

Chapter 1

Inquiry into the provisions of the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

Purpose of the Bill

1.1 The Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 (Bill) establishes a mandatory drug testing trial of 5000 recipients of Newstart Allowance and Youth Allowance (Other) in Canterbury-Bankstown, New South Wales; Logan, Queensland and Mandurah, Western Australia.¹

1.2 Trial participants who test positive to an illicit drug specified as part of the trial will be placed on income management for a period of 24 months and those who return two positive drug tests in the 24 month period may be required to submit to drug treatment.²

Background

1.3 In his 2017 Budget speech, the Treasurer, the Hon. Scott Morrison MP, announced:

...we will commence a modest drug testing trial for 5,000 new welfare recipients.

JobSeeker recipients who test positive would be placed on the Cashless Debit Card for their welfare payments and be subjected to further tests and possible referral for treatment.³

1.4 On 22 June 2017, the Social Services Legislation Amendment (Welfare Reform) Bill 2017 (Welfare Reform Bill) was introduced into the House of Representatives. Schedule 12 of the Welfare Reform Bill included a drug testing trial in almost identical terms to the current Bill.⁴

1.5 On the same day, the Welfare Reform Bill was referred to the Senate Community Affairs Legislation Committee (committee) for inquiry and report pursuant to the adoption of the Senate Selection of Bills Committee report.⁵ The committee presented its report to the Senate on 6 September 2017.⁶

1 Explanatory Memorandum, p. 4.

2 Explanatory Memorandum, p. 5.

3 The Hon. Scott Morrison MP, Treasurer of the Commonwealth of Australia, *House of Representatives Hansard*, 9 May 2017, p. 4067.

4 *House of Representatives Votes and Proceedings*, No. 64, 22 June 2017, p. 902.

5 *Journals of the Senate*, No. 48, 22 June 2017, pp. 1540–1541.

6 Senate Community Affairs Legislation Committee (committee), *Social Services Legislation Amendment (Welfare Reform) Bill 2017 [Provisions]*, September 2017; *Journals of the Senate*, No. 58, 6 September 2017, p. 1883.

1.6 On 7 December 2017, the Senate, on the motion of the government, agreed to remove Schedule 12 from the Welfare Reform Bill.⁷

1.7 On 28 February 2018, the Hon. Dan Tehan MP, Minister for Social Services, introduced the Bill in the House of Representatives.⁸

1.8 The Bill differs from the Welfare Reform Bill in the following ways:

- the drug test trial area is specified in the Bill,⁹ and
- new sub-clause 123UFAA(1C) of the *Social Security (Administration) Act 1999* provides that the Secretary must determine that a person is not subject to income management if the Secretary has reason to believe that it would pose a serious risk to the person's mental, physical or emotional wellbeing.¹⁰

Key provisions

1.9 The provisions of the Bill establish a drug testing trial with the following parameters:

- the drug trial areas are the local government areas of Canterbury-Bankstown, New South Wales; Logan, Queensland and Mandurah, Western Australia;¹¹
- the trial period is 24 months;¹²
- the trial will apply only to certain illicit drugs (testable drugs);¹³
- trial participants who test positive to a testable drug will be placed on income management for a period of 24 months;¹⁴
- trial participants may request that a positive drug test sample be retested, but the trial participant will be required to pay for the retest if it returns a positive result;¹⁵
- failing to comply with a notice from the Secretary to provide a sample means a trial participant's payment is not payable and will be cancelled. The trial

7 *Journals of the Senate*, No. 79, 7 December 2017, p. 2531.

8 *House of Representatives Votes and Proceedings*, No. 102, 28 February 2018, p. 1419.

9 Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 (Bill), item 1 'drug test trial area'. In the Social Security Legislation Amendment (Welfare Reform Bill) 2017 (Welfare Reform Bill) the trial site areas were to be defined in rules.

10 See Bill, item 24. In the Welfare Reform Bill the same provision used the word 'may'.

11 Bill, item 1 'drug test trial area'.

12 Bill, item 1 'drug test trial period'.

13 Bill, item 1 'testable drug'.

14 Bill, item 24.

15 Bill, item 11.

participant will be required to serve a 28 day drug test refusal waiting period before they are eligible to receive the payment again.¹⁶

1.10 The Bill also contains provisions to ensure that the provisions of the *Social Security Act 1991*, *Social Security (Administration) Act 1999* and *Farm Household Support Act 2014* amended by the Bill reflect the change in the name from 'Newstart Allowance' to 'Jobseeker Payment' when Part 1 of Schedule 1 of the Welfare Reform Bill commences.¹⁷

Legislative Scrutiny

1.11 The committee recognises the work undertaken by the Senate Scrutiny of Bills Committee and the Parliamentary Joint Committee on Human Rights.

