



**MINISTRY OF SOCIAL  
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

23 AUG 2017



Dear 

On 7 February 2017, you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *Please provide any information relating to recent proposals to drug test people receiving benefits. We understand the Ministry of Social Development in Northland is intending to drug test beneficiaries.*

I am aware that on 17 August 2017, the Ministry provided you with documentation regarding the Te Taitokerau T500 strategy. Following further discussions, the Ministry has identified additional documentation that may be of interest to you regarding the drug testing of clients.

As you will be aware, clients with work obligations are now required to take and pass a drug test where an employer or training provider asks for one as part of the application process for a suitable job.

In most cases a drug test is deemed a recruitment cost for the employer, not prospective employees. The drug testing policy for clients with work obligations allows the employer to be reimbursed for the test if a person fails, as long as the employer has informed Work and Income at the time of lodging the vacancy that the job requires a pre-employment drug test.

When a client with work obligations fails a drug test or refuses to comply with a drug test, the cost of the drug test is passed onto the client. Work and Income reimburses employers for the costs of the drug test and those costs are recovered as a debt from the client's benefit.

This policy aims to identify clients who are prevented from taking up suitable employment due to drug use or who refuse to apply for drug tested jobs, and to quickly get them back to a position where they can apply for a full range of suitable employment. Clients diagnosed with a drug dependency will not be sanctioned under this policy, but they will receive the support they need to address their addiction.

Further information about the obligations clients are required to meet is available on Work and Income's website at: [www.workandincome.govt.nz/on-a-benefit/work-obligations/](http://www.workandincome.govt.nz/on-a-benefit/work-obligations/). Further information about pre-employment drug testing is also available on the Work and Income website at: [www.workandincome.govt.nz/on-a-benefit/work-obligations/pre-employment-drug-testing.html](http://www.workandincome.govt.nz/on-a-benefit/work-obligations/pre-employment-drug-testing.html).

Please find enclosed the following reports which may be of interest to you:

<b>Date</b>	<b>Title</b>
8 September 2016	<i>Paper for September 2016 Business Growth Agenda Skilled and Safe Workplaces Meeting: Drug use and employment</i>
11 November 2016	<i>Skilled and Safe Workplaces: Drug use and employment</i>
5 December 2016	<i>Options to improve employment outcomes for people who are recreational drug users and the Budget implications</i>
7 December 2016	<i>Skilled and safe workplaces: drug use and employment</i>

Some information is withheld under section 9(2)(f)(iv) of the Official Information Act as it is under active consideration. The release of this information is likely to prejudice the quality of information received and the wider public interest of effective government would not be served.

You will note that the names and details of some individuals are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

You will notice that a table of information relating to client case notes has also been withheld under section 9(2)(a) of the Official Information Act. This table was provided to Ministers for context only and was not intended for a wider audience. Whilst no personal details were provided in the table, given the nature of the information provided regarding locations, family status and interventions, the Ministry has decided that it is prudent to withhold this information from a wider audience to protect the privacy of living people.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public shortly. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding drug testing clients receiving a benefit, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Poskitt', with a stylized, cursive script.

James Poskitt  
**General Manager, Working Age Policy**



**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MANATŪ WHAKAHIATO ORA



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

# Report

**Date:** 8 September 2016      **Security Level:** IN CONFIDENCE  
**To:** Hon Anne Tolley, Minister for Social Development  
Hon Michael Woodhouse, Minister for Workplace Relations and Safety

## **Paper for September Business Growth Agenda Skilled and Safe Workplaces Meeting: Drug use and employment**

### **Purpose of the report**

- 1 This report provides you with information on issues relating to drug use and employment for the Business Growth Agenda Skilled and Safe Workplaces (SSW) Ministers' meeting on Monday 26 September 2016. This report includes a proposed approach to future work.
- 2 It is recommended that you approve the submission of this paper to SSW Ministers and provide feedback to officials on the proposed approach to further work.

### **Executive summary**

- 3 Issues relating to drug use and employment have been discussed at recent Business Growth Agenda Skilled and Safe Workplaces (SSW) Ministers' meetings. At the SSW meeting in May 2016, Ministers directed the Ministry of Social Development (MSD) to provide information on the impact drug convictions have on employability. In July 2016, MSD and the Ministry of Business, Innovation and Employment (MBIE) were directed to consider the impact of drug convictions on employability and the extent to which drug use is restricting people from entering employment.
- 4 At the SSW meetings, Ministers also raised concerns that increased drug testing may be leading to the use of more harmful drugs, such as methamphetamine, that have a shorter detection period.
- 5 There are a range of individual interests and government outcomes involved in the issue of drugs and employment, including employment and health outcomes, and privacy interests.
- 6 Employment law settings provide a flexible framework that aims to clarify how and when employers can utilise different drug testing methods. This framework aims to balance an employer's responsibilities regarding safe and productive workplaces with an employee's right to reasonable privacy.
- 7 The science of drug testing has considerable limitations. Current drug testing methods detect drug residue, rather than impairment. As a result, it is difficult to determine whether an employee is impaired at work.
- 8 In 2013, Work and Income introduced pre-employment and training drug testing for clients who have work obligations. The policy was introduced to move more clients into work and to set the expectation that recreational drug use is not a reasonable excuse to turn down suitable employment. The policy aims to support clients into sustainable employment opportunities and encourage good health outcomes.

