



**Serena Wilson PSM**  
Deputy Secretary  
Department of Social Services

**Martin Hehir**  
Deputy Secretary  
Department of Employment

**Shane Bennett**  
Acting Deputy Secretary  
Department of Human Services

Senator Jonathon Duniam  
Chairperson  
Senate Community Affairs Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Senator Duniam

#### **SUBMISSION TO SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE**

Please find attached a joint submission by the Department of Social Services, the Department of Employment and the Department of Human Services to the Senate Community Affairs Legislation Committee Inquiry into the *Social Services Legislation Amendment (Welfare Reform) Bill 2017*.

Thank you for providing the Departments with the opportunity to make a submission.

Yours sincerely

Serena Wilson, Martin Hehir & Shane Bennett

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## **SOCIAL SERVICES LEGISLATION AMENDMENT WELFARE REFORM BILL 2017**

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# **SOCIAL SERVICES LEGISLATION AMENDMENT (WELFARE REFORM) BILL 2017**

## ***Introduction***

This joint submission by the Department of Social Services, Department of Employment and Department of Human Services provides information on the measures contained in the *Social Services Legislation Amendment (Welfare Reform) Bill 2017*.

The measures contained within this Bill introduce several 2017 Budget measures across the Social Services, Employment and Human Services portfolios.

These measures include:

- simplifying the working age payment system (schedules 1-8);
- strengthening welfare conditionality and supporting jobseekers with drug and alcohol abuse issues to pursue treatment (schedules 9,10, 12 and 13);
- streamlining administrative processes (schedules 11, 16,17 and 18); and
- introducing a new targeted compliance framework to identify and support vulnerable people while ensuring that wilfully non-compliant jobseekers face appropriate penalties (schedules 14 and 15)

The combined effect of these measures will be to provide better support for people searching for work while ensuring that the welfare system continues to provide a safety net for those who need it most.

## ***Schedule 1 – Creation of the JobSeeker Payment***

The amendments contained in Schedule 1 will introduce the JobSeeker Payment and cease Newstart Allowance.

### **Background and policy rationale**

JobSeeker Payment will consolidate seven income support payments, including Newstart Allowance, and will be the main payment for people of working age with capacity to work now or in the near future.

Simplifying the welfare system will make it easier for people to navigate and ensure that people in similar circumstances are treated the same. JobSeeker Payment will better accommodate a recipient's circumstances as they will not need to claim a new payment should they enter a period of sickness or bereavement. There will be one set of rules for working age income support recipients with capacity to work now or in the near future.

### **Who will be affected by this change?**

From 20 March 2020, Newstart Allowance, Sickness Allowance, Wife Pension, Bereavement Allowance and Widow B Pension will cease. Approximately 811,000 recipients will transition from an existing payment to the JobSeeker Payment and around 5,000 recipients will transfer to other payments, such as Age Pension and Carer Payment.

Widow Allowance will be closed to new entrants from 1 January 2018 and will cease on 1 January 2022. Partner Allowance will also cease on 1 January 2022 when all recipients will have transitioned to Age Pension.

The eligibility requirements for JobSeeker Payment will be based on existing Newstart Allowance rules, but will be broadened to include access for newly bereaved people and those who have a temporary illness or injury preventing them from working or studying.

The Bill contains a number of transitional provisions which will ensure recipients transitioning to the JobSeeker Payment are not, in most cases, worse off. Over 99.9 per cent of recipients will have the same or a higher rate of payment under this measure. It will create one set of rules for working-age income support payments for people with capacity to work. This simplification will also make the system easier for recipients to navigate and understand.

### ***Schedule 2 – Cessation of Widow B Pension***

The amendments contained in Schedule 2 will cease Widow B Pension from 20 March 2020.

#### **Background and policy rationale**

Widow B Pension is a payment made to older widows who did not qualify for a Parenting Payment, had limited means and who had lost the financial support of their partner. It has been closed to new applicants since 20 March 1997.

Ceasing this payment and transferring recipients to the Age Pension will simplify the social security system and strengthen the Age Pension as the default payment for those over Age Pension age.

#### **Who will be affected by this change?**

There are currently around 320 Widow B Pension recipients. On 20 March 2020 all these recipients will transition to Age Pension as they are already of Age Pension age and meet the relevant criteria. Age Pension and Widow B Pension have the same basic payment rate and means testing arrangements. Therefore, Widow B Pension recipients will not experience any change to their payment rates or means testing when they transition to Age Pension.

### ***Schedule 3 – Cessation of Wife Pension***

The amendments in Schedule 3 will cease Wife Pension from 20 March 2020.

#### **Background and policy rationale**

Wife Pension is a non-activity tested payment and has been closed since 1 July 1995. It is paid to female partners of Age Pension or Disability Support Pension recipients who are not eligible for a pension in their own right. To qualify, a person must have lodged their claim before 1 July 1995.

Wife Pension was granted to women solely on the basis of their partner's eligibility for Age Pension or Disability Support Pension. There was no assessment of capacity to work and the payment does not require recipients to satisfy mutual obligations. Wife Pension recipients do not receive assistance or incentives to improve their personal situation and reduce their reliance on welfare. Ceasing Wife Pension recognises that dependency based payments no longer reflect social and economic norms, such as women's labour force participation. Ceasing this payment will make the social security system more coherent and ensure that people in similar circumstances are treated the same. A number of transitional arrangements have been made to ensure existing recipients are not worse off.

#### **Who will be affected by this change?**

As at 2020 it is estimated there will be around 7,750 Wife Pension recipients.

#### **Transition from Wife Pension to JobSeeker Payment**

On 20 March 2020, 2,900 will transition to the JobSeeker Payment. Although the JobSeeker Payment basic rate will be lower than the Wife Pension rate and means testing will be tighter than Wife Pension means testing arrangements; transitional rates will ensure that Wife Pension recipients who are transitioned to JobSeeker Payment do not experience nominal reductions in their payment rates. Recipients will be paid a transitional jobseeker payment rate based on a frozen rate of Wife Pension at 19 March 2020. Their transitional jobseeker payment rate will be compared to their entitlement under normal jobseeker payment rules and recipients will only lose access to a transitional rate once their jobseeker payment rate is equal to or higher than their transitional jobseeker payment rate over a sustained period (see detailed description below).

On 20 March 2020, Wife Pension recipients who transition to JobSeeker Payment will be streamed into one of two groups:

- Transition Group One – maximum rate of Wife Pension recipients with income below the JobSeeker Payment Income Free Area.
- Transition Group Two – maximum rate of Wife Pension recipients with income above the JobSeeker Payment Income Free Area, or part rate of Wife Pension.
  - This group also includes Wife Pension recipients who were in receipt of a pension payment prior to the 2009 pension reforms, and receive a dual rate calculation as a result. The dual rate calculation for affected recipients compares their entitlement under the pre-2009 pension rules against the current pension rules, with the more beneficial rate paid.

Recipients in these transition groups will receive a transitional jobseeker payment rate based on:

- a **frozen rate of pension** (maximum basic rate and pension supplement maintained at the rate it would have been at 19 March 2020);
- **pension status for supplements** such as Rent Assistance and Energy Supplement (this would be higher than a normal JobSeeker Recipient's entitlement for Rent Assistance and Energy Supplement, amounts would be subject to existing indexation arrangements, where applicable);
- assets assessed according to the **pension assets test** (frozen as at 19 March 2020); and
- income assessed according to the **JobSeeker Payment income test** for those in Transition Group One; or income assessed according to the **pension income test** (frozen as at 19 March 2020) for those in Transition Group Two.

These provisions ensure that recipients retain the income test that would not cause a reduction in payment on implementation, while ensuring that recipients do not receive a more generous treatment for their circumstances than necessary to maintain their current level of assistance.

Recipients will continually have their transitional JobSeeker Payment rate compared against their JobSeeker Payment rate under JobSeeker Payment rules, with recipients transitioning to JobSeeker Payment once the rate provides an equal or higher result for at least 42 days. This ensures that former Wife Pension recipients will retain access to a transitional rate until the JobSeeker Payment delivers a better outcome over a sustained period, rather than only in the short term due to a temporary change in circumstances (such as a short break in income from employment). Recipients will also continue to receive the **Pensioner Concession Card** while receiving a transitional jobseeker payment rate.

Access to a transitional JobSeeker Payment rate would also be lost if the recipient no longer satisfies Wife Pension qualification rules due to a change of circumstances, such as separating from their partner.

Former Wife Pension recipients who transition to JobSeeker Payment will be required to fulfil JobSeeker Payment activity testing requirements to improve their work readiness and reduce their reliance on welfare.

