

**“Of good character” – the policy dialogue
on drug testing welfare recipients in
Australia**

Note

- I have been engaged in this debate (submissions, evidence, advice to parliamentarians)
- I do not support the proposal to drug test welfare recipients
- But with this paper, I am seeking to step back and analyse the expert and political debate, with a view to deriving insights and lessons for social policy advocacy

Welfare conditionality

Social welfare programs have conditions:

- Eligibility/status (eg age, citizenship)
- Need (eg illness, disability, low income)
- Conduct (eg ‘of good character’)

Conduct = Behavioural conditionality or New Conditionality

Defined as

- “the deliberate use of conditions to enact changes to social norms and patterns of behaviour” (Taylor et al., 2016)
- “a form of coercive power, which uses the threat of deprivation (of welfare goods) to achieve behavioural change” (Watts & Fitzpatrick, 2018).

Target “conduct” for behavioural conditionality

- Child immunisation
- School enrolment
- Job search activities
- Attending training
- Community service activities
- Refraining from anti-social behaviour (housing)

The ways in which these are monitored vary (intrusive - self-report)

The type and severity of sanctions vary (harsh – lenient)

It is under scrutiny

- Perception that, amongst developed nations:
 - Behavioural conditionality is increasing
 - Harshness of sanctions is increasing
- Targeted towards:
 - Unemployed people
 - Youth
 - Sick and disabled people
 - Low income families
 - Social housing tenants
- And not those who receive other government benefits: aged care pensions, tax relief
- Widely interpreted as “a moral agenda to reform the poor character of a welfare-dependent ‘underclass’” (Watts & Fitzpatrick, p. 79)

Perfect! People who use drugs!

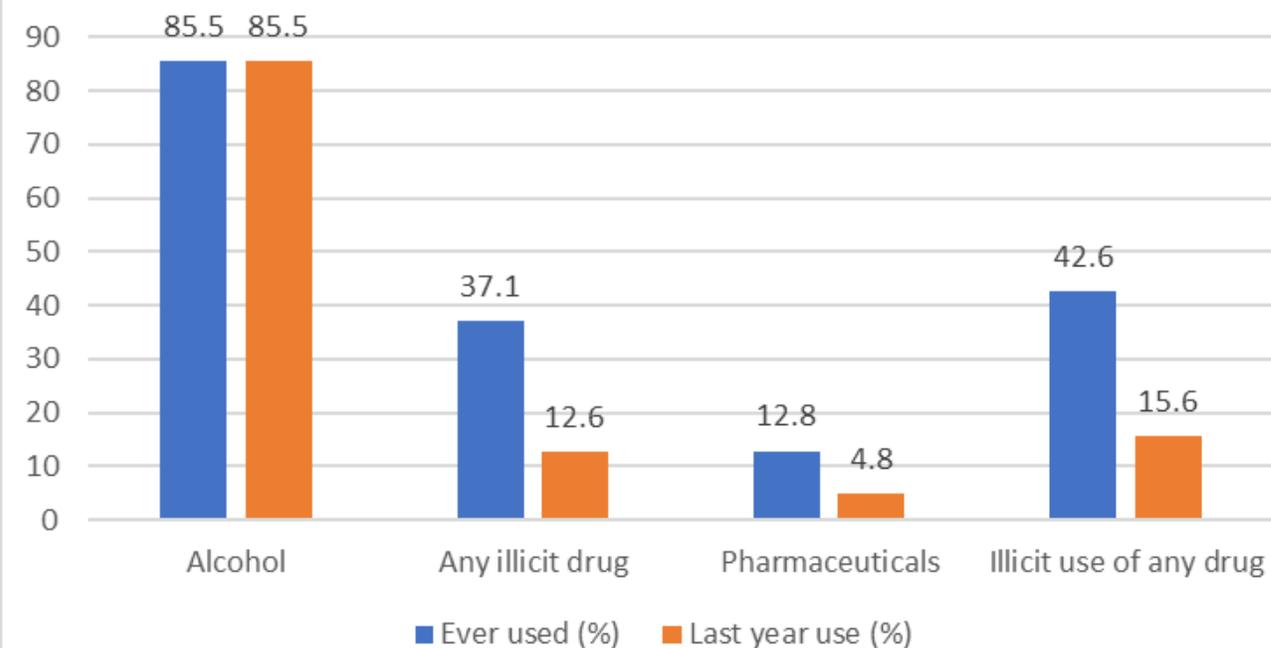
- Allegedly of “poor character”
- Illegal behaviour
- Self-inflicted condition
- Undeserving
- Marginalised and disenfranchised