- 9 Officials recommend that further work be carried out to assess issues regarding drug use and employment. Our proposed approach is outlined below:

• s 9(2)(f)(iv)

- MSD to lead scoping work on regional and sectoral analysis to improve information about the extent of drug use and its impact on employment.
- An assessment of guidance for employers about the legal framework for drug testing employees.
- MBIE will work with Transport to assess whether better support could be given to firms wishing to test for drug impairment in employment, including by examining whether developments in testing methodologies could be better utilised by firms

- 10 If Ministers agree to the proposed work programme, officials will report back on progress by the end of November 2016.

### Recommended actions

- 11 It is recommended that you:

- a) **note** that Business Growth Agenda Skilled and Safe Workplaces Ministers' directed MSD and MBIE to establish a cross-agency project to consider the extent that drug use in employment is an issue and how drug policies may be restricting the employment of people who are otherwise available for work

Yes / No

- b) **approve** the submission of this report for the Business Growth Agenda Skilled and Safe Workplaces Ministers' meeting on Monday 26 September 2016

Yes / No

- c) **note** that current information on the use of drugs and its impact on employment is limited

Yes / No

- d) **provide** officials with feedback regarding the proposed approach for further work.

Yes / No

- There is more info needed as per attached HT.

Yes / No

<p><i>[Signature]</i></p> <p>Sacha O'Dea General Manager Working Age Policy Ministry of Social Development</p>	<p><i>[Signature]</i></p> <p>Joanne Hughes General Manager Labour and Immigration Policy Ministry for Business, Innovation and Employment</p>
<p>Date: 8/9/16</p>	<p>Date: 9/9/16</p>
<p><i>[Signature]</i></p> <p>Hon Anne Tolley Minister for Social Development</p>	<p>Hon Michael Woodhouse Minister for Workplace Relations and Safety</p>
<p>Date: 20-9-16</p>	<p>Date:</p>

## **Background**

- 12 Drug use and employment has been discussed at two previous SSW Ministers meetings this year. It was initially raised at a strategic discussion in May 2016, where MSD was asked to provide information on the impact drug convictions have on employability.
- 13 It was further discussed at the July 2016 SSW Ministers' meeting. MSD and MBIE were directed to consider whether drug use is acting as a restriction to employment. Ministers asked what sanctions are available and what can be done at the community level and through education to address these issues.
- 14 In response to SSW Ministers directions, MSD and MBIE have begun analysis on whether policies related to drug use and employment are best set to support employment and health outcomes.
- 15 This report outlines the current situation for drug testing and employment. This includes the legal framework for in-employment testing, the limitations of current science around drug testing and the policy of pre-employment testing for Work and Income clients. The report also highlights the range of outcomes impacted by drug use and employment and a proposed approach to further work.

## **Outcomes relevant to drug use and employment**

- 16 There are a range of individual interests and government outcomes involved in the issue of drugs and employment, including employment and health outcomes, and privacy interests.

### *Employment outcomes*

- 17 Individuals who are impaired due to drug use have a higher chance of injuring themselves or others at work. Impairment can also lower productivity and work quality, regardless of whether individuals are impaired at work. Poor outcomes in these areas can increase pressure on other employees and the firm. Drug use can also contribute to unemployment.

### *Health outcomes*

- 18 Where employment-based testing requires individuals to remain drug-free, this can act as an effective deterrent to ongoing drug use. However, where an individual has a serious drug problem, testing can act as a barrier to employment, which can in turn exacerbate the problem.

### *Privacy interests*

- 19 Achieving good employment and health outcomes should be balanced against maintaining an individual's reasonable privacy interests. Determining whether drug testing is justifiable requires balancing reasonable privacy interests against how testing in this circumstance will support other outcomes, such as improved health and safety practice. For example, case law has found that random drug testing in safety sensitive work environments is likely to be more justifiable because of the significant risk impairment poses to maintaining health and safety.

## **Status quo: information, law, science and policy relating to drug use and employment**

### *A: Information on impacts of drug use and employment*

- 20 Current government data on drug use and its impact on employment is limited. Anecdotal evidence suggests that the number of employers implementing drug testing, either as a pre-employment or regular requirement, is increasing.
- 21 There has also been anecdotal evidence that increased testing has led to employees and job seekers using drugs that have a shorter detection time, but are more harmful.

