

Chapter 2

Key issues

Introduction

2.1 Submitters raised a number of concerns about the Bill in written submissions and in oral evidence to the committee. These issues included:

- creation of Jobseeker Payment and cessation of certain payments;
- changes to activity tests for persons aged 55 to 59;
- start day for some participation payments;
- removal of intent to claim provisions;
- establishment of a drug testing trial;
- removal of exemptions for drug and alcohol dependence;
- changes to reasonable excuses; and
- targeted compliance.

2.2 The order in which these issues are discussed in this chapter reflects the structure of the Bill and Explanatory Memorandum (EM).

Schedules 1 to 7 – Creation of Jobseeker Payment and cessation of certain payments

2.3 Under the proposed changes in Schedules 1 to 7 of the Bill, a number of current welfare payments will cease and a new Jobseeker Payment will be introduced as the main income support payment for working age people.

2.4 The proposed amendments allow for the automatic transfer of some income support recipients to other payments, and will also provide exemptions from some conditions for certain recipients transferring from ceased payments to ensure that these people are not disadvantaged by the changes. The joint submission by the Departments of Social Services, Employment and Human Services (joint departmental submission) states that about 811 000 welfare recipients will transition from an existing payment to the Jobseeker Payment and about 5 000 recipients will transfer to other payments including the Age Pension.¹

2.5 A number of submitters expressed support for the move to simplify or streamline the administration of payments to welfare recipients.²

1 Joint submission by the Department of Social Services, Department of Employment, Department of Human Services, *Submission 5*, p. 4.

2 See for example: Carers Australia, *Submission 1*; Jobs Australia, *Submission 17*; National Social Security Rights Network, *Submission 18*; Chinese Australian Services Society, *Submission 22*; Australian Council of Social Service, *Submission 50*; Good Shepherd Australia New Zealand, *Submission 52*.

2.6 However, some submitters raised concerns in relation to the cessation of specific payments and/or some of the transitional arrangements affecting some payment recipients.³ For example, the Australian Council of Social Service (ACOSS) recommended that:

- a. The transitional payment for Wife and Widow B Pensioners be indexed.
- b. The 200 Wife Pension recipients living overseas continue to receive a pension payment.
- c. The Bereavement Allowance be retained as a separate payment, paid at its current rate with current indexation, and not rolled into the Jobseeker Payment.⁴

2.7 The joint departmental submission indicated that:

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.⁵

2.8 In addition, the joint departmental submission stated that the new Jobseeker Payment will make using the system easier for welfare payment claimants and recipients. For example, recipients will not need to make a claim for a new payment type should they become temporarily unable to work due to illness or bereavement.⁶

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

2.9 The proposed amendments in Schedule 9 would change the activity test requirements for job seekers aged 55 to 59 years, so that from 20 September 2018, someone cannot be excused from looking for paid work by engaging in only volunteering activities.

2.10 These changes will be supported by three new programs targeting mature age workers to be introduced from 1 July 2018:

- Career Transition Assistance Program;
- National Work Experience Program; and
- Pathway to Work pilots.⁷

2.11 The Department of Employment provided the committee with data on the employment participation rate for people aged 55 to 59, which it stated is similar to the overall participation rate.⁸ The key difference for mature age workers aged over 50

3 See for example: National Social Security Rights Network, *Submission 18*; Combined Pensioners and Superannuants Association, *Submission 36*; ACOSS, *Submission 50*.

4 *Submission 50*, p. 2.

5 *Submission 5*, p. 4.

6 *Submission 5*, p. 3.

7 Department of Employment, [2017–18 Budget - Employment Overview](#) (accessed 2 September 2017).

8 Mr Martin Hehir, Department of Employment, *Committee Hansard*, 30 August 2017, p. 53.

is the time taken to find work: the average time taken for job seekers aged 50 and over is around 73 weeks, compared to the overall average of between 40 to 50 weeks.⁹

2.12 Some organisations argued that the proposed changes to the activity test requirements fail to recognise the challenges facing mature age job seekers in finding work.¹⁰ However, the Department of Employment stated that the proposed amendments acknowledge and seek to address these challenges:

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. 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.¹¹

2.13 The Department of Employment also noted that jobseekers who currently fully satisfy activity test requirements through approved volunteer or other suitable paid work are not able to access support through the Employment Fund.¹² The proposed changes would provide a trigger for workers aged 55 to 59 to access this existing means of support.