### **Example A**

A Wife Pensioner with an income level below the Jobseeker Free Area would move to Jobseeker Payment as part of Transition Group One on the day of Wife Pension's closure (20 March 2020). This would mean that they would be eligible for a transitional rate of JobSeeker Payment based on a frozen rate of Wife Pension (the maximum basic rate plus pension supplement) as well as any applicable supplements (such as rent assistance and energy supplement, for which the recipient would be considered as a pensioner). Due to their income level, they would be subject to the Jobseeker income test and frozen pension assets test. This recipient's rate package would be calculated and compared against the rate package they would be eligible for as a normal Jobseeker, with the higher rate provided to the recipient.

### **Example B**

A Wife Pensioner with an income level above the Jobseeker Free Area would move to Jobseeker Payment as part of Transition Group Two on the day of Wife Pension's closure (20 March 2020). Their rate would be based on the same rate components as the recipient in Example A in conjunction with the frozen pension assets test, but would be subject to a frozen pension income test instead of the JobSeeker Payment income test. Once again, their final rate package would be compared to what they would be eligible for under the normal JobSeeker Payment rules, with the higher result provided to the recipient.

### **Example C**

A former Wife Pensioner with a transitional rate based on the 2009 pension reforms would move to jobseeker payment as part of Transition Group Two on the day of Wife Pension's closure (20 March 2020). This would mean that they would be eligible for a transitional rate of jobseeker payment based on the transitional rate under the 2009 pension reform (maximum transitional rate of pension), frozen as at 19 March 2020, as well as any applicable supplements (such as rent assistance and energy supplement, for which the recipient would be considered a pensioner). Their rate would be subject to the pension income test that applies to 2009 pension reform transitional rate recipients, frozen as at 19 March 2020, alongside the frozen pension assets test that applies to all former Wife Pension recipients receiving jobseeker payment. Once again, their final rate package would be compared to what they would be eligible for under the normal jobseeker payment rules, with the higher result provided to the recipient.

### **Transition from Wife Pension to Age Pension**

2,250 of the 7,750 Wife Pension recipients will meet the Age Pension eligibility requirements and transition to that payment. Wife Pension and Age Pension have the same basic rates and means testing arrangements. Therefore, recipients that move to Age Pension will not experience any change to their payment rate.

### Transition from Wife Pension to Carer Payment

2,400 recipients who receive both Wife Pension and Carer Allowance will automatically transfer to Carer Payment. Wife Pension and Carer Payment have the same basic rates and means testing arrangements. Therefore, recipients that move to Carer Payment will not experience any change to their payment rate. They will remain eligible for Carer Payment as long as they continue to receive Carer Allowance.

### Transition for Wife Pension recipients residing overseas

It is estimated that around 200 Wife Pension recipients who reside overseas will no longer be eligible for a social security payment as a result of this measure. These recipients are under Age Pension age and would not be eligible for either another payment under an international agreement or a portable payment. It would not be appropriate to maintain Wife Pension for these 200 recipients. If they continue to be paid Wife Pension, the payment will remain open for a number of decades. This would maintain existing inequities in the social security system and reinforce out-dated societal norms around women's labour market participation. It would also be a significant administrative burden on the system and would reduce the effectiveness of working-age payment simplification. The implementation date of 20 March 2020 will allow these recipients to adjust to their new circumstances, for example by testing their skills in the labour market. These recipients could also return to Australia before 20 March 2020 where they would continue to receive Wife Pension and transition to the appropriate payment after that date.

## **Schedule 4 – Cessation of Bereavement Allowance**

The amendments in Schedule 4 will cease Bereavement Allowance from 20 March 2020 and provide assistance to newly bereaved people through the JobSeeker Payment and Youth Allowance.

### **Background and policy rationale**

Bereavement Allowance is a short-term payment (usually up to 14 weeks) paid to a person immediately following the death of a partner. If a woman is pregnant at the time of her partner's death, Bereavement Allowance is payable from the time of claim until the birth of the child, the end of the pregnancy or for up to 14 weeks, whichever is longer. There are around 960 recipients of Bereavement Allowance each year.

The amendments in this Schedule contribute to the simplification of the working-age payment system. Simplification will make the system easier for recipients to understand and navigate. It will also reduce the need for recipients to transfer between payments as newly bereaved people will be able to claim assistance through the JobSeeker Payment and Youth Allowance. A number of transitional arrangements have been made to ensure existing recipients are not worse off.

This Bill does not change Bereavement Payment provisions available to recipients through their income support payments. Bereavement Payments are separate and different to Bereavement Allowance. Bereavement Payments are made as a temporary continuation of a deceased person's income support payment and are only available for people who are income support recipients at the time of death.



Bereavement Payments may be paid following the death of an income support recipient, and sometimes dependants, to assist the survivor to adjust to the change in financial circumstances after the death. In the case of individuals, a bereavement payment is paid to the estate to assist with settling financial expenses incurred by the deceased prior to death. Newly bereaved recipients must choose between Bereavement Allowance and Bereavement Payments and cannot receive both.

### **Who will be affected by this change?**

On 20 March 2020 it is expected there will be around 170 people in receipt of Bereavement Allowance. These recipients will be unaffected by the cessation of the payment. They will continue receiving Bereavement Allowance at the same rate for the remainder of their bereavement period.

Up to 960 people per year who would have otherwise claimed Bereavement Allowance will be able to claim JobSeeker Payment, Youth Allowance or another income support payment.

JobSeeker Payment and Youth Allowance will provide additional assistance to newly bereaved people through exemptions to waiting periods and a triple rate of payment in the first fortnight of their bereavement period. The triple payment acknowledges the high upfront costs associated with losing a partner or spouse, such as funeral expenses. Exemptions from waiting periods will ensure that newly bereaved people have access to timely support. As is currently the case with Bereavement Allowance, existing recipients will not be able to claim the triple payment in addition to Bereavement Payments. They will need to choose one or the other.

Recipients of Parenting Payment, Youth Allowance, JobSeeker Payment and Special Benefit that are recently bereaved will be exempt from activity testing requirements for the duration of their bereavement period.

### ***Schedule 5 – Cessation of Sickness Allowance***

The amendments in Schedule 4 cease Sickness Allowance from 20 March 2020. The Schedule also modifies JobSeeker Payment eligibility criteria to allow people who are temporarily incapacitated for work or study because of illness or injury to qualify for payment in similar circumstances to those presently covered by Sickness Allowance.

### **Background and policy rationale**

Sickness Allowance is an income support payment for working age people who are temporarily incapacitated for work or study due to illness or injury. Recipients need a medical certificate from a doctor declaring that they are temporarily unfit for work. Sickness Allowance is generally paid for the period specified on the person's medical certificate or 13 weeks, whichever is less. This period can generally be extended in 13 week increments if further medical certificates are provided.

Over the past few years there has been an increase in the number and proportion of long-term Sickness Allowance recipients. This indicates that the payment is not effective as a short-term response to temporary incapacity and that it would be more appropriate to provide support through a consolidated JobSeeker Payment. Many recipients transfer between Sickness Allowance and Newstart Allowance. Consolidating Sickness Allowance into the JobSeeker Payment will avoid the need for recipients to transfer between payments. The JobSeeker Payment will provide a safety net for recipients while they are unable to work and will support them into employment once they have recovered.

### **Who will be affected by this change?**

On 20 March 2020, there will be around 8,400 Sickness Allowance recipients. All recipients will remain on the payment until their maximum period ends, at which point they will cease to qualify for Sickness Allowance. If appropriate, they will transfer to the new JobSeeker Payment or return to their employment or study. From 20 September 2020, Sickness Allowance will cease as all recipients would have transitioned to the JobSeeker Payment or returned to employment or study.

Sickness Allowance and JobSeeker Payment will have the same basic rates and means testing arrangements. Therefore, recipients will not experience a change to their basic rate but some may lose eligibility for Pharmaceutical Allowance.

Currently, Pharmaceutical Allowance (\$6.20 per fortnight single; \$3.10 per fortnight partnered) is automatically paid to Sickness Allowance recipients. In line with existing Newstart Allowance rules, JobSeeker Payment recipients will be assessed to determine their eligibility for Pharmaceutical Allowance. JobSeeker Payment recipients will be eligible if they:

- are temporarily incapacitated;
- have a partial capacity to work;
- are a single principal carer of a dependent child; or
- are 60 years or more of age and have been in receipt of income support continuously for at least nine months.

It is estimated that around 400 former Sickness Allowance recipients will be ineligible for Pharmaceutical Allowance when they transition to JobSeeker Payment as they will not meet one of the criteria above. This represents less than five per cent of the Sickness Allowance population on 20 March 2020.