## *B: Employment law relating to drug use and employment*

- 22 Employment drug testing is regulated by a framework of legislation, standards and case law. Case law is the primary source of law in this area. Employment law in this area seeks to balance employers' needs to ensure their workplace is safe and productive, and the employee's reasonable privacy interests.
- 23 The courts have established a number of principles to guide employment drug testing practice. The principles include:
  - 23.1 a requirement for a written policy,
  - 23.2 that more intrusive testing requires greater justification, and
  - 23.3 policies must deal with private information sensitively.
- 24 Further information on the legal position of employment drug testing is provided in Appendix 1.
- 25 The legal framework exclusively regulates in-work testing and does not cover pre-employment testing. However, we would expect that pre-employment testing is broadly consistent with the legal framework (to ensure that any testing approach taken in pre-employment can be continued once the worker commences employment).
- 26 Officials consider that the legal framework appropriately balances employment and health objectives, as well as privacy interests. The legal framework allows for flexibility to ensure that relevant outcomes and interests can be balanced according to the particular circumstances of the situation.
- 27 However as a result of this flexibility, we are aware some employers are concerned about uncertainty, particularly around case law, about when drug testing is legal. Ensuring employers understand the legal framework for drug testing is vital to supporting positive employee and firm outcomes in this area. We recommend undertaking further work, exploring the usefulness of further employer guidance. This is discussed further in the section outlining the proposed approach to further work.

## *C: Current science and practice of drug testing*

- 28 There are still considerable limitations in the science and practice of drug testing. Currently, drug testing cannot determine whether an individual is impaired. Further, tests cannot determine when drugs were consumed. Therefore drugs with a longer retention period are more likely to be detected.
- 29 In-work drug testing is commonly carried out through testing urine samples. These tests must comply with scientific and professional standards.<sup>1</sup> Urine testing detects residues of certain drugs and their metabolites in the body. Each drug has a set threshold or cut-off level for screening and evidential tests. To fail a test, a person must have drugs in their system that reach or exceed these levels.
- 30 Threshold levels of drug residue may remain for a significant period after consumption, including when an individual is no longer impaired. The length of time certain drugs will stay in a person's system depends on a range of factors including the amount and frequency of use, the person's body mass, age, overall health, drug tolerance and whether multiple drugs have been mixed.
- 31 Further, the average detection period differs across drug forms. For example, amphetamines have an average detection period of one to four days, while cannabis has an average detection period of five to eight days (first time user) or 11 to 30 days (regular user). Urine testing methods cannot detect the time or level of consumption, or measure impairment.

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<sup>1</sup> The Australian/New Zealand Standard AS/NZS 4308:2008. To meet the standard, drug tests must be undertaken by a person who is NZQA accredited for urine specimen collection in the workplace.

- 32 International evidence correlating drug levels and impairment is inconclusive. Developing a scientific basis for setting drug limits that can reliably indicate impairment would require extensive epidemiological and experimental testing.
- 33 Officials recommend further work is carried out to determine the best current evidence about drug levels and impairment at work. This work would provide an evidence base that could be shared with employers to inform best practice for employment drug testing. It is suggested that this forms part of the development of further guidance for employers. This is further outlined in the proposed approach section.
- 34 The drug testing policies used by New Zealand Police (Police) and Transport, outlined below, may provide processes which could be used to improve employment testing.

#### Police drug testing for drivers

- 35 New Zealand's drug-driving regime allows for testing on suspicion of impairment. Testing is carried out when Police have a 'good cause to suspect' a driver is impaired, for example erratic driving or swerving across lanes. If this criteria is met, the driver can be required to undergo a Compulsory Impairment Test (CIT) to determine whether they are impaired. The CIT involves a test of physical coordination and pupil dilation, allowing a connection to be made between the impairment test and the following drug test.
- 36 Drivers who fail a CIT are required to provide a blood sample for laboratory analysis. These tests determine whether there are active ingredients for drugs present in the sample. Compared with urine testing, these tests provide a far more sophisticated analysis. It is unclear whether employers are utilising such testing methods.
- 37 Transport recently completed a review on the drug driving enforcement regime. The Government is yet to make decisions regarding the review. Officials will continue to follow developments in this work.

#### Transport drug testing for employment

- 38 Earlier this year, the Government introduced new measures to address alcohol and drug related impairment in aviation and maritime industries. To give effect to these proposals, the Civil Aviation Act 1990 and the Maritime Transport Act 1994 will need to be amended. It is expected from 2017, that it will be mandatory for all commercial aviation and maritime operators to have drug and alcohol management plans, which must include random testing.
- 39 Policy and legislative developments in these workstreams are informed by international policy and scientific developments. Officials from MBIE and Transport will continue to work together to share emerging evidence and best practice for drug testing. This includes investigating the use of CIT in employment settings.

#### *D: Pre-employment and training testing for Work and Income clients*

- 40 In July 2013, pre-employment and training drug testing was introduced for Work and Income clients with work obligations. Where a prospective employer requires a drug test, clients are required to take and pass the test.
- 41 Prior to this policy change, clients could avoid applying for suitable jobs that required a pre-employment drug test if they would not be able to pass. The policy was introduced to move more clients into work and set the expectation that recreational drug use was no longer an excuse to turn down suitable employment.

- 42 In some situations clients will be able to provide a good and sufficient reason for failing a drug test or refusal of a referral to a drug tested job.<sup>2</sup> As a result, they will receive a 30 day deferral from drug test obligations.
- 43 Clients who fail a drug test without good and sufficient reasons will face sanctions. A client can fail pre-employment drug testing if they: are referred to a suitable job and fail the test or refuse to take the test, or if a suitable job is available and they advise they cannot apply as they believe they will fail a drug test.
- 44 Approximately 40 per cent of job vacancies advertised with Work and Income require a pre-employment drug test. These vacancies are often in safety sensitive roles, where health and safety risks are prominent.