2.14 Concerns were also raised that the Career Transition Assistance Program would start in 2020, some time after the commencement of the proposed changes to activity tests for persons aged 55 to 59.¹³

2.15 However, the Department of Employment made clear that the Career Transition Assistance Program will actually commence in 2018 in five pilot sites, in order to evaluate and refine the program, before a national roll-out from 2020.¹⁴

2.16 Volunteering Australia, the national peak body for the volunteer sector, expressed concerns about the impact that the proposed changes would have on the volunteer sector.¹⁵

2.17 The joint departmental submission stated that there will be minimal impact on the volunteering sector. The proposed amendments will not prevent any job seekers from undertaking volunteer work, and new activity requirements for job seekers aged

9 Mr Martin Hehir, Department of Employment, *Committee Hansard*, 30 August 2017, p. 54.

10 See for example, Volunteering Australia, *Submission 12*; Jobs Australia, *Submission 17*; Chinese Australian Services Society Limited, *Submission 22*; Australian Council of Social Service, *Committee Hansard*, 30 August 2017, p. 5.

11 *Submission 5*, p. 14.

12 Mr Martin Hehir, Department of Employment, *Committee Hansard*, 30 August 2017, p. 54.

13 Ms Lavanya Kala, Policy and Communications Coordinator, Volunteering Australia, *Committee Hansard*, 31 August 2017, p. 33.

14 Mr Martin Hehir, Department of Employment, *Committee Hansard*, 30 August 2017, p. 54.

15 Volunteering Australia, *Submission 12*, pp. 6-7.

60 and over, which also form part of the broader welfare reform package, can be met entirely through approved volunteer work.¹⁶

Schedule 10 – Start date for some participation payments

2.18 Schedule 10 of the Bill provides that, from 1 January 2018, the starting date of some income support payments will generally change to align with the day that a job seeker who is subject to RapidConnect holds their first meeting with their jobactive or Transition to Work provider.¹⁷

2.19 Organisations representing community service providers expressed concern that the proposed amendments would impose waiting times on people at a difficult time and reduce a recipient's first income support payment.¹⁸

2.20 The joint departmental submission stated that the proposed Schedule 10 amendments are intended to encourage those job seekers subject to RapidConnect to engage with their jobactive or Transition to Work provider as soon as possible,¹⁹ noting that there is also an obligation on the service providers to have appointments available for job seekers within two business days.²⁰

2.21 The EM indicates that the proposed changes will not apply to any job seekers who are not subject to RapidConnect, and it will not apply to people who are referred to the Community Development Program (CDP) or Disability Employment Services. In addition, it will not apply to new apprentices or those undertaking full time study who claim Youth Allowance.²¹

Schedule 11 – Removal of intent to claim provisions

2.22 Schedule 11 of the Bill amends the *Social Security (Administration) Act 1999* to remove intent to claim provisions, which currently enable social security payment claimants to receive payments from the date of first contact with the Department of Human Services.²² The joint departmental submission stated that the intention of the amendments is to 'simplify the claim process and encourage social security claimants to provide timely and complete information in support of claims'.²³

2.23 Some submitters expressed concern at the removal of these provisions, particularly for people with limited or no access to the internet, or who otherwise face

16 *Submission 5*, pp. 13-14.

17 *Submission 5*, p. 16.

18 See for example: Mission Australia, *Submission 8*, p. 1; National Social Security Rights Network, *Submission 18*, p. 9.

19 *Submission 5*, p. 16.

20 *Submission 5*, p. 17.