But not a new phenomenon - alcohol

- 1908 Invalid & Old Age Pensions Act:
 - “No person shall receive an old-age pension unless:
 - 17(c): he (sic) is of good character
 - 51 (1): is in any Court convicted of drunkenness... may forfeit any one or more of the instalments
 - 52 (1): Notwithstanding that a pensioner has not been convicted of drunkenness, a Registrar may ...summon any pensioner to appear before a Magistrate to show cause why his pension should not be cancelled, reduced or suspended for a time on account of his drunken, intemperate or disreputable habits...
- 1935 “The Brown Book” (codified the instructions) “convictions for drunkenness”: 1st warning, followed by 6 month suspension
- 1947 Social Services Consolidation Act
 - No explicit mention of drunkenness but retained “of good character”; “deserving of a pension”
- 1971 a pension was cancelled on grounds of alcoholism (undeserving) (Jordan, 1989)
- 1974 reference to ‘good character’ and ‘deserving’ fully removed

Back to drugs

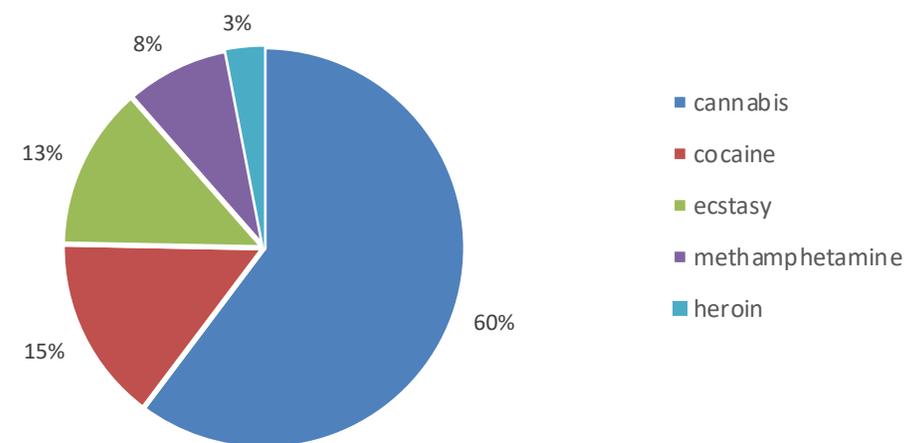
Drug use in Australia (2016)



Types of drug use:

- Pleasure/recreational
- Self-medication
- Enhancement (physical; spiritual)
- Dependence

Most commonly used drugs



% of people who use drugs who develop drug problems:

- Cannabis ~ 9%
- Heroin ~ 23%
- Cocaine ~ 17%

Drug testing of welfare recipients

- 2017 Social Services Legislation Amendment (Welfare Reform) Bill 2017
- 2018 Social Services Legislation Amendment (Drug Testing Trial) Bill 2018
- 2019 Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

Round 1: 2017 Welfare Reform Bill

On 22 June 2017, the Social Services Legislation Amendment (Welfare Reform) Bill 2017 was introduced into the House of Reps by Minister for Social Services, the Hon Christian Porter MP.