Former Sickness Allowance recipients who transition to JobSeeker Payment may be subject to activity testing requirements if they do not meet any of the JobSeeker Payment activity exemptions which will include similar circumstances to current Sickness Allowance eligibility (for example, the temporary incapacity exemption).

## **Schedule 6 – Cessation of Widow Allowance**

The amendments in Schedule 6 will close Widow Allowance to new entrants from 1 January 2018 and cease the payment from 1 January 2022.

### **Background and policy rationale**

Widow Allowance is an income support payment paid to older working age women who lose the support of a partner and face barriers to employment. Widow Allowance is payable to women over 50 born before 1 July 1955 who are no longer partnered and have become widowed, divorced or separated since turning 40 years of age, and have no recent workforce experience.

Currently, mature aged unemployed single and partnered women not caring for children and all men are required to claim Newstart Allowance. Closing Widow Allowance and providing support through Newstart Allowance (Jobskeeper Payment from 20 March 2020) will improve the coherence of the system and ensure that recipients in similar circumstances are treated the same. A number of transitional arrangements have been made to ensure existing recipients are not worse off.

### **Who will be affected by this change?**

From 1 January 2018, Widow Allowance will be closed to new entrants. Existing recipients will continue to receive Widow Allowance until they reach Age Pension age and transition to that payment. Age Pension payment rates and means testing arrangements are more generous than Widow Allowance rates and means testing. These recipients will therefore experience an increase in their payment rates.

To support those who would have otherwise been eligible for Widow Allowance, when Widow Allowance is closed on 1 January 2018 people who would have otherwise been eligible will be able to claim Newstart Allowance or another income support payment. Newstart Allowance and Widow Allowance have the same basic rates and means testing arrangements. While Utilities Allowance is payable on Widow Allowance, it is not payable on Newstart Allowance. Utilities Allowance is a quarterly payment which totals around \$609.20 per year for singles and \$304.60 per year for each eligible member of a couple. Recipients who would have otherwise been eligible for Widow Allowance will be exempt from the activity test requirements as they will all be over 60 years old and nearing Age Pension age. However, they will be able to opt in to employment services to assist them in building capacity and seeking work if they choose to do so.

On 1 January 2022, approximately 400 remaining Widow Allowance recipients will have reached Age Pension age and transition to that payment. Those who do not meet the 10 year Australian residence qualifying rule will be given one-off exemptions from this rule. As explained above, Widow Allowance recipients will receive a higher rate of payment on Age Pension.

## ***Schedule 7 – Cessation of Partner Allowance***

The amendments in Schedule 7 cease Partner Allowance from 1 January 2022.

### **Background and policy rationale**

Partner Allowance was closed on 20 September 2003. It provides income support for older partners of income support recipients who face barriers to finding employment because of their previous limited participation in the workforce. Partner Allowance is payable to people born before 1 July 1955 who are members of a couple and whose partner was on a qualifying pension or allowance at the time of claim. They must not be qualified for Parenting Payment.

Ceasing this payment will contribute to the simplification of the social security system. Transferring recipients to the Age Pension will strengthen the Age Pension as the default payment for those over Age Pension age.

### **Who will be affected by this change?**

All Partner Allowance recipients will have reached Age Pension age by 1 January 2022 and will automatically transfer to Age Pension. Age Pension basic payment rates and means testing arrangements are more generous than Partner Allowance rates and means testing. These recipients will therefore receive a higher rate of payment on Age Pension.

## ***Schedule 8 – Minister’s rules***

The amendments in this Schedule will allow the Minister to make rules of a transitional nature in relation to the amendments and repeals made by Schedules 1 to 7. The Minister’s rule making power is subject to limits and safeguards.

These rules are necessary to allow the Government to address any unintended consequences in a timely manner.

## ***Schedule 9 – Changes to activity tests for persons aged 55 to 59***

The amendments in Schedule 9 will change activity tests for some income support recipients.

### **Background**

Under current legislative arrangements (see sections 603AA and 731G of the *Social Security Act (1991)*), job seekers aged 55 to 59 years receiving Newstart Allowance and Special Benefit (as Nominated Visa Holders) can be taken to satisfy the activity test if they undertake at least 30 hours per fortnight of approved voluntary work, suitable paid work (including self-employment) or a combination of these activities. Job seekers who meet those criteria cannot be required to simultaneously look for, or be willing to undertake, additional suitable paid work.

Under the Social Services Legislation Amendment (Welfare Reform) Bill 2017, from 20 September 2018 job seekers aged 55 to 59 on Newstart Allowance and Special Benefit (as Nominated Visa Holders) will no longer be taken to satisfy the activity test through approved voluntary work alone. Of the 30 hours per fortnight, at least half (15 hours per fortnight) must be satisfied through suitable paid work in order for the job seeker to be taken to satisfy the activity test.

### **Policy Rationale for the proposed changes**

The Australian population is ageing. Over the last decade the average Australian life expectancy has increased from 78.5 years for males to 80.4 years and from 83.3 years for females to 84.5 years.<sup>1</sup>

People are also working longer. In 2004-05, the average retirement age was 52 years. In 2004-05, the average age at which those in the workforce expected to retire was 62 years and almost a quarter of all workers intended to retire before reaching the age of 60. However, by 2014-15, the average retirement age had increased to 54.4 years and the average age of intended retirement had also increased to 65.1 years and just 8 per cent of workers intended to retire before reaching 60 years of age.<sup>2</sup>

Changing community attitudes around ageing and working are reflected in changes to the age pension, where eligibility for the age pension (subject to meeting other eligibility requirements) is now 65 years and 6 months. This age will gradually rise to 67 years by 1 July 2023.

Contemporary community expectations are that those aged 55 to 59 have many productive years ahead of them. However, the current activity test discriminates against them by applying out-dated views of work capacity based on their age. The amendments aim to better connect job seekers with the labour market, and better align participation requirements with the current levels of employment for mature age job seekers. It reflects community expectations that years of working life are longer and people under 60 years should actively engage in suitable paid work where possible.

The proposed change also supports one of the key principles of Australia's income support system, which is to encourage all working age income support recipients to look for and accept paid work, and move off welfare as soon as possible. A recent Organisation for Economic Cooperation and Development (OECD) report<sup>3</sup> looking at strategies to connect people with jobs in Australia found there is unmet activation potential in Australia's labour market for groups underrepresented in the labour market, including those aged over 55 years.

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<sup>1</sup> Australian Institute of Health and Welfare, Life Expectancy Supplementary Data [www.aihw.gov.au/delaths/life-expectancy](http://www.aihw.gov.au/delaths/life-expectancy) accessed 10 July 2017

<sup>2</sup> Australian Bureau of Statistics, Retirement and Retirement Intentions, catalogue number 6238.0

<sup>3</sup> OECD (2017) 'Connecting People with Jobs: Key Issues for Raising Labour Market Participation in Australia'

Australian Bureau of Statistics data shows that while the unemployment rate for mature age people is relatively low, mature age job seekers are more susceptible to becoming long-term unemployed and more likely to become discouraged during their job search. As at April 2017, the average duration of unemployment was 78 weeks for persons aged 55 and over and 80 weeks for persons aged 55-64 (well above the 45 week average for all persons). Also, mature age persons are more likely to be classified as discouraged job seekers. In February 2016, 48.2 per cent (48,700) of discouraged job seekers were aged 55 and over.

This data shows that our welfare system needs to provide better support for mature age job seekers to return to work. The proposed changes will encourage job seekers aged 55 to 59 to undertake at least 15 hours a week of paid work.

### **Who will be affected by this change?**

Under the amendments approximately 40,000 job seekers will need to engage in at least 15 hours of suitable paid work (of the 30-hour total requirement) from 20 September 2018 in order to be taken to satisfy the activity test.

### **How will the changes affect individual job seekers?**

The amendments will encourage 55-59 year old job seekers to engage in paid work for 15 hours per fortnight and highlight the importance of individuals' involvement and efforts on improving their own well-being. OECD evaluations on active labour market policies note that successful experiences of re-entering labour market, even for short-term jobs, can provide further occupational development.<sup>4</sup>

Many mature age workers have a lot of experience and skills, and this measure aims to increase employment outcomes for them and help change perceptions about the abilities of older job seekers.

Mature age job seekers affected by this measure will be assisted to find work both by existing programs such as the Restart wage subsidy program and the Government's \$110 million Mature Age Job Seeker Package that was announced in the 2017-18 Budget.

The Restart wage subsidy, which offers employers up to \$10,000 over six months for hiring mature age job seekers, has assisted more than 12,000 mature age people into a job.