21 Social Services Legislation Amendment (Welfare Reform) Bill 2017 Explanatory Memorandum, June 2017, p. 57.

22 Social Services Legislation Amendment (Welfare Reform) Bill 2017 Explanatory Memorandum, June 2017, p. 61.

23 *Submission 5*, p. 18.

difficulties in being able to contact the Department of Human Services or provide all the required documentation in a timely way, through circumstances beyond their control.²⁴ Concern was also raised that removal of intent to claim provisions:

will remove any flexibility for decision makers and it also fails to recognise that, even with the most intuitive, quick and simple online system, there will be circumstances where it will be reasonable to backdate payments to the date an applicant established their entitlement. This capacity should remain.²⁵

2.24 In evidence, the Department of Human Services made it clear that there will be scope for discretion where:

someone either can't complete online or has difficulties associated with, for example, going through a change in personal circumstances and they don't have the paperwork et cetera, they would be able to contact the department. The date of claim would still be the date that they contacted the department.²⁶

2.25 Some evidence presented to the committee referred to the sometimes lengthy delays currently experienced by some social security claimants.²⁷ In evidence, the Department of Human Services indicated that the proposed amendments in Schedule 11 will assist to address these delays:

What we believe though is that, for the vast majority of people who will have the convenience of doing this online and at home, the ability to supply all their information to complete the claim will assist us with the processing of the claim and will assist us with giving them a quicker answer.²⁸

Schedule 12 – Drug testing trial

2.26 The proposed amendments in Schedule 12 introduce a mandatory drug testing trial from 1 January 2018 in three locations for new Newstart Allowance and Youth Allowance (other) recipients. In its 2017–2018 Budget information, the Department of Social Services stated that:

This measure will trial the use of random drug testing in three locations as a way of better identifying and supporting those with substance misuse issues... This forms part of a larger measure to better target assistance

24 See for example: Commonwealth Ombudsman, *Submission 11*; National Social Security Rights Network, *Submission 18*, Anglicare Australia *Submission 28*; ACOSS, *Submission 50*.

25 Carers Australia, *Submission 1*, p. 4.

26 Mr Shane Bennett, Acting Deputy Secretary, Programme Design Group, Department of Human Services, *Committee Hansard*, 30 August 2017, pp. 55-56.

27 See for example: Ms Terese Edwards, Chief Executive Officer, National Council of Single Mothers and their Children, *Committee Hansard*, 31 August 2017, p. 39.

28 Mr Shane Bennett, Department of Human Services, *Committee Hansard*, 30 August 2017, p. 61.

activities to jobseekers, including identifying and resolving barriers to work.²⁹

2.27 A number of issues were raised in submissions and oral evidence in relation to the proposed establishment of drug testing trials, including:

- a lack of evidence to support the use of drug testing;
- the cost, availability and reliability of drug testing;
- availability of treatment services to meet potential increased demand; and
- reliance on delegated legislation to set out significant detail about the operation of the trial; and
- income management.

Evidence

2.28 Critics of the introduction of a drug testing trial have stated that there is no evidence that drug testing will achieve the desired outcome. Submitters referred to drug testing of welfare recipients introduced in, for example, the United States of America and New Zealand, where only small numbers of those tested returned positive test results.³⁰

2.29 The committee heard that, while information relating to the cost and detection rates of the New Zealand drug testing program is available,³¹ outcome data is not available.³² Similarly, results of drug testing programs in, for example, Florida in the United States, have focused on the input costs and savings achieved as a result of the program.³³

2.30 The Department of Social Services noted that the overseas examples of drug testing 'relate to either penalising people on welfare or preventing them from obtaining welfare'.³⁴ By contrast, the department indicated that the proposed drug testing trial is intended to:

29 Department of Human Services, [Better Targeting of Assistance to Support Jobseekers, Budget 2017-18](#) (accessed 25 July 2017).

30 See for example, Australian Medical Association, *Submission 2*; Uniting Communities, *Submission 3*; National Drug and Alcohol Research Centre, *Submission 4*; UnitingCare Australia, *Submission 6*; Catholic Social Services Australia and Catholic Health Australia, *Submission 7*; Mission Australia, *Submission 8*; 360 Edge, *Submission 9*; Salvation Army, *Submission 10*; Australian Injecting and Illicit Drug Users League, *Submission 26*; Royal Australian and New Zealand College of Psychiatrists, *Submission 45*.