45 s 9(2)(f)(iv)

#### Impact of drug convictions on employability of MSD's clients

- 46 At the SSW strategic discussion in May 2016, MSD was asked to provide information on the impact drug convictions have on employability. Further information is attached in Appendix 2.

#### *E: Addiction and support services*

- 47 There are a range of drug and alcohol support services available, including support groups in most communities. These services support the reduction of drug use and addressing the individual factors that may contribute to it. It is unclear whether these are currently being utilised when attempting to match job-seekers to work.

48 s 9(2)(f)(iv)

#### **Proposed approach to further work**

s 9(2)(f)(iv)

<sup>2</sup> Work and Income defines good and sufficient reasons as: taking controlled prescription medicine; diagnosed with a drug addiction or dependence; in or awaiting treatment for a drug addiction or dependence; has a drug issue identified by the Alcohol Drug Helpline and is engaging and participating in services and support offered by the Helpline

### *Sector and regional analysis*

- 55 This paper has highlighted that current data and information on drug use and employment is limited. In order to determine the extent of the issue across different sectors and regions, officials are proposing to undertake further information gathering and analysis. Further understanding of sector and regional variations will also assist Work and Income in providing more tailored services to clients.
- 56 Due to the limited information currently held, significant scoping work will need to be carried out. We expect scoping work is likely to take several months. MSD will lead scoping work to determine how to carry out the information collection and analysis, as well as likely sectors and regions that will be included and how this research will address current information gaps.
- 57 If Ministers agree, officials could report back on this scoping work by the end of November.

### *Guidance to employers*

- 58 As noted above, we are aware that some employers feel there is currently insufficient guidance on workplace testing. The legal framework for employment drug testing is complex, in part due to the flexibility of the law to allow for the particular circumstances of the situation. As a result, employers may not be testing where there is strong justification, such as health and safety, for doing so. On the other hand, some employers may be illegally testing because they do not understand the law. It is also possible that employers are not currently aware about addiction and support services that may be available for their employees.
- 59 Officials propose that work be carried out to assess the current range of resources available on this topic. This assessment could then inform stakeholder engagement on knowledge of employment law relating to drug testing. It is recommended that this work also include an assessment of the addiction and support services information currently available for employers.
- 60 If Ministers agree, officials can carry out this initial stage of work and report back on findings and possible next steps by the end of November.

### *Further information on scientific evidence for drug/impairment testing*

- 61 The uncertain scientific evidence relating to drug levels correlation with impairment further complicates workplace testing. Officials propose that work is carried out to determine whether recent scientific developments in this area can improve testing methods currently used by employers. This work will be carried out by MBIE, and will

be informed by work recently carried out by Transport, as well as expert advice from The Institute of Environmental Science and Research (ESR).

- 62 It is suggested that this work informs the assessment of current guidance and any development of future resources. If Ministers agree, officials can report back on this work alongside the guidance to employers.

### **Next Steps**

- 63 Subject to feedback from respective Ministers, MSD and MBIE officials can begin work as outlined in the previous section.

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## **Appendix 1: Employment law relating to drug use and employment**

### *Legislative framework informs common law principles*

- 64 New Zealand does not have legislation that expressly determines the conditions in which employment drug testing can occur. Instead, legislation sets a framework that balances employers' duty to provide a safe workplace (Health and Safety at Work Act 2015), with employees' right to reasonable privacy (Privacy Act 1993, Bill of Rights Act 1990, Human Rights Act 1993).
- 65 Based on the legislative framework, the courts (including the Employment Authority) have established a number of principles. These common law principles, balance the respective rights and duties, to guide drug testing practice. The courts have determined employment drug testing is legal, subject to a number of limitations.

### *Testing requires written policy*

- 66 All drug testing requires employers to have a written policy. Courts are likely to find testing that is not based on a written policy is unjustified. Policies and their application must satisfy the test of being a lawful and reasonable direction to an employee. Further, drug testing policies must adhere to the Privacy Act principles in dealing with sensitive information, utilise scientifically defensible testing methods and be consistent with relevant employment agreements.
- 67 This supports the careful balance between the employers duty to mitigate the risk employees impaired by drugs or alcohol may pose to health and safety, against employees right to reasonable privacy over their private lives.

### *More intrusive testing requires greater justification*

- 68 Where testing poses a more significant impact on the right to reasonable privacy, this requires a greater justification against achieving employment outcomes. Therefore, courts have held that because random testing is more intrusive, it is only justified where employees work in safety sensitive areas. Courts have not defined 'safety sensitive' but have noted the employees work must be genuinely safety or security critical, such as pilots or aircraft engineers.
- 69 Similarly, reasonable cause testing is only justified where there is evidence to suspect an employee is impaired due to drug use and this is impacting their ability to work effectively or safely.

### *Guidance for addressing positive test results*

- 70 The courts have also provided guidance for practice following positive test results. A positive drug test result does not automatically constitute serious misconduct. In determining the appropriate disciplinary response, employers must act in good faith and have a range of possible options. These options include supporting employees to attend a rehabilitation programme.