The Mature Age Job Seeker Package includes three measures: the development and implementation of the new Career Transition Assistance Program, the expansion of the National Work Experience Program (NWEPP) and the introduction of the new Pathway to Work Pilots.

The Career Transition Assistance Program will assist mature aged job seekers aged 50 years and over to reskill and identify opportunities in new industries and occupations. The program will be a short, intensive course consisting of skills assessments, exploration of suitable occupations, research of local labour markets and learning resilience strategies. This will be followed by digital literacy training where appropriate to build IT skills.

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<sup>4</sup> Ibid

The expansion of the NWEP will offer more short term work experience opportunities to people looking for work. The NWEP will give mature age job seekers more opportunity to develop new skills and experience. Evidence shows that the NWEP is effective at leading to employment, with around 50 per cent of participants in a job within three months of participating.

The Pathway to Work Pilots will connect job seekers, including mature age job seekers, with jobs. The pilots will prepare and train participants for vacancies in specific growth industries or infrastructure projects.

The Australian Law Reform Commission's review on legal barriers to older persons' participation found that a number of stakeholders argued that the existing concessional activity test sends an inappropriate message about the expected workforce participation of mature age persons.<sup>5</sup> This included the Australian Chamber of Commerce and Industry, which argued that the current exemptions for mature age workers can discourage participation in the workforce and the Council on the Ageing, which agreed that allowing persons to satisfy their activity test by volunteering alone could be seen to be discouraging older people from trying to re-enter the paid workforce.

### **Safeguards**

The legislative amendments in Schedule 9 acknowledge the difficulties older Australians face in finding work, and there are a range of safeguards to protect those who face difficulties in being taken to satisfy the activity test. The amendments will not affect the operation of the current provisions relating to the circumstances in which, regardless of age, recipients who are principal carer parents or have a partial capacity to work may be taken to satisfy the activity test.

Job seekers who are unable to participate in employment services for extended periods can also apply for exemptions from their activity test requirements.

There are reasonable excuse provisions to ensure that job seekers are not penalised for actions that are beyond their control. The definition of reasonable excuse included in policy guidelines covers a wide range of potential circumstances, which may have impacted on a job seeker's capacity to comply.

### **Impact on the volunteering sector**

The proposed changes are expected to have minimal impact on the number of volunteers or the hours contributed towards the volunteering sector. The Department of Employment data indicates there are 8,016 job seekers registered in jobactive undertaking volunteer work to satisfy their activity test requirements. According to statistics prepared by Volunteering Australia, only 43 per cent of volunteers in Australia were aged 55-64 years in 2010.<sup>6</sup>

The amendments do not preclude any job seekers from volunteering. Job seekers aged 55 to 59 can continue to be taken to satisfy the activity test through volunteering, including at not-for-profit organisations, but will need to do so in combination with suitable paid work.

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<sup>5</sup> [https://www.alrc.gov.au/sites/default/files/pdfs/publications/whole\\_78\\_0.pdf](https://www.alrc.gov.au/sites/default/files/pdfs/publications/whole_78_0.pdf)

<sup>6</sup> <https://www.volunteeringaustralia.org/wp-content/uploads/VA-Key-statistics-about-Australian-volunteering-16-April-20151.pdf>

Furthermore, separate changes being progressed as part of the Government's welfare reform agenda that are not part of this Bill will mean that job seekers aged 60 to the age pension age will have new participation requirements of ten hours per fortnight. These participation requirements can be met through volunteering alone and are expected to result in a number of additional job seekers undertaking volunteering activities.

The proposed cap on volunteering activities for the purposes of being taken to satisfy the activity test is expected to have no or minimal impact on any caring responsibilities 55-59 year old job seekers may have for their grandchildren, as the requirement of the total number of hours (30 hours) each fortnight remains the same. This means that job seekers aged 55 to 59 will continue to have the same time to devote to caring activities. Additionally, caring responsibilities are taken into account in determining participation requirements.

### ***Schedule 10 – Start day for some participation payments***

The amendments in Schedule 10 will change the start day for some participation payments.

#### **Background**

Currently, as part of RapidConnect, a person who claims Newstart Allowance or Youth Allowance (other) is required to attend an interview with an employment services provider before their income support is payable. Their income support is then paid back to the day on which they first contacted the Department of Human Services. The aim of RapidConnect is to assist job seekers claiming income support to join the workforce by being required to promptly access employment opportunities through an employment services provider.

In certain circumstances for some individuals it is not appropriate for them to be referred immediately to employment services and, accordingly, they are exempt from RapidConnect (e.g. individuals exempt from mutual obligation or those assessed as having multiple barriers to employment).

#### **Overview - Work First: Faster connection to employment services**

The Work First: Faster connection to employment services initiative was announced in the 2017-18 Budget as part of the Better Targeting of Assistance to Job Seekers measure. The aim of the initiative is to ensure that job seekers connect as quickly as possible with employment services and are accessing the programs that are available to help them find a job. Schedule 10 of the Bill implements this initiative, which is due to commence on 1 January 2018.

Under the Work First initiative, job seekers who are subject to RapidConnect will generally be paid their income support from the day they first attend a meeting with their jobactive or Transition to Work provider, rather than from the date their claim was made (or deemed to be made) unless the individual is serving a waiting period.



The Work First measure will not apply to those job seekers who are currently exempt from RapidConnect (e.g. job seekers referred to Stream C or Disability Employment Services), and job seekers in Community Development Program regions. Around 28.8 per cent of all Newstart Allowance and Youth Allowance (other) commencements are exempt from RapidConnect.

Consistent with current arrangements a job seeker subject to RapidConnect will be referred to employment services once their income support claim is finalised by the Department of Human Services.

Both jobactive and Transition to Work providers are currently required to have appointments available for job seekers to attend within two business days. To ensure there is opportunity for job seekers to connect with either a jobactive or Transition to Work provider, these existing contractual requirements will be maintained to ensure that job seekers are able to attend appointments quickly and connect with the services that will help them find a job.

To avoid penalising job seekers who are able to attend an appointment within two days, but where there is no jobactive or Transition to Work provider appointment available in those two days, their income support will be paid from the day their claim was finalised by the Department of Human Services.

If a job seeker has a reasonable excuse for missing their initial appointment, and they attend a subsequent appointment, their income support would generally commence from the appointment they missed, rather than the subsequent appointment.

### **Policy rationale for the proposed changes**

The proposed changes will help job seekers find work faster by encouraging them to connect their jobactive provider sooner. More than one third of job seekers take longer than two days to connect with their jobactive provider and almost 10 per cent take longer than five days to attend their initial appointment. These delays are inconsistent with community expectations that those on income support are taking all reasonable efforts to find work as quickly as possible.

### **How long does it currently take for a job seeker to attend their provider appointment?**

Current administrative data indicates that 90.3 per cent of job seekers subject to RapidConnect connect with their jobactive/Transition to Work provider within five calendar days of being referred by the Department of Human Services. Around 63.9 per cent of job seekers connect within two days.

Approximately 9.7 per cent can take longer than five days to attend their initial appointment with their jobactive/Transition to Work provider (for example due to job seekers rescheduling appointments or not attending appointments with an employment services provider).

<b>Time to Connect</b>	<b>Proportion</b>
Connects from 0-5 days	90.3 per cent
Connects from 6 to 10 days	4.5 per cent
Connects from 11 to 15 days	0.7 per cent
Connects from 16 to 20 days	0.1 per cent
Connects after 21 or more days	0.02 per cent
No connection	4.5 per cent

***Schedule 11 – Removal of intent to claim provisions***

The amendments in Schedule 11 will change intent to claim provisions.

**Background**

From 1 July 2017, welfare claimants need to provide all of the information under their control to make a claim, and from 1 January 2018, they will generally receive payments from the date they lodge a complete claim, rather than from the date they first contact the Department of Human Services (DHS) expressing an intention to claim.

These changes simplify the claim process and encourage social security claimants to provide timely and complete information in support of claims. DHS are providing clear information about what information must be provided as part of the claim process.

These changes are part of a number of changes the Government is making from this Budget to remove unnecessary administrative practices, which ultimately cost the taxpayer.

**Who will be affected by this change?**

This measure applies to all new claims for social security payments. There are approximately 850,000 new claims per year.

Current arrangements for a number of payments that allow payments to be made with a reduced level of required documentation will be retained. These apply in exceptional circumstances where a person may be in severe financial hardship.

## ***Schedule 12 – Establishment of a drug testing trial***

The amendments in Schedule 12 will establish a two year trial of mandatory drug testing for 5,000 new recipients of Newstart Allowance and Youth Allowance (other) in three regions. The drug testing trial will commence on 1 January 2018.