31 See for example: Royal Australasian College of Physicians, *Submission 20*, pp.3-4.

32 Professor Alison Ritter, Director, Drug Policy Modelling Program, National Drug and Alcohol Research Centre, University of New South Wales, *Committee Hansard*, 30 August 2017, p. 14.

33 See for example: Salvation Army, *Submission 10*, p. 5.

34 Ms Cath Halbert, Group Manager, Payment Policy, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 47.

assess the value of drug testing as a way of identifying those for whom drug misuse is a barrier to work, and as a means of supporting them to undertake treatment...This trial is not about penalising jobseekers with drug abuse issues. It is about finding new and better ways of identifying these jobseekers and ensuring they are referred to the support and treatment they need.³⁵

2.31 In further evidence, the Department of Social Services stated that the objective of the drug testing trial is to:

provide the evidence as to whether an additional trigger for people who are receiving unemployment payments and have substance abuse problems will encourage them to self-disclose and/or be found to have that problem and to be quickly linked to treatment.³⁶

Drug testing – cost, availability and reliability of tests and avoidance of detection

2.32 Some evidence before the inquiry raised issues in relation to the cost, availability and reliability of drug testing, depending on which type of test will be used,³⁷ and the reliability of testing on its own to identify people with drug dependency problems.³⁸

2.33 The Department of Social Services indicated that the specific type of drug testing and the specific drugs to be tested for would be identified in consultations between the Department of Human Services and the company that secures the contract to deliver drug testing services.³⁹ In relation to the reliability of drug testing to identify and assist people with drug dependency problems, the Department of Social Services stated that the trial will focus on the detection of illicit drug use and is one part of a broader suite of measures being undertaken to assist unemployed people with drug dependence issues which impact on their ability to obtain employment.⁴⁰

2.34 Concerns were raised by some submitters and witnesses about the potential for welfare recipients to seek to avoid drug use detection by shifting to unlisted, and

35 Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 22 June 2017, p. 7428.

36 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 47.

37 See for example: cohealth, *Submission 15*; St Vincent's Health Australia, *Submission 16*; Royal Australasian College of Physicians, *Submission 20*.

38 See for example: Australian Medical Association, *Submission 2*; National Drug and Alcohol Research Centre, *Submission 4*; Rural Doctors Association of Australia, *Submission 19*; National Drug Research Institute, Curtin University, *Submission 23*; Royal Australian and New Zealand College of Psychiatrists, *Submission 45*; People with Disability Australia, *Submission 60*.

39 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 41.

40 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, pp. 42-43.

possibly more harmful drugs.⁴¹ The Department of Social Services stated that the avoidance of testing had been raised by stakeholders, and the department had been unable to find any evidence of this behaviour occurring in other drug testing trials.⁴² However, the department noted that the consequences of a positive test result in the proposed trial – income management, referral for medical assessment and potentially treatment – will be without financial penalty, and therefore 'not a strong incentive' for people to avoid a positive test result by using drugs other than those listed for testing.⁴³

2.35 The Department of Social Services also indicated that a comprehensive evaluation of the drug testing trial will be conducted in parallel with the trial, through which the department will be assessing unintended consequences, 'because the whole point of the trial is to have a positive outcome for those communities'.⁴⁴

Availability of treatment services

2.36 Some submissions have stated that the proposed drug testing will capture both recreational drug users as well as people with a drug dependence problem, the impact of which could be increased demand for drug treatment services not necessarily resourced to meet this demand.⁴⁵

2.37 In response to these concerns, the Department of Human Services indicated that only a second positive drug test would trigger a referral to a medical professional, who would be an addiction specialist.⁴⁶ The department has estimated that of the 5 000 people to be tested over the three trial sites, around 420 to 450 people would test positive once and between 100 and 120 people test positive a second time and be sent for medical assessment.⁴⁷ The department believes that this treatment might involve a range of different services, 'anything from counselling sessions through to, at the most extreme end, residential rehabilitation'.⁴⁸

41 See for example: Professor Alison Ritter, Director, Drug Policy Modelling Program, National Drug and Alcohol Research Centre, University of New South Wales, *Committee Hansard*, 30 August 2017, p. 13.