### *Analysis of current legal framework*

- 71 Officials consider that the current legal framework is well equipped to balance health and safety outcomes and privacy interests. However, it is unclear if the current legal settings are supporting other employment outcomes, such as productivity, or health outcomes.
- 72 We are aware a number of employers are concerned about uncertainty about when drug testing is legal. Ensuring employers understand the legal framework for drug testing is vital to supporting positive employee and firm outcomes in this area.

## Appendix 2: Impact of drug convictions on employability of MSD's clients

- 73 MSD does not hold data about whether specific clients have drug convictions and how this impacts on their employability. However, MSD does hold data from the Department of Corrections (Corrections) that can be used to determine how many clients have a previous drug conviction.
- 74 As at the end of December 2015, 6.57 per cent or 19,788 clients were identified as having a drug and alcohol conviction<sup>3</sup>. Jobseeker Support had the highest number of clients with drug and alcohol convictions of all client groups (8.75 per cent or 10,756).
- 75 In 2014, the Benefit System Performance Report<sup>4</sup> examined the effect that having a Corrections history has on long-term benefit receipt. The report concluded that having convictions makes it harder to find and sustain suitable employment. It found:
- Nearly one-third of clients receiving a main benefit have some form of Corrections history. Conversely approximately one-quarter of people with a Corrections history receive a main benefit.
  - Liability is consistently higher for people with a Corrections history across all benefit categories (except for Youth Payment and Young Parents Payment), genders and ethnicities. Jobseekers with a Corrections history have a 29 per cent higher liability than those without.
- 76 Having a Corrections history also a strong predictor of long-term benefit dependency. It was recommended that Corrections data be included in future valuations to enable a deeper understanding of the correlation between Corrections history and long-term benefit receipt. Further analysis of the 2015 Valuation results found that 52 percent of clients who had been in prison for illicit drug offences were still receiving a main benefit 12 months after release.

### Evidence from MSD's Employer Services

- 77 MSD's Employer Services provided anecdotal evidence from employers on the potential impact drug convictions have on employability. The impact varies across industries. In general, there is a strong reluctance to recruit people with drug convictions in the construction and transport industries where health and safety risks are more prominent. For some employers the ability to pass a current drug test is more important than having a previous conviction.
- 78 Recruitment processes requiring a criminal conviction check can deter some people with convictions from even applying. Employers also take into consideration the seriousness of the offence and the length of time passed since offending. More recent offences will have a greater impact on employability.

**Table 1: Anecdotal evidence by industry on impact of drug convictions**

Industries	Impact of having a drug conviction on employability
Construction	The impact of drug convictions on employability is high. Most companies are unlikely to recruit people with drug convictions as the perceived risks are too high. The industry has a zero tolerance approach to drug use and commonly do spot testing. Workers often work independently in roles that

<sup>3</sup> While the data records both drug and alcohol offences, MSD has not been able to identify any alcohol related offences in the data. This suggests that the majority of offences are drug related.

<sup>4</sup> 2014 Benefit System Performance Report (May 2015) <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/evaluation/investment-approach/2014-benefit-system-performance-report.pdf>

	can be high risk that involve operating heavy machinery.
Agriculture farming and forestry	There tends to be a greater tolerance for employing people with previous drug convictions. More emphasis is placed on a person's ability to pass a drug test at the time of employment and remain drug free. There is more reluctance in the dairy industry to employ people with theft or dishonesty convictions.
Retail and hospitality	The retail and hospitality sectors appear to be more flexible around employing people with drug convictions, although the severity of the offence, age at time of offending and length of time since sentencing will be considered. The main focus for employers in these sectors is on competency, willingness, availability and reliability.
Manufacturing	Similar to other sectors, employers will be more focused on how a person presents at the time of recruitment. Previous drug convictions are less important than a person's ability to pass a drug test and remain drug free.
Transport	Previous drug convictions have a significant impact on employability. Employers are generally reluctant to employ people with drug convictions as workers operate heavy and expensive machinery and the potential health and safety issues are significant.

#### *Further evidence on the impact of drug convictions on employability*

- 79 There is a lot of evidence to suggest that people with drug convictions face significant barriers in finding suitable employment. There are strong societal views that those with convictions will not be as trustworthy or work as hard as people without convictions.
- 80 A report by the UK's Department of Work and Pensions<sup>5</sup> examined the issues surrounding employment and benefit uptake of drug users. Many employers were reluctant to take on people with a history of drug misuse or with convictions. The potential for further offending can be a barrier to employment due to the risk that some drug users engage in illegal activity, often to finance their drug use.
- 81 Research undertaken by the University of Manchester<sup>6</sup> looked at barriers to employment for drug users. The report found that drug use history in itself was less important than an applicant being 'fit for the job' and meeting the criteria of being a good employee. Employers had concerns about physical and mental health issues of problem drug users and the potential impact on reliability, punctuality and capability. Once employed, drug use that impacts on a person's ability to carry out their job will not be tolerated. Employers in the study also considered the length of time clean and any rehabilitation that had been completed.