### **Background**

The drug testing trial is designed to identify job seekers who may have ongoing drug dependency issues and may benefit from pursuing treatment. Its aim is to improve the capacity of recipients with drug misuse issues to find employment, or participate in relevant education or training, by assisting them to access appropriate treatment and overcome their barriers to work. The trial will test the effectiveness of drug testing as a means of detecting people with drug use issues, as well as intervention strategies, including Income Management and medical professional assessment and treatment.

The drug testing trial will be comprehensively evaluated, including during the trial period. The evaluation will consider all aspects of the trial, including the characteristics, experience and outcomes of recipients who participate.

The trial will be conducted in three locations. These locations will be selected by considering a range of factors, including crime statistics, drug use statistics, social security data and health service availability. The Government has not yet made an announcement on the trial locations.

### **Drug testing**

From 1 January 2018, all people making a claim for Newstart Allowance or Youth Allowance (other) will be asked to acknowledge in the claim form that they may be required to undergo drug testing as a condition of payment. If the claimant is a resident in one of the trial locations, their claim will not be able to be granted if they have not acknowledged this in the claim form.

Recipients of Newstart Allowance and Youth Allowance (other) who claim after 1 January 2018, have acknowledged potential drug testing as part of their claim and are residing in a trial location, may be selected to undertake a drug test. Recipients selected will be notified to attend an appointment at their local Department of Human Services (DHS) office, consistent with standard DHS appointment requirements. At the appointment, recipients will be notified if they are required to undertake a drug test.

Drug testing of selected Newstart Allowance and Youth Allowance (other) recipients will be administered by a qualified third party drug testing provider contracted for this purpose and will be carried out on either DHS premises or at the drug testing provider's premises. If travel is required, the recipient will be given sufficient time and reasonable assistance, if necessary, to get to the drug test appointment.

The drug test will be performed by appropriately trained persons engaged by the contracted provider in a private setting.

A legislative instrument setting out Drug Test Rules is allowed for in the Bill and will include the protocols for conducting the drug tests, including safeguards to ensure that the testing is conducted appropriately and in accordance with relevant standards. The Drug Test Rules are currently being drafted by the Department of Social Services. An exposure draft of these Rules will be made available to the Committee for consideration.

The Department is also undertaking consultation with key stakeholders. The expert advice of the contracted testing provider and the drug and alcohol sector will be taken into account in developing these protocols and safeguards. The exposure draft of the Drug Testing Rules may therefore be subject to change based on these considerations.

The drug testing trial is focused on the abuse of illicit drugs and is not intended to capture recipients who may be taking legal medications, or medical cannabis. It is intended that job seekers undergoing a drug test will be questioned by the drug testing provider to account for any legal medications that they are taking which may cause a positive result. If a job seeker provides evidence that they are taking legal medications, such as a valid prescription, the drug testing provider will take this into account in recording the test result and may therefore record a negative result.

### **First positive drug test**

Recipients who test positive to the initial drug test will be placed on Income Management for a 24 month period. If the recipient's initial test is negative they will not be placed on Income Management.

The use of Income Management is intended to help people identified through the trial as using illicit drugs to manage their drug use by restricting the amount of their welfare payment that will be available to them as cash.

If the recipient leaves payment during the 24 month period and they later reclaim, they will return to Income Management for the remainder of the 24 months.

In addition to being placed on Income Management, recipients who test positive to the initial drug test will be subject to further random tests during the trial period, the first of which will occur within 25 working days of the initial positive test. Subsequent testing of recipients is intended to identify those job seekers who may have more serious, ongoing drug abuse issues and may need further intervention to pursue treatment where appropriate.

### **Income management**

The Government has decided that Income Management will be the method of welfare quarantining applied to recipients who return a positive drug test under the drug testing trial. Income Management is an established method of welfare quarantining applied to help vulnerable recipients and is currently operating in a number of locations across Australia.

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 DHS 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.

Once on Income Management, the recipient will have access to a range of support services. These services include the Income Management line and the ability for recipients to check their Income Management and BasicsCard balance via a range of channels including online, by phone or in person. Financial support services and referrals are also available. These arrangements are consistent with existing Income Management measures.

Under Income Management, DHS makes Income Management payments to businesses through a number of various mechanisms. Merchants can be approved for BasicsCard which allows them to accept payment through their standard EFTPOS facilities. Currently, more than 15,000 merchants accept the BasicsCard nationwide. If a merchant is not eligible to accept the BasicsCard, DHS can make payment to them in a number of other ways. Income Management Third Party Organisations are businesses that generally do not have EFTPOS to support BasicsCard activation. They include service providers receiving fortnightly payments without the customer needing to attend the business, as is the case for BasicsCard. Income Management Third Party Organisations also include a large number of private landlords that cannot be paid by BasicsCard. Using the DHS system, a payment can be made to a contracted or un-contracted third party's nominated bank account without the need for manual processing.

The Bill provides that under the drug testing trial a person may be taken off Income Management if it is assessed that being on Income Management may seriously risk the person's mental, physical or emotional wellbeing. Where required, this assessment would be undertaken by a DHS Social Worker based on all the facts which may include documentary evidence provided by suitably qualified professionals.

### **Second positive drug test**

Recipients who test positive to more than one drug test in the 24 month period will be referred to a medical professional for assessment. The medical professional will be a person with expertise in drug and alcohol treatment. Arrangements for sourcing these medical professionals will depend on the trial sites selected. The assessment will consider the extent of the recipient's substance misuse or dependency and the impact of this on their capacity to work.

If the medical professional recommends treatment, the recipient will be required to undertake the recommended treatment activities to address their substance abuse as part of their Job Plan. The medical assessment may recommend any type of drug or alcohol treatment that is appropriate for the job seeker's individual circumstances. Examples of treatment may include, but are not limited to, further assessment services, support and case management, counselling, information and education programs, detoxification and withdrawal management, non-residential care or rehabilitation, residential care or rehabilitation, or pharmacotherapy.

Where treatment is not immediately available, recipients will need to take appropriate action, such as being on a waiting list.

Recipients with a drug treatment activity in their Job Plan may still be required to undertake other mutual obligation activities, depending on their circumstances and the intensity of the treatment activity or activities recommended. Intensive treatment which precludes a recipient from undertaking other activities, such as residential rehabilitation, would fully meet the recipient's mutual obligation requirements.

As per the existing job seeker compliance framework, recipients who fail to meet the terms of their Job Plan, including any drug treatment activity, may be subject to compliance action. Reasonable excuse provisions would continue to apply; however, not where the reason is wholly or substantially attributable to drug or alcohol misuse (see Schedule 14 of the Bill).

Recipients who have tested positive to two drug tests may be subject to further drug test/s during the 24 months of the trial period.

### **Refusal of a drug test**

Recipients who refuse to take the test (whether it the first or a subsequent test) will have their payment cancelled immediately. The recipient will be advised upfront by DHS at the appointment of the consequences of refusing a drug test.

If the person then makes a new claim for Newstart Allowance or Youth Allowance (other) following cancellation, a 4-week waiting period will apply from the date of cancellation. Recipients who subsequently return to payment after their waiting period will still be subject to the trial and be required to undergo random drug testing as a condition of their ongoing receipt of payment. The 4-week waiting period only applies to recipients whose payment was cancelled because of their refusal to take the drug test despite acknowledging that they may be subject to drug testing as part of their initial claim for payment.

### **Attendance is required at appointments**

Recipients who are part of the drug testing trial and fail to attend scheduled appointments, with either DHS or the drug testing provider, will have their payment suspended until they attend a rescheduled appointment. This is consistent with existing arrangements for appointments, including with DHS or an employment services provider.

When the recipient attends a rescheduled appointment, their payment will be resumed and backdated from the date of suspension if the recipient has a reasonable excuse for not attending, such as unforeseen caring responsibilities. If no reasonable excuse exists, their payment will be payable from the date of their attendance at the rescheduled appointment. If the recipient has not attended a rescheduled appointment, within 13 weeks from the date of suspension, their payment will be cancelled.

If the recipient provides DHS with prior notice of a reasonable excuse for not being able to attend the appointment, such as work commitments, they will be able to reschedule their appointment and their payment will not be suspended as long as they attend the rescheduled appointment.

### **Repayment of an amount for subsequent positive drug tests and re-tests**

If a recipient tests positive to a second or any subsequent test, they will be required to repay an amount representing the cost of these tests through a small percentage reduction of their future fortnightly payment. Recipients will not have to repay the cost of their first positive test or the cost of any negative test result. Hardship provisions will apply.