42 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 40.

43 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 40.

44 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 40.

45 See for example: Australian Medical Association, *Submission 2*; National Drug and Alcohol Research Centre, *Submission 4*; Clinical Associate Professor Adrian Reynolds, President, Australasian Chapter of Addiction Medicine, Royal Australasian College of Physicians, *Committee Hansard*, 30 August 2017, p. 17.

46 Mr Shane Bennett, Department of Human Services, *Committee Hansard*, 30 August 2017, p. 46.

47 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 38.

48 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 38.

2.38 Consultations with the Department of Health and other health services undertaken by the Department of Social Services have indicated that there are services available for the provision of treatment services.⁴⁹ In addition, the department has:

built into the policy that, if you can't access treatment immediately, as long as you are committed to undertaking it, you can be managed until such time as it becomes available.⁵⁰

The Government has also announced a \$10 million fund that will be available to provide additional assistance to drug treatment services in the three trial sites.⁵¹

Delegated legislation

2.39 Some submitters raised concerns about the lack of detail in the Bill in relation to the implementation of the drug testing trial and the reliance on delegated legislation which had not yet been made publicly available for consultation and comment.⁵²

2.40 The Department of Social Services tabled an exposure draft of the Social Security (Drug Test) Rules 2017 at the committee's public hearing on 30 August 2017 in Sydney.

2.41 The rules cover the following aspects of the drug testing trial:

- (a) prescribing up to 3 discrete areas for the purposes of the definition of drug test trial area in subsection 23(1);—
- (b) prescribing substances for the purposes of the definition of testable drug in subsection 23(1);
- (c) giving and taking samples of persons' saliva, urine or hair for use in drug tests;
- (d) dealing with such samples;
- (e) carrying out drug tests;
- (f) giving results of drug tests in certificates or other documents and the evidentiary effect of those certificates or documents;
- (g) confidentiality and disclosure of results of drug tests;
- (h) requirements relating to contracts entered into for the carrying out of drug tests;
 - (i) keeping and destroying records relating to:
 - (i) samples for use in drug tests; or
 - (ii) drug tests.⁵³

49 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 38.

50 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 38.

51 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 38.

52 See for example, Uniting Care, *Submission 6*; Law Council of Australia, *Submission 42*; Mrs Peta Rutherford, Chief Executive Officer, Rural Doctors Association of Australia, *Committee Hansard*, 31 August 2017, p. 14.

2.42 The joint departmental submission indicated that there will be consultation with the contracted testing provider and key stakeholders in the drug and alcohol sector on the exposure draft of the drug testing rules, and that this expert advice would be taken into account.⁵⁴

Income management

2.43 Some submitters raised issues in relation to the potential impacts on some income support recipients who would be placed on income management following a positive drug test result.

2.44 The Commonwealth Ombudsman and the Western Australian Network of Alcohol and Other Drug Agencies (WANADA) made reference to proposed subsection 123UFAA(1C) which provides that the Secretary may determine that a person will not be subject to income management where it will pose a serious risk to the person's mental, physical or emotional wellbeing.⁵⁵ While WANADA strongly supports this provision, the Commonwealth Ombudsman recommends that participants be made aware of the right to request an exclusion from income management.⁵⁶

2.45 Further, the Ombudsman referred to the proposed new subsection 123UFAA(1D), which provides that the Secretary has no duty to consider whether to make a determination under subsection 123UFAA(1C).⁵⁷

2.46 Concern in relation to the interaction of these two provisions was also raised by the Senate Standing Committee on the Scrutiny of Bills and referred for advice to the Minister for Social Services.⁵⁸ In his response, the Minister agreed to amend new subsection 123UFAA(1C) of the Bill, so that the Secretary 'will', rather than 'may', determine that a person is not subject to the income management regime where being subject to the regime would pose a serious risk to the person's mental, physical or emotional wellbeing.⁵⁹

Schedules 13 and 14 – Removal of exemptions for drug or alcohol dependence and Changes to reasonable excuses

2.47 Schedule 13 of the Bill introduces amendments that limit the ability of income support recipients to access exemptions from mutual obligation requirements due to drug and alcohol dependence.