Omnibus Bill, covering amendments to:

- Social Security Act, 1991
- Social Security (Administration) Act 1999
- A New Tax System (Family Assistance) Act 1999
- Income Tax Assessment Act, 1936, 1997
- Veterans Entitlements Act 1986
- Paid Parental Leave Act 2010
- Student Assistance Act 1973
- Disability Discrimination Act 1992
- Farm Household Support Act 2014

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- The measures included
 - “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 9-13);
 - streamlining administrative processes (schedules 11, 16-18); 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)” (DSS/DHHS)
 - With reference to drugs:
 - Schedule 12: Establishment of a drug testing trial
 - Schedule 13: Removal of exemptions for drug or alcohol dependence
 - Schedule 14: Changes to reasonable excuses

Referred to Senate Committee

- On 22 June 2017, the Senate referred the Welfare Reform Bill 2017 to the Senate Community Affairs Legislation Committee for inquiry and report
- Submissions were sought (closed 4th Aug 2017)
- 63 submissions received in total, of which 1 confidential/not available; 1 DSS (neutral) (n=61)
- Of these 61, n = 52 spoke to the drug testing trial schedules = 85%
 - Only 9 did not mention the drug testing sections/schedules
- Of the 52, 2 argued in support of the new provisions, and 50 argued against it (96%)
- Despite this, the report from the Senate Committee (Sept 2017):
 - did not take on board the criticisms and concerns received in the submissions
 - recommended that the Bill be passed
 - dissenting reports from Australian Labor Party and The Australian Greens

Round 1: outcome

- Parliamentary review, debate
- Senate unlikely to pass the omnibus bill if Schedule 12 retained
- On 7 December 2017, the Senate, on the motion of the government, agreed to remove Schedule 12 from the Welfare Reform Bill.
- The Bill passed Parliament with amendments (including the removal of the two year trial of drug testing trial on 27 March 2018).
- (our job here is done)

Round 2: Drug testing trial bill

- On 28 February 2018, the Hon. Dan Tehan MP, Minister for Social Services, introduced the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018 in the House of Representatives
- The Bill differed from the Welfare Reform Bill in the following ways:
 - the trial areas were now specified in the Bill
 - new sub-clause provided that the Secretary must determine that a person is not subject to income management if ... reason to believe that it would pose a serious risk to the person's mental, physical or emotional wellbeing

The details...

- Random drug testing of 5,000 new recipients of Newstart and Youth Allowance
- Within three sites (Canterbury-Bankstown in New South Wales, Logan in Queensland, and Mandurah, WA)
- New recipients required to acknowledge the conditions (random drug testing) prior to any payments starting
- Drugs tested from the person's saliva, urine or hair; methamphetamine, cannabis, opioids
- If do not attend for test, payments cancelled, unless reasonable excuse, 4/52 wait for re-application
- If do attend and test positive, welfare payments through income management (for 24/12) & subject to further tests
- If 2nd test (must be within 25 days) positive; repay cost of test; referred to contracted medical professional for assessment for rehabilitation, counselling or ongoing drug testing
- If treatment recommended, recipient required to complete treatment activities as part of their Job Plan (or being on a waiting list)
- Failure to comply with the treatment provisions, “would be subject to the participation payment compliance framework” and not where the reason is wholly or substantially attributable to drug or alcohol use
- \$10 million in dedicated treatment funding for the 3 sites

Why? (objectives/rationale)

1. Maintain the integrity of, and public confidence in, the social security system by ensuring that tax-payer funded welfare payments are not being used to purchase drugs or support substance abuse;
2. Improve a recipient's capacity to find employment or participate in education or training by identifying people with drug use issues and assisting them to undertake treatment

(Explanatory Memo)

Referred to the Senate Committee

- On 22 March 2018, the Bill was referred to the same Senate Committee for inquiry and report by 7 May 2018.
- 52 submissions received (of which 3 were confidential/name withheld and were not available).
- Of the remaining 49 submissions, all of them bar 1 (#25, DSS) were against the proposed Bill.
- Senate report (May 2018): once again, the Committee recommends that
 - The Bill be passed
 - Dissenting reports: Labor and Greens
- The Bill passed the House of Representatives on August 13 2018 and was introduced to the Senate on August 14, 2018
- Senate did not hear the Bill (subsequently lapsed; Federal election 18 May 2019)

Round 3: 2019

- Media announcement Friday 6th Sept that the Bill would be again put before the House of Reps (in light of the lapsed previous Bill).
- Identical to 2018 Bill, except:
 - Inclusion of heroin and cocaine
 - Removal of provision that recipients repay the costs of positive drug tests
- Slated for this week (not listed in order of business so far)

Analysis: the policy dialogue

- What arguments were used in support of and against the Bill?
- Focussed on Round 2, 2018
- Insights from the policy dialogues
- Implications: how to advocate for better social policy?