The amount to be repaid will be an amount determined by the Secretary of the Department of Social Services in an Instrument. This amount will be no more than the lowest cost option of the drug tests available to DHS under their contract with the drug testing provider (regardless of testing method that was used in the recipient's case). The cost will be deducted in instalments from the recipient's future Newstart Allowance or Youth Allowance (other) payments at a percentage rate set by the Secretary. This amount will be no more than a maximum of 10 per cent. This is significantly lower than the standard rate for recovery of social security debts, which is 15 per cent. DHS will also be able to vary the person's repayment rate if they are experiencing financial hardship, or to increase the rate at their request.

### **Re-tests**

If a recipient disputes the result of a drug test, they will be able to request a re-test. It is intended that when the initial sample for the drug test is taken, this sample will be split into two: an 'A' sample and a 'B' sample. This is consistent with arrangements for other forms of drug testing used in Australia. The initial test will use the 'A' sample. If the recipient requests a re-test, this re-test will use the 'B' sample. A re-test does not mean that the recipient can undertake the drug test on a different day, or use a different drug test provider. If the re-test is positive, the recipient will be required to repay the cost of the test through deductions from their fortnightly payments, as outlined above.

### **Privacy implications**

The *Privacy Act 1998* regulates how personal information is handled, and includes the 13 Australian Privacy Principles which apply to most Australian Government agencies. The Privacy Principles are designed to guide Government and large organisations to ensure their policies provide for the open and transparent management of the personal information they handle.

The Privacy Principles provide that personal information may be collected, used and disclosed where required or authorised under Australian law. The Social Security Law contains specific provisions regarding the protection of personal information. Personal information about social security recipients may be obtained or recorded, used or disclosed in limited circumstances in accordance with the confidentiality provisions in Division 3, Part 5 of the *Social Security (Administration) Act 1999*. This includes for the purposes of administering the social security law; for research, statistical analysis or policy development; and where it has been certified as being in the public interest.

The results of a job seeker's drug test and any other information collected under the trial will be classed as protected information for the purposes of social security law. Protection of personal information is dealt with in section 202 of the *Social Security (Administration) Act 1999* and all standard recording, disclosure and usage provisions will apply.

The Bill provides for subordinate legislation that will set out rules for drug testing, including rules relating to the security of test results. The contract with the drug test provider will be for services to be delivered in accordance with these drug testing rules, and will also contain contractual requirements specifically relating to the security of test results. Transmission of test results between the provider and the Government will be through a secure system.

The Department of Social Services is conducting a Privacy Impact Assessment in conjunction with the Department of Human Services as part of the implementation of the drug testing trial. The Privacy Impact Assessment will be provided to the Office of the Australian Information Commissioner.

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

From 1 January 2018, this measure removes exemptions from the activity test and participation requirements where the circumstances giving rise to the request for the exemption are attributable to drug or alcohol misuse (including abuse of drugs or alcohol) or drug or alcohol dependency. The measure will apply to recipients of:

- Newstart Allowance
- Youth Allowance (other)
- Disability Support Pension (under 35 with participation requirements)
- Special Benefit (with activity test requirements), and
- Parenting Payment Single (with participation requirements).

#### **Background**

Under current arrangements, recipients of the above payments may be granted an exemption from their activity test or participation requirements in some circumstances that may be directly attributable to drug or alcohol misuse or abuse. For example, exemptions may be granted because the recipient has a temporary incapacity due to drug or alcohol dependency or is experiencing special circumstances, such as homelessness, which were caused by drug use or alcohol misuse.



The number of job seekers exempt from mutual obligation requirements due to drug or alcohol dependency has nearly doubled over the last five years, from 2,920 in September 2011 to 5,256 in September 2016.

Recipients who are exempt have no mutual obligations and no requirement or expectation to pursue treatment to address the underlying cause that gave rise to the request for an exemption. Recipients with an exemption are also disconnected from employment services and related support to help them address their barriers to work.

### **New arrangements**

From 1 January 2018, recipients will no longer have access to exemptions from the activity test or participation requirements where the reason for the exemption is wholly or predominantly attributable to drug or alcohol dependency or misuse.

It is not in line with community expectations that someone on welfare payments is exempt from their mutual obligation requirements primarily due to alcohol or drug misuse without any expectation that they will address their substance misuse. Allowing people to be exempt from their mutual obligations due to drug or alcohol issues supports a disengagement from the employment services support process and may impede a person's return to work.

This measure recognises that, while job seekers with substance misuse issues may be unable to undertake job search or other work-related activities, they should be encouraged to pursue treatment to overcome their barriers to work.

Where a job seeker's request for an exemption is rejected on the basis that it is primarily related to substance dependency or misuse, they will remain connected to their employment services provider and need to satisfy mutual obligation or participation requirements. Mutual obligation activities are tailored by employment service providers to the individual's needs and will include activities designed to address a person's barriers to work. The job seeker's provider will work with them to determine whether treatment is an appropriate activity for their Job Plan and to pursue that treatment.

Under a related measure announced in the 2017-18 Budget, from 1 January 2018, all job seekers will be able to have drug or alcohol treatment as an approved activity in their Job Plan.

Currently only job seekers in Stream C of jobactive, Disability Employment Services (DES) or the Community Development Program (CDP) can undertake drug or alcohol treatment as part of their mutual obligation requirements. From 1 January 2018, job seekers in Streams A and B of jobactive will also be able to count drug or alcohol treatment towards meeting their Annual Activity Requirements in the Work for the Dole phase.

Where a job seeker has sought an exemption and it has not been granted due to being drug or alcohol misuse related and treatment is determined to be in the interests of the job seeker, employment services providers will also be able to refer job seekers to drug or alcohol addiction treatments as part of an agreed Job Plan.

Treatment may also be determined to be appropriate for a job seeker where the job seeker voluntarily requests treatment be included in their Job Plan; where substance misuse is disclosed through the Job Seeker Classification Instrument or an Employment Services Assessment and identified as a barrier; or where the job seeker is having difficulty meeting their requirements and has provided substance misuse as a reasonable excuse.

Job seekers who choose to undertake treatment will have this included in their Job Plan as a voluntary activity. Intensive treatment (such as residential rehabilitation) which prevents the job seeker from participating in any other activities will fully meet the job seekers requirements. Less intensive treatment (such as fortnightly counselling) will contribute to meeting their requirements and the job seeker may have to undertake other activities, depending on their circumstances and capacity.

Under existing jobactive arrangements, drug and alcohol addiction treatments for job seekers can be funded from resources in the Employment Fund. The Employment Fund is a flexible pool of funds which jobactive providers can access to pay for training or other assistance, to help job seekers gain and keep employment.

The Employment Fund is not available to Disability Employment Services (DES) providers. However, under the DES model, providers receive substantially higher service fees than jobactive providers so they may respond flexibly to the needs of the individual job seeker. For job seekers with substance abuse issues, this can include delivering or purchasing alcohol and drug treatments where appropriate. The amount and type of assistance offered to job seekers, including with respect to alcohol and drug treatment, is at the DES provider's discretion.

Job seekers with substance misuse issues may still be eligible for an exemption for circumstances not related to their substance misuse if these circumstances prevent them from meeting mutual obligation requirements. Exemptions may be granted for reasons such as temporary incapacity, major personal crisis (including homelessness or domestic violence), major disruption to the job seeker's home, or temporary caring responsibilities.

Existing processes for applying for exemptions not related to substance misuse will remain in place. An exemption can only be granted by DHS. The job seeker may need to provide evidence, such as a medical certificate, to support their request for an exemption.

This measure will not apply to recipients who are participating in the Community Development Program (CDP). The Bill provides that "designated program participants" as specified by legislation instrument will be excluded from the measure. This instrument will cover CDP participants. The Government is considering options for the future of this program separately.

## ***Schedule 14 – Changes to reasonable excuses***

The amendments in Schedule 14 will change reasonable excuses for failing to meet mutual obligations.

### **Background**

Job seekers who do not meet their mutual obligations do not incur a penalty where they can demonstrate they had a reasonable excuse.

In 2016, 2,258 people tried to use drug and alcohol issues as a reasonable excuse for not meeting their mutual obligations on 4,325 occasions. In 1,351 cases 720 job seekers had their drug or alcohol dependency accepted as a reasonable excuse for not meeting their mutual obligations. In addition, the number of accepted reasonable excuses due to drug or alcohol dependency in 2016 was over twice the 2015 level (1,351 compared to 637).

Under current arrangements, there is limited incentive for job seekers whose drug or alcohol dependency is preventing them from looking for work to seek treatment. Job seekers are able to continually avoid their mutual obligation requirements citing drug or alcohol dependency with no requirement to seek treatment.