<sup>5</sup> Problem drug users' experiences of employment and the benefit system (June 2010)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/214409/rrep640.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214409/rrep640.pdf)

<sup>6</sup> Getting problem drug users (back) into employment (December 2008) [http://www.ukdpc.org.uk/wp-content/uploads/Evidence%20review%20-%20Getting%20problem%20drug%20users%20\(back\)%20into%20employment\\_%20employer,%20provider%20and%20service%20user%20perspectives.pdf](http://www.ukdpc.org.uk/wp-content/uploads/Evidence%20review%20-%20Getting%20problem%20drug%20users%20(back)%20into%20employment_%20employer,%20provider%20and%20service%20user%20perspectives.pdf)



# Report

**Date:** 11 November 2016

**Security Level:** IN CONFIDENCE

**To:** Hon Anne Tolley, Minister for Social Development

## Skilled and Safe Workplaces: Drug use and employment

### Purpose of the report

- 1 This report provides you with information relating to drug use and employment for the Business Growth Agenda Skilled and Safe Workplaces (SSW) Ministers' meeting on 29 November 2016. It is recommended that you approve the submission of this report for the SSW meeting.

### Recommended actions

It is recommended that you:

- 1 **note** that at the last Skilled and Safe Workplaces Ministers' meeting on 22 September 2016, Ministers asked the Ministry of Social Development for further information on:
  - how many people stay on a benefit due to drug use
  - how many people return to benefit due to drug use or failing a drug test
  - how many MSD clients have failed a drug test to date
  - what does MSD know about clients with drug convictions.

Yes/No

- 2 **note** that this report provides the further information requested

Yes/No

- 3 **s 9(2)(i)(iv) Active consideration**

4

- 5 **forward** a copy of this report to Hon Michael Woodhouse, Minister for Workplace safety and Relations

Yes/No

- 6 **approve** the submission of this report for the Business Growth Agenda Skilled and Safe Workplace Ministers' Meeting on 29 November 2016.

**Yes/No**

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Sacha O'Dea  
General Manager  
Working Age Policy

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Date

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Hon Anne Tolley  
Minister for Social Development

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Date

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## Background

- 2 The impact of drug use on employment has been discussed at recent Skilled and Safe Workplaces (SSW) Ministers' meetings. At the last meeting on Thursday 22 September 2016, Ministers asked for further information and data to be able to quantify the size of the issue.
- 3 Ministers noted the lack of data available due to it being recorded in electronic notes on client files. Ministers asked for information on:
  - how many people stay on a benefit due to drug use
  - how many people return to benefit due to drug use or failing a drug test
  - how many MSD clients have failed a drug test to date
  - what does MSD know about clients with drug convictions.
- 4 Ministers wanted information specific to the four areas being considered for further NEET initiatives (Northland, Gisborne, Eastern Bay of Plenty, Hawke's Bay) for all work ready Jobseeker clients broken into clients 24 and under, and clients aged 25-65.
- 5 The Ministry of Business, Innovation and Employment (MBIE) and WorkSafe were asked to provide an update on employer views on drug use. MBIE has provided an aide memoire with this information to you and Hon Michael Woodhouse, Minister for Workplace Relations and Safety. Ministers also asked about the pathway for people who are recreational drug takers when they interact with Work and Income, apply for jobs and fail a drug test.

## Additional information requests

### *Number remaining on benefit due to drug use*

- 6 People who are on a benefit due to drug and alcohol abuse are recorded under the Substance Abuse incapacity code. As at the end of September 2016, the total number of clients on a benefit due to drug abuse was 2,255 (the number on benefit due to alcohol abuse was 2,304). This includes all clients on Jobseeker Support – Health Conditions and Disability and Supported Living Payment. This number also includes those who are on prescription medication and does not capture recreational drug users. Only primary incapacity codes are recorded – Substance Abuse will not be recorded for clients if it is a secondary incapacity.
- 7 Clients aged 18-24 years make up a very small percentage of people within the Substance Abuse category (22 clients or 1.5 percent). Clients aged 55-64 years make up the largest group within the Substance Abuse Category (with 601 or 62.6 percent) – the older age group has a higher number of people on benefit for alcohol abuse.

### *Number returning to benefit due to drug use*

- 8 The reason for returning to benefit will be recorded on a client's record. Sourcing accurate information on the number of clients who have been dismissed by an employer and returned to benefit due to drug use is difficult as it relies on self-reporting from the client.
- 9 MSD advised you through the Social Development Update that a sample of client records would be searched to test whether information in the sample would assist in quantifying the size of the issue.
- 10 A sample of 50 Jobseeker Support – Work ready (JS-WR) client records from the regions being considered for further NEET initiatives was searched. Of this sample, 35 were aged 18-24 years and 15 aged 25-64 years.
- 11 Of the 35 clients aged 18-24 years, 32 records were opened (three were secured). Of the 32, three matches were made where drugs were mentioned in the client's notes. Each of these clients had complex issues and other barriers to employment including homelessness, family breakdown, violent offending and caring for younger siblings. A preliminary search into the files of clients aged 25-64 years did not identify any notes

- 13 Clients aged 18-24 years make up a small percentage of people within the Substance Abuse category (22 clients or 1.5 percent). Clients aged 55-64 years make up the largest group within the Substance Abuse Category (601 clients or 62.6 percent) – the older age group has a higher number of people on benefit for alcohol abuse.