53 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 42.

54 *Submission 5*, p. 21.

55 Commonwealth Ombudsman, *Submission 11*, p 8; WANADA, *Submission 27*, p. 19.

56 *Submission 11*, p. 8.

57 *Submission 11*, pp. 8-9.

58 Senate Standing Committee for the Scrutiny of Bills, [Scrutiny Digest 8 of 2017](#), 9 August 2017, pp. 27-28 (accessed 3 September 2017).

59 The Hon. Christian Porter MP, Minister for Social Services, correspondence to Senator Helen Polley, Chair, Senate Scrutiny of Bills Committee, 28 August 2017, p. 6.

2.48 Schedule 14 provides for the Secretary to make rules setting out what cannot be taken into account in deciding whether a recipient has a reasonable excuse for breaching a mutual obligation requirement – the EM indicates that this would be used to prevent recipients from using drug or alcohol abuse or dependency more than once where that person has chosen not to engage in treatment.⁶⁰

2.49 Some submitters argued against removing exemptions and limiting access to reasonable excuses due to drug or alcohol misuse from activity tests or other forms of mutual obligation.⁶¹ These submitters stated that drug and alcohol dependence is a health problem, and should be dealt with in the same manner as other health conditions.

2.50 The joint departmental submission provided evidence that the number of job seekers being exempted from mutual obligation requirements due to drug and alcohol dependency 'has nearly doubled over the last five years, from 2,920 in September 2011 to 5,256 in September 2016'.⁶² In addition, the submission stated that:

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).⁶³

2.51 The Minister's second reading speech outlined the rationale for the proposed changes under schedules 13 and 14 of the Bill:

Jobseekers who are no longer eligible for an exemption will instead remain connected to their employment service provider and actively engaged in appropriate activities tailored to their particular circumstances and barriers to work, including their substance misuse issues.⁶⁴

2.52 In addition, the Minister referred to other measures to be implemented which would complement the measures contained in the Bill, including that, for the first time, 'all jobseekers are able to undertake drug or alcohol treatment as an approved activity in their job plan'.⁶⁵

60 Social Services Legislation Amendment (Welfare Reform) Bill 2017 Explanatory Memorandum, p. 85.

61 See for example: Australian Medical Association, *Submission 2*; Mission Australia, *Submission 8*; cohealth, *Submission 16*; Jobs Australia, *Submission 17*; Public Health Association of Australia, *Submission 33*; Dr Alex Wodak, *Submission 51*.

62 *Submission 5*, p. 25.

63 *Submission 5*, p. 27.

64 Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 22 June 2017, p. 7430.

65 Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 22 June 2017, p. 7428.

Broad powers delegated to the Secretary

2.53 A number of submissions have expressed concern at the proposed inclusion of Section 28C in the *Social Security Act 1991* which provides a broad power for the Secretary to determine by legislative instrument 'declared program participants' and to modify how social security law will apply to people so declared.⁶⁶ The EM states that the intention is to prevent participants from certain employment services programs, including CDP, from being subject to the removal of exemptions for drug and alcohol dependence.⁶⁷

2.54 However, as was pointed out by the Human Rights Law Centre in its submission:

the exceptionally broad power given to the Secretary in proposed section 28C to determine *who* 'declared program participants' are and *how* the social security law applies to them goes far beyond what is necessary to achieve the stated purpose of excluding CDP participants from these measures. More fundamentally, it is a power to modify how social security rights and obligations apply, not only to CDP participants, but to other classes of people whom the Federal Government may decide in the future should have different entitlements or be subject to different conditions under social security law.⁶⁸

2.55 The Department of Social Services stated in evidence that Section 28C was drafted as such based on advice that this would avoid the necessity to amend the primary legislation should the name of the program change, indicating that 'it would be possible to narrow that without changing the intent. The intent is just that CDP be excluded'.⁶⁹

Schedule 15 – Targeted compliance framework

2.56 The changes to the compliance framework in schedule 15 include the introduction of graduated sanctions for failure to meet mutual obligation requirements. This seeks to address some deficiencies in the existing framework which can 'unnecessarily penalise' some job seekers, while not addressing ongoing failures of some recipients to satisfy their mutual obligations.⁷⁰ All job seekers, with the exception of CDP participants, will be subject to the new compliance system.⁷¹

2.57 In his second reading speech, the Minister for Social Services stated that:

66 See for example: Commonwealth Ombudsman, *Submission 11*; National Social Security Rights Network, *Submission 18*; Human Rights Law Centre, *Submission 39*; Ms Lisa Fowkes, *Submission 31*.