The Bill proposes changing the reasonable excuse criteria to ensure that job seekers are unable to repeatedly use drug or alcohol dependency as a reasonable excuse if they have refused or failed to participate in available and appropriate treatment. The Bill encourages job seekers to address drug or alcohol misuse or dependency by enabling them to participate in treatment as an approved activity to contribute to their mutual obligation requirements.

The Bill will allow the Secretary to make an instrument specifying what factors must not be considered by decision makers in determining if a job seeker has a reasonable excuse. This instrument would specify that where a job seeker's abuse or dependency on drugs or alcohol is used as a reasonable excuse once, and the job seeker refuses to participate in treatment that is appropriate and available, this must not be considered when determining whether the person has a reasonable excuse for committing subsequent failures. However, if the job seeker has other valid reasons for the relevant participation failure, these will continue to be considered in assessing a reasonable excuse.

### **Policy rationale for the proposed changes**

Over a third of job seekers (36 per cent) who successfully used drug or alcohol use as a reasonable excuse in 2016 used it on multiple occasions, and 6 per cent used it on 5 or more occasions. This is not consistent with community expectations or the principle that those receiving unemployment payments should do everything in their capacity to move into being able to support themselves through paid work.

Supporting job seekers to overcome any drug or alcohol use issues will improve their chances of finding and maintaining a job and reduce the risk of ongoing welfare dependency. This will benefit not just the job seekers and their families but also the wider community and the economy.

## **Who will be affected by this change?**

This measure will impact around 2,000 to 2,500 job seekers who attempt to use drug and alcohol dependency as a reasonable excuse for not meeting their mutual obligation requirements.

## **Safeguards**

The measure provides incentive to seek treatment for job seekers who are unable to meet their mutual obligation requirements due to drug or alcohol dependency. Those job seekers who do not rely on drug or alcohol dependency as an excuse for non-compliance, or who are already undertaking treatment, will be unaffected by this measure.

Following a first instance of non-compliance where drug or alcohol dependency is accepted as a reasonable excuse, job seekers will face no penalty and their provider will refer them to treatment if it is available and appropriate for their circumstances. If treatment is not available or not appropriate, then existing reasonable excuse provisions will continue under current arrangements.

Where treatment is available and appropriate, job seekers may choose to participate voluntarily as part of their Job Plan. Job seekers' participation in treatment may meet or reduce their other mutual obligation requirements. This ensures that job seekers will have sufficient time and capacity to undertake treatment that is appropriate for their circumstances.

Where job seekers are referred to appropriate treatment but refuse to participate, and again fail to meet their mutual obligation requirements, drug or alcohol dependency will not be a consideration in assessing reasonable excuse. In this case, the job seeker may be subject to financial penalties.

Where a job seeker's continuing drug or alcohol misuse or dependency prevents them from being able to look for or find work or undertake other approved activities, it is reasonable that they be required to undertake available treatment or face a potential reduction in their payment. However, the measure is not about penalising drug or alcohol users. In fact, no significant increase in penalties is expected. Job seekers will only face potential financial penalty where all of the below conditions are met:

- the job seeker does not meet their requirements due to drug or alcohol use, and
- they are subsequently referred to available and appropriate treatment, and
- they actively decide not to participate, and
- they again fail to meet their requirements due to drugs or alcohol; and
- they do not have any other reasonable excuse for their failure.

Additionally, any penalties that are imposed are potentially subject to review, both within the Department of Human Services and by appeal to the Administrative Appeals Tribunal.

Job seekers will only face potential financial penalties where they continue to be unable to meet their mutual obligation requirements due to drug or alcohol, and actively refuse to participate in treatment.

## ***Schedule 15 – Targeted compliance framework***

The amendments in Schedule 15 will introduce a new targeted compliance framework.

### **Background**

The Bill will introduce a new, targeted job seeker compliance framework that will place greater emphasis on re-engagement for the majority of job seekers who generally meet their requirements, whilst introducing more effective sanctions for the small minority of non-genuine job seekers.

All job seekers will commence in the Personal Responsibility Phase (demerits phase). Every failure by job seekers to meet their requirements without reasonable excuse will result in accrual of a demerit and payment suspension until re-engagement. Payment will be back paid when re-engagement occurs.

To better identify job seekers who are simply having difficulty meeting their requirements, providers will assess each job seeker's capability and requirements after their third demerit and DHS will also do so after their fourth. At either point, if they are found to be unable to meet their requirements because of some underlying capability issue, their requirements will be adjusted and they will remain in the demerits phase, with their demerits reset to zero. Where necessary, the job seeker may also be moved to a more appropriate stream or employment services program, or have an Employment Services Assessment conducted to determine if they have a reduced capacity to participate in work and other activities. This will help ensure that any capability issues or vulnerabilities a job seeker may have are identified and taken into account.

If a job seeker accrues four demerits within six months and the capability interviews and assessments determine that the job seeker's requirements were appropriate, they will enter the Intensive Compliance Phase (three strikes phase). In this phase, job seekers will face graduated penalties, beginning with loss of half their fortnightly payment for their first failure without reasonable excuse. They will lose all of their fortnightly payment for their second failure and payment cancellation for four weeks for their third failure.

These penalties will provide a strong message to recalcitrant job seekers. However, penalties will only apply after job seekers have committed 5 failures, within a six months period, without a reasonable excuse and have been subjected to multiple checks to ensure their requirements are appropriate.

Just because a job seeker has entered the three strikes phase, it does not mean penalties are inevitable. Once a job seeker is in the three strikes phase, they can still avoid any penalties by meeting all their requirements. Those who remain fully compliant for three months will return to the demerits phase, with their demerits reset to zero. This will provide a strong incentive for job seekers to change their behaviour and start to comply.

Job seekers in either phase who refuse an offer of suitable work or fail to start in a suitable job without a valid reason will have their payment cancelled for four weeks. This penalty is identical to that imposed on job seekers who have reached three strikes (but less than the eight week penalty that currently applies). It recognises the seriousness of refusing work and the importance of reducing reliance on welfare wherever possible. The only job seekers who will incur such penalties are those who have been offered suitable work but, for no good reason, have refused it. These job seekers are clearly job ready and unlikely to be vulnerable.

The new compliance framework introduced by this Bill will address weaknesses within the current framework:

- The majority of job seekers, who currently face financial penalties with no back pay for even one missed appointment or activity, will now only incur a payment suspension, with full back pay when they re-engage.
- Persistently and deliberately non-compliant job seekers will face tougher sanctions without loopholes, ensuring that they either change their behaviour or leave income support.
- Simpler rules with consistent consequences for different types of failures will make the system easier for job seekers and providers to understand and reduce unnecessary and expensive administrative churn.

### **Policy rationale for the proposed changes**

The current framework takes a one-size-fits-all approach to job seeker compliance. It can unnecessarily penalise those unable to meet their requirements or who might miss the occasional requirement, while providing little deterrence to the small group who deliberately avoid their requirements.

The majority of job seekers (around 64 per cent), attend all their appointments or miss one at most in any six month period. For these job seekers, evidence suggests that a temporary payment suspension (with full back-pay once the job seeker re-engages) is sufficient to ensure the job seeker re-engages with employment services. The suspend-until-attend approach for provider appointments led to an increase in attendance rates at re-engagement appointments from 65 per cent in 2013–14 to 87 per cent in 2015–16.

As well as payment suspensions, generally compliant job seekers can incur financial penalties for their first failure under the current compliance framework.

At the other extreme, there is a small core (estimated to be between two to four per cent) of job seekers who appear to be deliberately avoiding their requirements and only attend appointments which re-activate suspended income support payments. Around half of all reports for compliance failures confirmed by the Department of Human Services (DHS) relate to only two per cent of job seekers. Many of these job seekers have no underlying reasons for their persistent non-compliance.

The current compliance processes for many types of failures are cumbersome and ineffective. For example, under the current process for job seekers who refuse to look for work, it takes more than 12 weeks for a job seeker to face any penalty, allowing job seekers to avoid looking for work for months without consequences.

The current framework also allows some job seekers to continuously fail to meet their requirements. Whilst job seekers can in theory incur an eight week penalty for persistent non-compliance or refusing a job, in practice the overwhelming majority of these penalties (93 per cent) are waived, meaning most job seekers face no real consequences for deliberate and persistent non-compliance or for refusing work when it is offered and they are capable of doing it.

The current compliance framework does not require comprehensive consideration of a job seeker's circumstances by DHS until they commit enough failures to trigger a comprehensive compliance assessment. On average, job seekers incur 3.8 financial penalties before any assessment is undertaken. Under the proposed framework, two comprehensive assessments will be undertaken before any loss of income support (other than for refusing work).