In particular:

- Compare 'expert' debate (submissions) with political debate (Hansard)
- 'Experts' = social service providers, drug treatment providers, researchers, peak bodies (across drugs and social policy), individuals

The 'experts' (submissions)

- 360 edge
- ACOSS
- AIVL
- AMA
- Anglicare Australia
- Anti Poverty Network South Aust
- ATDC Tasmania
- Australian Assoc of Social Wokers
- Australian Federation of AIDS Organisations
- Australian Human Rights Commission
- Brisbane South PHN
- Catholic Social Services Australia
- Chief Minister of the NT
- City of Mandurah
- cohealth
- CPSU
- CSRH and SPRC
- Department of Social Services
- Dr Anna Olsen
- Glenn Lynch (SSDP)
- James Clarke
- Jobs Australia
- Kirby Institute
- Law Council of Australia
- Logan City Council
- Mission Australia
- NADA
- National Council of Single Mothers and their Children
- National Social Security Rights Network
- NDARC/DPMP
- Office of the Australian Information Commissioner
- Penington Institute
- Public Health Association
- Public Service Research Group, UNSW Canberra
- Queensland Council of Social Services
- RANZ College of Psychiatrists
- Royal Australasian College of Physicians
- Salvation Army
- Seear, Fraser, Moore, valentine
- Sharon Hollamby
- South Aust Network of Drug & Alcohol Services
- St Vincent De Paul Society National Council
- St Vincents Health Australia
- Ted Noffs Foundation
- The Parenthood
- Uniting Care Australia
- Victorian Alcohol and Drug Association
- WA Primary Health Alliance
- WANADA

The expert debate (submissions)

Analysis used four categories:

- Evidence and data
- Underpinning assumptions
- Implementation issues
- Ethical and moral issues

The expert debate (submissions)

Evidence and data	<ul style="list-style-type: none"> • No supporting evidence that drug testing of income support recipients results in: 1. increased employment; 2. decreased drug use; 3. increased access to treatment • Testing technology unreliable • Costly without effectiveness • Compulsory treatment effectiveness queried • Potential negative outcomes: increase in poverty, increase in inequality, increase in crime • Contributes to stigma
Underpinning assumptions (flawed)	<ul style="list-style-type: none"> • Misunderstands drug use, drug dependence • Excludes alcohol (the substance associated with most harm) • Misunderstands employment and relationship between drug use and employment • Ignores structural barriers to employment
Implementation issues	<ul style="list-style-type: none"> • Lack of availability of treatment • Absence of procedural fairness • Privacy/confidentiality concerns • Increased aggression against Centrelink staff
Ethical and moral issues	<ul style="list-style-type: none"> • Infringes human rights • ‘Morally wrong’ • Punitive, coercive • Unjust, unfair • Discriminatory

The political debate (hansard)

	Arguments against	Arguments for
Evidence and data	<ul style="list-style-type: none"> • Zero evidence • Proven to be highly ineffective • Complete lack of support from the experts (“You still can't find one single credible expert that says this bill will do anything meaningful to address drug addiction”). • Increase poverty, increase crime, increase homelessness • Costly, and costs not disclosed 	<ul style="list-style-type: none"> • Evidence in support (international trials) • Measure specifically designed as a trial • Give it a go
Underpinning assumptions	<ul style="list-style-type: none"> • The government is confusing a healthcare issue with welfare • “The government's attempt to conflate drug misuse with unemployment is not just wrong; it's harmful”. 	<ul style="list-style-type: none"> • Drug addiction is a huge barrier to long-term employment • It will help people with drug abuse issues to get treatment, rehabilitate and get a job • Illegal drugs are tearing apart families and destroying our communities • “Millions of Australians” are used to accepting drug testing for jobs in mining, construction, transport Why should it be any different for someone on welfare?