67 Social Services Legislation Amendment (Welfare Reform) Bill 2017 Explanatory Memorandum, p. 81.

68 Human Rights Law Centre, *Submission 39*, p. 5.

69 Ms Cath Halbert, Department of Social Services, *Committee Hansard*, 30 August 2017, p. 59.

70 *Submission 5*, p. 29.

71 *Submission 5*, p. 29.

The new targeted framework is designed to change the behaviour of non-genuine jobseekers, while supporting the majority of jobseekers who are absolutely genuine in their efforts to find work.⁷²

2.58 Some submitters indicated support for the some aspects of this measure, in so far as it will address deficiencies within the existing compliance system.⁷³ However, concerns were raised in relation to the introduction of non-waivable penalties.⁷⁴

2.59 The joint departmental submission states that of the estimated 1.22 million job seekers per annum who will be subject to the new framework, around 1.14 million job seekers will experience more streamlined administration and face no financial penalties. The joint submission estimates that around 83 000 job seekers may receive financial penalties in the first year, ranging from the loss of one week's income support to payment cancellation lasting four weeks.⁷⁵

2.60 However, the Minister for Social Services has stated that there will be a number of points at which an individual's circumstances and the reasons for non-compliance with an obligation can be reviewed and assessed prior to any financial penalty being imposed: 'No penalty will be applied to any jobseeker if they have a reasonable excuse for any failure to observe a mutual obligation'.⁷⁶

Committee view

2.61 The committee notes the views expressed by stakeholders in support of the core principles underlying the Bill: simplification and streamlining of the administration of the welfare system, providing earlier and more targeted support to working age job seekers in need of assistance, and improving the targeted compliance framework.

2.62 The committee acknowledges the Government's intention to promote ready access to support and assistance for people who are seeking work or who are temporarily unable to work. In particular, the committee notes the amendments that will provide for more efficient processing of income support claims and other aspects of social security administration, and the amendments that will enable mature age job seekers to access the targeted support available.

2.63 The committee also notes that concerns have been raised in relation to specific aspects of the Bill, particularly in relation to the drug testing trial.

72 Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 22 June 2017, p. 7430.

73 See for example: National Social Security Rights Network, *Submission 1*; Ms Liz de Chastel, Director, Social Policy, Catholic Social Services Australia, *Committee Hansard*, 30 August 2017, p. 22.

74 National Social Security Rights Network, *Committee Hansard*, 30 August 2017, p. 7.

75 *Submission 5*, p. 31.

76 Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 22 June 2017, p. 7430.

2.64 The committee acknowledges that, in evidence, the Departments of Social Services, Employment and Human Services have indicated that many of the concerns raised will be addressed in the consultations currently under way, in particular in relation to the drug testing trial. The release of the exposure draft of the drug testing rules for consultation during this inquiry is a measure of the departments' intention to engage with stakeholders to address issues raised through this inquiry.

2.65 The committee further notes the undertaking by the Minister to amend certain aspects of the Bill in relation to protecting the wellbeing of participants in the drug testing trial.

2.66 While acknowledging the concerns raised by submitters and witnesses, the committee considers that both the Minister and the responsible departments have indicated a willingness to review aspects of the reforms, where issues have been identified during stakeholder consultations.

2.67 The committee considers the proposed reforms will create a simpler, more efficient and better targeted welfare system. The changes will provide an opportunity to trial and evaluate a new way to assist people who are facing specific challenges in entering or re-entering the workforce.

Recommendation 1

2.68 The committee recommends that the Bill be passed.

Senator Slade Brockman

Chair