The current framework is also overly complex. The penalties faced by job seekers vary considerably depending on the type of requirement they failed to meet, with a complex combination of payment suspensions, one day penalties, multiple day penalties and eight week penalties being applicable depending on the circumstances. There are also different rules for when different penalties can be deducted and different criteria for waiving different eight week penalties.

The high complexity of the current arrangements also makes the current framework difficult for providers and DHS to administer, and creates significant administrative churn. In the year from October 2015-September 2016, jobactive providers submitted large volumes of unnecessary compliance reports. This represents significant wasted effort for both providers and DHS that could be redirected to earlier identification of job seekers who need support to comply with their Mutual Obligation requirements.

### **Who is affected by this change?**

All job seekers on unemployment payments will be covered by the new compliance framework, with the exception of Community Development Programme (CDP) participants.

The framework is expected to apply to around 1.22 million job seekers per year.

For 1.14 million of these job seekers, the new framework will result in less administration and no financial penalties.

The small minority of job seekers who repeatedly do not comply with their requirements without good reason will face clear financial penalties. In the first year of the measure, approximately 83,000 job seekers may receive one or more graduated financial penalties in the Intensive Compliance Phase (three strikes phase) – ranging from loss of one week's income support payment (for their first strike, which is actually their fifth failure without reasonable excuse) to payment cancellation for four weeks (for their third strike, or seventh failure). This number depends on the extent of the change in behaviour of those repeat offenders.

It is estimated that approximately 22,000 job seekers with the most entrenched non-compliant behaviour will see their payments cancelled after three strikes in the three strike phase to comply with their job plan. This is expected to rise to approximately 37,000 in subsequent years as job seekers accrue demerits following implementation. These numbers are likely to vary depending on the extent to which the framework is able to change the behaviour of that recalcitrant minority.

### **Safeguards**

The new compliance framework will have a number of safeguards to protect vulnerable job seekers from unfairly incurring financial penalties.

After incurring three demerit points, each job seeker's capability and requirements will be assessed by their employment service provider. This will provide each job seeker with the opportunity to disclose any issue they are experiencing or changes to their personal circumstances that may be preventing them from meeting their mutual obligations. If after this assessment the job seeker is found to be unable to meet their mutual obligation requirements, their requirements will be adjusted to better meet their circumstances and their demerits reset to zero. Where necessary, the job seeker may also be moved to a more appropriate stream or employment services program, or have an Employment Services Assessment conducted to determine if they have a reduced capacity to participate in work and other activities.

Similarly, DHS will undertake another assessment after a job seeker incurs four demerit points that will be independent of the assessment conducted by the job seeker's employment services provider. As occurs with the assessment conducted by the employment services provider, if the job seeker is found to be unable to meet their mutual obligation requirements, their requirements will be adjusted to better meet their circumstances and their demerits reset to zero. Where necessary, the job seeker may also be moved to a more appropriate stream or employment services program, or have an Employment Services Assessment conducted to determine if they have a reduced capacity to participate in work and other activities.

These safeguards will help ensure that any capability issues or vulnerabilities a job seeker may have are identified and taken into account before the job seeker is subject to a financial penalty.

### ***Schedule 16 – Streamlining tax file number collection***

The amendments in Schedule 16 will require applicants for social security payments to provide their Tax File Number (TFN) when they claim a payment, and removes the current 28 day grace period for the provision of a TFN.

The 28 day grace period is no longer needed as applicants who do not have their TFN on hand can choose to have the Department of Human Services (DHS) obtain the TFN directly from the Australian Taxation Office (ATO). Those yet to be issued with a TFN can authorise DHS to obtain their TFN directly from the ATO, and either submit a TFN application form to DHS for forwarding to the ATO, or apply for a TFN online through the ATO website prior to claiming.

Removal of the 28 day grace period will create legislative consistency across all Centrelink payments.



## **Who will be affected by this change?**

This measure will impact all claims for social security payments, although DHS practice will remain largely unchanged. Removal of the grace period would delay eligibility of those who do not provide their TFN or give permission for DHS to obtain their TFN from the ATO. It is expected the majority of claimants will provide their TFN at the time of claim or authorise DHS to obtain their TFN directly from the ATO.

This change is part of a number of changes the Government is making from this Budget to remove unnecessary administrative practices, which ultimately cost the taxpayer.

## **Schedule 17 – Information management**

Schedule 17 amends the *Social Security (Administration) Act 1999* (SS(Admin)Act), along with reciprocal amendments to other payment enabling legislation (*A New Tax System (Family Assistance) (Administration) Act 1999*, *Student Assistance Act 1973*, *Paid Parental Leave Act 2010*), to allow information obtained about a person in the course of an administrative action under section 192 (General power to obtain information) of the SS(Admin)Act (and other equivalent provisions) to be used in subsequent investigations and criminal proceedings.

Previously, the only way DHS could obtain admissible material for criminal proceedings, was by a search warrant pursuant to section 3E of the *Crimes Act 1914* (Cth). DHS requests around 1,000 of these warrants annually. Each warrant requires the resources of a seconded AFP agent and can require two to three business days of an investigator's effort. As such, this process is a significant burden on DHS, the AFP, deposit-taking institutions and the courts, particularly when the information has already been collected under section 192 of the SS(Admin)Act for administrative purposes.

Streamlining the process and reducing the administrative burden of criminal investigations enables DHS to obtain information once for the purpose of an administrative action, investigation or criminal prosecution.

The change will only align DHS's information gathering powers with that of other agencies at both Commonwealth and State/Territory levels and does not expand the actual coercive information gathering powers of the Secretary.

## **Schedule 18 – Aligning social security and disability discrimination law**

This amendment will align the operation of the social security law and disability discrimination law by extending the existing exemption from the *Disability Discrimination Act 1992* (the Disability Discrimination Act) to all current social security legislation.

The *Social Security Act 1991* (the Social Security Act) is currently exempt from the Disability Discrimination Act under subsection 51(1). The Explanatory Memorandum to the Disability Discrimination Act clarifies that clause 51 'is designed to ensure that in relation to pensions and allowances a person's entitlement is as set out in the legislation which provides for those pensions and allowances and that entitlement is not affected by the coming into force of this Bill.' The clause sets out Commonwealth laws under which pensions and allowances are paid and makes it clear that where there are discriminatory provisions in those Acts, this legislation does not affect those provisions.

This means that provisions relating to pensions, allowances or benefits that might ordinarily be discriminatory do not contravene the Disability Discrimination Act and anything done by a person in direct compliance with these provisions under the Social Security Act is not unlawful. The exemption means that pensions, allowances and benefits under social security law can be appropriately targeted, including to people with disability.

At the time the Disability Discrimination Act commenced, the Social Security Act encompassed the entire social security law in a single Act. The Social Security Act was split in 1999 into three Acts: the Social Security Act, the *Social Security (Administration) Act 1999* (the Administration Act) and the *Social Security (International Agreements) Act 1999* (the International Agreements Act). The exemption in the Disability Discrimination Act was not extended to these new Acts; however, at that time, the scope of the Administration Act and the International Agreements Act was lesser than it is today.

In 1999, the provisions in the Administration Act only dealt with the administration of the social security law. The scope of the Social Security Administration Act has broadened since then with the inclusion of provisions relating to income management and the compliance framework for participation payments. The number and scope of legislative instruments made under the Social Security Act and the Social Security Administration Act in relation to particular policy areas, such as instruments made for the purposes of Disability Support Pension, has also grown over time.

Similarly, the number of countries covered by the International Agreements Act has also grown significantly since 1999. The International Agreements Act gives effect to any social security agreement between Australia and another country relating to reciprocity in social security or superannuation matters. The International Agreements Act provides that an international social security agreement has effect despite anything in the social security law. This is designed to coordinate the social security systems of Australia and the specified country to give better income support protection for people who move between the two countries.

This means that there are now a number of provisions in the Administration Act and the International Agreements Act, or in legislative instruments under the social security law, that could be potentially be discriminatory in relation to a person's entitlement to a pension, allowance and benefit under the Disability Discrimination Act. The intention as outlined in the Explanatory Memorandum to the Disability Discrimination Act is that a person's entitlement to pensions and allowances should not be impacted by the operation of the Disability Discrimination Act.

Given the expanded scope of the Administration Act, the International Agreements Act and relevant legislative instruments, it is prudent to make consequential amendments at this time to ensure that all of the social security law is covered by the exemption from the Disability Discrimination Act as originally intended.

While the development of the measures covered in the other schedules in this Bill brought the need to make these amendments to the attention of the Government, the amendments in this schedule are broader than any particular measure. These amendments are intended to ensure the disability discrimination law interacts consistently across the Acts and legislative instruments that make up the social security law and that people acting in the administration of the social security law are not inadvertently contravening the Disability Discrimination Act.