*Number returning to benefit due to drug use*

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- 15 MSD advised you through the Social Development Update that a sample of client records would be searched to test whether information in the sample would assist in quantifying the size of the issue.
- 16 A sample of 50 Jobseeker Support – Work ready (JS-WR) client records from the regions being considered for further NEET initiatives was searched. Of this sample, 35 were aged 18-24 years and 15 aged 25-64 years.
- 17 Of the 35 clients aged 18-24 years, 32 records were opened (three were secured). Of the 32, three matches were made where drugs were mentioned in the client's notes. Each of these clients had complex issues and other barriers to employment including homelessness, family breakdown, violent offending and caring for younger siblings. A preliminary search into the files of clients aged 25-64 years did not identify any notes relating to drugs. A summary of the notes of the three clients in the 18-24 year age group is provided in the table below – none had returned to benefit due to drug use.

Section 9(2)(a) Privacy of Natural Persons

	Cancelled	Current	Expired	Suspended	Total
<b>Jobseeker Support</b>	132	130	2	8	272
<b>Sole Parent Support</b>	3	16	0	1	20
<b>Other Benefits</b>	14	21	1	2	38
<b>Total</b>	149	167	3	11	330

13 The largest group under 'other benefits' was non-beneficiary. This includes those who chose to cancel their benefit while under an obligation failure rather than engage on the failure and the recompliance activity.

14 The number who failed drug test obligations by year is:

- 2013/14: 21
- 2014/15: 47
- 2015/16: 144
- 2016/17: 118 (to date)

15 As at the end of September 2016, 167 of the 330 clients who had a previous drug obligation failure were currently receiving a benefit. The majority were in Work Focused Case Management.

<b>Case Management Service</b>	<b>Current</b>
Work Focused Case Management (WFCM)	65
WFCM Health Condition and Disability	14
WFCM Integrated Service	5
Work Search Support	26
General Case Management	57
<b>Total</b>	<b>167</b>

#### *What MSD knows about clients with drug convictions*

16 MSD has access to Department of Corrections data that can partially identify the number of clients with previous drug convictions. As at the end of December 2015, 6.57 per cent or 19,788 clients were identified as having a drug and alcohol conviction<sup>2</sup>. Jobseeker Support had the highest number of clients with drug and alcohol convictions of all client groups (8.75 per cent or 10,756). The liability of clients with criminal convictions was included in the last valuation. Those with a Corrections history have an average future lifetime welfare cost that is over \$37,000 higher than those without.

#### *Employer views on drug use*

17 MBIE and WorkSafe were asked to provide an update on employer views on drug use. MBIE provided an aide memoire with this information to you and Hon Michael Woodhouse, Minister for Workplace Relations and Safety. The 2013/14 National

<sup>2</sup> While the data records both drug and alcohol offences, MSD has not been able to identify any alcohol related offences in the data. This suggests that the majority of offences are drug related.

Survey of Employers found that 10 percent of employers reported having concerns about productivity losses and eight percent of employers have health and safety concerns due to employees using illicit drugs<sup>3</sup>.

- 18 The findings in the survey reflect employer views at a national level. MSD is aware that in some regions the rate of drug use is higher and the concerns from employers are significant. For example anecdotal evidence from Work and Income staff in the Northland region indicate that a high number of vacancies are in industries where drug testing is required. The pool of available job seekers to be referred to those vacancies is reduced a number of clients in the region are not drug-free.

### Further work on drugs and employment

19 s 9(2)(f)(iv)

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### Appendix

- 23 Work and Income pre-employment drug testing policy

Author: s 9(2)(a) Senior Policy Analyst, Working Age Policy

Responsible manager: s 9(2)(a) Policy Manager, Working Age Policy

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<sup>3</sup> 2013/14 National Survey of Employers <http://www.mbie.govt.nz/publications-research/research/labour-market-and-skills/national-survey-of-employers-2013-14.pdf>



# Report

Date: 5 December 2016

Security Level: IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

## Options to improve employment outcomes for people who are recreational drug users

Section 9(2)(f)(iv) Active Consideration

### Purpose of the report

1. Section 9(2)(f)(iv)

### Executive summary

2. Recreational drug use acts as a barrier to some clients in finding and sustaining suitable employment. The impact varies regionally as drug use is more prevalent in some regions.
3. The impact of recreational drug use on employment has been a focus at recent Skilled and Safe Workplaces (SSW) Ministers' meetings. Ministers have been hearing anecdotal evidence from employers about the extent that drug use is impacting on their businesses. Ministers have also expressed concern about the effectiveness of Work and Income's pre-employment drug-testing policy. The policy is not achieving its original intent and there are areas operational improvements could be made.
4. To improve employment outcomes for recreational drug users and to support people to remain drug-free, officials are recommending a two-pronged approach:
  - Increase support for clients for whom recreational drug use is a barrier to sustainable employment, including low-intensity programmes and community-focused initiatives
  - Further work to develop options for changing processes and making operational improvements to the pre-employment drug-testing policy to streamline and simplify the current process (further advice will be provided by March 2017).
5. It is proposed that initiatives to increase support be trialled in the Northland, Bay of Plenty, East Coast and Nelson regions. A parallel process to improve data collection in these regions will be completed. Further work will consider whether other regions should be included in the trial phase.
6. The estimated costs of running low-intensity programmes would be approximately \$2,000 per client. Providing up to 1,000 places across the four proposed trial regions would cost approximately \$2 million per annum. The approximate cost of running a community-wide initiative across the regions aimed at changing behaviours and attitudes is up to \$400,000. Following your feedback and approval, officials will prepare information for inclusion as a bid for consideration in Budget 2017.
7. It is recommended that you agree to amend the report for the (SSW) Ministers' meeting on 13 December 2016 to include information on the proposed initiatives and the improved data collection process in the trial regions.