The political debate (contin)

	Arguments against	Arguments for
Implementation issues	<ul style="list-style-type: none"> • Access to treatment – long waiting periods 	<ul style="list-style-type: none"> • Drug testing technology: published Drug Test Rules (exposure draft) for review
Ethical and moral issues	<ul style="list-style-type: none"> • “Those for the trial are waging an ideological war on the most vulnerable in our society” • Degrades and demonises people • Denigrating, demeaning, diminishing vulnerable people 	<ul style="list-style-type: none"> • This policy is based on love • The community has the right to expect that taxpayer funded welfare payments are not being used to fund drug addiction • It helps keep taxpayers' money out of the hands of drug dealers. • “We never give up on anyone” • We don't want to see children damaged

Analysis

- Expert debate was completely one-sided – all against
- Expert debate covered a large variety of arguments (evidence, conceptual flaws, implementation issues, and ethical concerns)
- Two arguments that were missing:
 - Critique of ‘system’ and Newstart as the wrong mechanism. Drug dependence as a health condition (chronic, relapsing) was noted. Newstart is the only source of income support for these people (if <66 years of age). Not eligible for disability support pension
 - “Drug dealers” being funded through income support payments from recipients
- Political debate on the Bill included evidence, underpinning assumptions, ethics (implementation issues not raised as much)
- A key rationale for those in favour of the Bill: welfare payments being used to fund drug addiction and to pay drug dealers

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- Recall the two objectives of the trial:
 1. Maintain the integrity of, and public confidence in, the social security system by ensuring that tax-payer funded welfare payments are not being used to purchase drugs or support substance abuse;
 2. Improve a recipient's capacity to find employment or participate in education or training by identifying people with drug use issues and assisting them to undertake treatment
 - The expert debate concerned the latter
 - The political debate largely concerned the former
 - If it were just the latter (treatment for drug dependence), then the policy and program measures would be quite different
 - But because it is the former, everyone gets tested, and it's a punitive regime (eg income management measures) because it is fundamentally about not using drugs if receiving income support
 - This then speaks to moral frames....

Moral frames ('normative lenses', Watts & Fitzpatrick)

1. Paternalism

- Protect people from the consequences of their own poor decision-making
- In the best interests of income support recipients

2. Contractualism (mutual obligation)

- Relationship between citizen and the state based on reciprocal agreement, with mutual obligations

3. Communitarianism

- Community solidarity and social cohesion; collective good is greater than individual freedom
- Based on community norms; responsibilities towards each other

4. Utilitarianism (consequentialist)

- That which brings about the best state of affairs, maximising utility/welfare
- Turns largely on empirical questions – what increases net wellbeing/welfare?

5. Rights

- Rights fundamental; rights are owed to all people

Moral frames

- Analysis of the moral frames within:
 - The expert debate
 - The political debate

Political debate – moral frames

Moral frames	Those in favour of the Bill	Those against the Bill
Paternalism ++	“People with substance abuse issues deserve government support and intervention to help them get clean, into work and back to a productive life, not just for them but also for their family”	
Contractualism +	“Needs to be a degree of mutual obligation” “if you're being paid by the taxpayer to look for work or do a job, they have every right to know what's going on”	
Communitarianism +++	“The community has a right to expect that taxpayer-funded welfare payments are not being used to fund drug addiction ...We don't want our welfare system subsidizing drug dealers”. [community norm assumed]	
Utilitarianism +++		“There is not a single strand of evidence to support this vindictive policy” [decreases net welfare]
Rights +++		“Rarely should a government mandate procedures that are physically invasive or otherwise intrude disproportionately on the person or the rights of the individual” “You don't lift people out of poverty by taking away their rights”.

