment in treatment and recovery services, otherwise people looking for help will just end up at the back of an already long queue," she added.<sup>153</sup>

### **Victorian Government**

The Victorian Government is opposed to the trials. In an interview for the ABC's 7.30, Martin Foley (Minister for Mental Health) described the measure as 'cheap, populist nonsense':

MARTIN FOLEY, VIC MINISTER FOR MENTAL HEALTH: It simply won't work and it is cheap, populist nonsense, designed to create a smokescreen as to what really drives disadvantage.

JULIA HOLMAN: The Victorian Government has revealed to 7:30 that it won't cooperate with the drug-testing trial.

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148. Ibid., p. 3.

149. Ibid., p. 2.

150. Ibid., p. 3.

151. Ibid., p. 3.

152. Ibid., p. 2.

153. Royal Australasian College of Physicians (RACP), [RACP urges Government to abandon welfare drug testing plans](#), media release, 31 May 2017.

MARTIN FOLEY: We've made it clear to the Government at two ministerial councils that we're not interested in being part of this scam, because all it will do is create even more demand for services that already stretched, that are already under pressure from Commonwealth cuts, and we won't have bar of it.

But if the Commonwealth Government wants to go out and demonise people and pretend that they're doing good work in this space, let them do it somewhere else because all it will do in Melbourne, and Victoria, is drive people more into disadvantage.<sup>154</sup>

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154. J Holman, '[Victorian government reject Commonwealth plan to drug test welfare recipients](#)', 7.30, ABC, 13 June 2017.