Scrutiny of Bills Committee

1.12 The Senate Scrutiny of Bills Committee considered the Bill in *Scrutiny Digest 3 of 2018*.¹⁸ As the Bill is substantially similar to Schedule 12 of the Welfare Reform Bill, the committee restated its comments and the former Minister's response contained in *Scrutiny Digest 8 of 2017* which considered the relevant part of the Welfare Reform Bill.¹⁹

1.13 The Senate Scrutiny of Bills Committee raised the following concerns about Schedule 12 of the Welfare Reform Bill:

- that significant matters were placed in delegated legislation, including confidentiality of drug test results and that proposed subsection 123UFAA(1B) of the *Social Security (Administration) Act 1999* (item 24) would allow the Secretary to determine a period longer than 24 months for the trial;
- that the contractor would be provided with the power to effectively determine who is subject to income management, but that the contractor's responsibilities were not articulated in the Bill; and
- that judicial review was limited because there was no obligation on the Secretary under proposed subsection 123UFAA(1D) (item 24) to consider whether to exercise the power in proposed subsection 123UFAA(1C).²⁰

1.14 The Explanatory Memorandum to the Bill notes that in response to the comments of the Senate Scrutiny of Bills Committee on the Welfare Reform Bill, item 24 (paragraphs 123UFAA (1C) and (1D)) of the Bill has been strengthened to provide that the Secretary must determine that a person will not be subject to income

16 Bill, items 6, 8.

17 Bill, items 33–43.

18 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, pp. 34–44.

19 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, p. 34; Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 8 of 2017*, pp. 24–28.

20 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 8 of 2017*, pp. 24–28.

management if the Secretary is satisfied that placing the person on income management would pose a serious risk to the person's mental, physical or emotional wellbeing.²¹

Parliamentary Joint Committee on Human Rights

1.15 The Parliamentary Joint Committee on Human Rights considered the Bill in *Report 3 of 2018*. The committee referred to and endorsed its earlier human rights analysis of Schedule 12 of the Welfare Reform Bill.²² That analysis raised concerns that Schedule 12 interfered with and limited the rights to privacy, bodily integrity, social security and equality and non-discrimination.²³

1.16 In its submission, the Australian Human Rights Commission endorsed the Parliamentary Joint Committee on Human Rights' analysis.²⁴

1.17 The *Statement of compatibility with human rights* attached to the Explanatory Memorandum accepts that some human rights are impacted, but notes that 'to the extent that it may impact human rights, the impact is for a legitimate objective, and is reasonable, necessary and proportionate'.²⁵

Conduct of the inquiry

1.18 On 22 March 2018, pursuant to the adoption of the Selection of Bills Committee report, the Bill was referred to the committee for inquiry and report by 7 May 2018.²⁶

1.19 The committee advertised the inquiry on its website and invited submissions by 11 April 2018. The committee received 49 public submissions which are listed at Appendix 1 of this report.

1.20 The committee conducted two public hearings in connection with the inquiry. The first was held in Canterbury-Bankstown on 23 April 2018 and the second was held in Logan on 24 April 2018. A list of the witnesses that appeared at each hearing can be found at Appendix 2 of this report.

1.21 This matter was also extensively canvassed during the committee's Welfare Reform Bill inquiry, including at public hearings in Sydney on 30 August 2017 and Melbourne on 31 August 2017.²⁷

21 Explanatory Memorandum, pp. 20–21.

22 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, pp. 124–128.

23 Parliamentary Joint Committee on Human Rights, *Report 8 of 2017*, pp. 51–61; Parliamentary Joint Committee on Human Rights, *Report 11 of 2017*, p. 150–170.

24 Australian Human Rights Commission, *Submission 28*, p. 2.

25 Explanatory Memorandum, *Statement of compatibility with human rights*, p. 8.

26 *Journals of the Senate*, No. 91, 22 March 2018, p. 2884.

27 For a list of witnesses at each hearing see Committee, *Social Services Legislation Amendment (Welfare Reform) Bill 2017 [Provisions]*, September 2017, pp. 63–65.

Notes on references

1.22 In this report, references to *Committee Hansard* are to proof transcripts. Page numbers may vary between proof and final copies.