Expert debate – moral frames

Moral frame	Those against the Bill (n=48)
Paternalism	
Contractualism	
Communitarianism	
Utilitarianism +++	<p>“There is no evidence that drug testing of people without a job leads to those people finding employment”</p> <p>“There is no evidence drug testing of welfare recipients either improves employment outcomes or reduces harms associated with drug taking”</p>
Rights ++	<p>“This testing is intrusive and cutting people off from their benefits, giving them nothing to live on is a basic infringement of human rights”</p> <p>“The income management regime thus constitutes an impermissible, disproportionate and unjustifiable incursion of rights”.</p>

Analysis

- Those for the Bill advance three moral frames: paternalism, contractualism and communitarianism
- Those against the Bill advance utilitarian and rights-based arguments
- Arguments (on both sides) slide past each other given these differences
- For example, no matter how much empirical data showing harms outweigh benefits (utilitarianism) the contractualism view sees this as irrelevant
- Behavioural conditionality arguably inherently paternalistic precisely because it involves a “claim by the government that it knows best how beneficiaries should behave” (Taylor et al., 2016, p. 5) ie don’t use drugs!

What now?

- As long as the expert debate remains within utilitarian and rights-based morality; and the political debate within paternalism, contractualism and communitarianism they are unlikely to speak to each other
- Can we shift the moral frames for social security in Australia?
- Or at least, tackle it within the expert debate?
 - Argue against paternalism, contractualism and/or communitarianism?
 - Identify conditions under which paternalism may be ethical?
 - Ways in which proposal as it stands contradicts communitarianism?
 - Capture communitarianism to argue against the proposal? (appropriate their moral frame)
- More specific areas for thought:
 - “taxpayers money being given to drug dealers”
 - Perceptions towards people who use drugs – as deserving
 - Community attitudes towards income support/social security

Summary & Conclusions

- Behavioural conditionality associated with income support is:
 - Growing in popularity
 - Likely here to stay
- Drug testing of welfare recipients simply one example
- Tenacity to the conservative government's attempts to get this up
- Rationale: community norms about income support recipients; desire to help people with “drug issues”
- Justified through moral frames of paternalism, contractualism and communitarianism
- Strong opposition
- Those advocating against it use rights-based and utilitarianism moral frames
- Tackle and/or harness the moral frames more explicitly?

Thank you

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Possible arguments

- “this is about helping people get off drugs; dealing with a life-inhibiting condition”
 - Why test everyone then? (given ~70-80% who test positive will not have a drug problem per se)
 - Other ways to identify those people
 - Treatment resources not available
 - If a health condition, chronic relapsing, then Newstart is the wrong scheme
- It is not stigmatising/targeting
 - Why not test everyone who receives income support?
 - Why not test the whole population? Test politicians – what are the sanctions?

Round 1: 2017 two submissions in favour

- #48
 - Discriminatory, just test everyone. Nobody should use drugs. Sending message that drug use is OK so long as you're not on welfare
- #63
 - Receiving welfare is a privilege
 - Those who are addicted see federal welfare as rewarding their behaviour
 - Use addiction as a reason to avoid responsibility
 - Govt could be accused of helping maintain addiction
 - Being addicted is demeaning and humiliating (not drug testing)

Data wars: Are people who are unemployed more likely to use drugs?

- “The Australian Institute of Health and Welfare's National Drug Strategy Household Survey 2013 showed that those who were unemployed were 2.4 times more likely to use ice and other drugs than those who were employed. (Hansard, Aug, 2018)
- “The Australian Institute of Health and Welfare's 2016 National Drug Strategy Household Survey shows that those who were unemployed were three times more likely to have recently used drugs such as ice and other amphetamines than those who were employed”. (Hansard, Tehan, Feb 2018)
- “According to the 2016 National Drug Strategy Household Survey, unemployed people are around 1.3 times more likely to have used illicit drugs in the last 12 months when compared to employed people. However, the 2016 Survey also found that unemployed people are more likely to have never used illicit drugs than employed people”. (Submission #1)
- “The Australian Institute of Health and Welfare Household Survey of 2013 indicated that 75.5% of unemployed people had not used illicit drugs in the previous 12 months” (Submission #21)
- Population data: more people are employed, so “Although the proportion of unemployed people who use drugs is higher than the proportion of employed people, the vast majority of people who use drugs are employed”. (Submission #1)

Evidence and data

- Evidence for drug-testing is equivocal
 - Opportunity to overstate
 - Focus on micro details (eg medicinal cannabis)
 - Data wars

Copied from Submission #1