## Recommended actions

It is recommended that you;

- 1 **note** that you have requested a budget bid be developed to address issues relating to recreational drug use and employment (Yes/No)
- 2 **note** that officials recommend a two-pronged approach to improve employment outcomes for recreational drug users and to support people to remain drug-free:
  - Increase support for clients for whom recreational drug use is a barrier to sustainable employment, including low-intensity programmes and community-focused initiatives
  - further develop options for changing processes and making operational improvements to the pre-employment drug-testing policy to streamline and simplify the current process (and further advice will be provided to you by March 2017)(Yes/No)
- 3 **note** that it is proposed that the initiatives to increase support for clients would be initially trialled in the Northland, Bay of Plenty, East Coast and Nelson regions, and further work will identify whether other regions should be included in the trial phase (Yes/No)
- 4 **note** that estimated costs of running low-intensity programmes would be up to \$2 million per annum (for up to 1,000 clients at \$2,000 per place), and the estimated cost of running a community-wide initiative across the four regions aimed at changing behaviours and attitudes would cost up to \$400,000 (Yes/No)

5 Section 9(2)(f)(iv)

- 6 **agree** to amend the report submitted for Skilled and Safe Workplaces Ministers' Meeting scheduled for 13 December 2016, to include information on:

- the proposed approach and initiatives under recommendation 2 above
- the process to improve data collection in the proposed trial regions.

AT (Agree/Disagree)

AT (Agree/Disagree)

AT (Agree/Disagree)

Sacha O'Dea  
General Manager  
Working Age Policy

5/12/16  
Date

Hon Anne Tolley  
Minister for Social Development

6-12-16.  
Date.

Section 9(2)(f)(iv)

## Background

8. Section 9(2)(f)(iv)

9.

## Problem definition

10. Recreational drug use acts as a barrier to some clients finding and sustaining employment. Some see drug-testing as a barrier and would rather stay on benefit than apply for a job where they know they will fail a drug test. There is no definition of what constitutes recreational drug use. Some drugs remain detectable up to 30 days after use which impacts on infrequent users applying for drug-tested jobs. Drug use also impacts on businesses' ability to grow and to recruit suitable employees.
11. Drug support services are generally targeted at those with addiction issues. Recreational drug users are likely to require different types of support than what is provided to problem users. Shorter low-intensity motivational programmes delivered in group settings or one-on-one may better meet the needs of recreational users. There will be a group of clients who consider that their drug use is recreational where in reality it is more problematic. Engaging clients initially in low-intensity services will help to identify those who cross the threshold into problem use and would benefit from more intensive support to help them achieve sustainable employment.
12. The impact of recreational drug use is more prevalent in some regions. For example, in the Northland region a high percentage of vacancies advertised with Work and Income require pre-employment drug-testing and there is an equally high percentage of clients who are not drug-free. In some communities drug use is normalised and accepted as part of daily life. In these situations interventions will be needed to bring about attitude and behavioural change at the community level.
13. Work and Income's pre-employment drug-testing policy was introduced in July 2013 to move more clients into employment and to set the expectation that recreational drug use was no longer an excuse to turn down suitable employment. A number of vacancies advertised with Work and Income require pre-employment drug-testing. Since 2013, there have been approximately 57,000 vacancies listed with Work and Income requiring a pre-employment drug-test as part of the recruitment process (107,000 referrals were made to these 57,000 vacancies).
14. The current process is long and there has been less use of sanctions than expected. The number of clients who have failed drug-test obligations to date is fairly low (330 as at the end of September 2016). Re-compliance activities for drug-test obligation failures are different to other obligation failures and it is often easier to re-comply.

Section 9(2)(f)(iv)

## Outcomes sought

15. Section 9(2)(f)(iv)

16.

Section 9(2)(f)(iv)

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Section 9(2)(f)(iv)

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OFFICIAL INFORMATION ACT

Section 9(2)(a) Privacy of natural persons

Author: [redacted] Senior Policy Analyst, Working Age Policy)

Responsible manager: (Section 9(2)(a) Policy Manager, Working Age Policy)

Section 9(2)(f)(iv)



# Report

**Date:** 7 December 2016

**Security Level:** IN CONFIDENCE

**To:** Hon Anne Tolley, Minister for Social Development

## Skilled and Safe Workplaces: Drug use and employment

### Purpose of the report

- 1 This report provides you with information relating to drug use and employment for the Business Growth Agenda Skilled and Safe Workplaces (SSW) Ministers' meeting on 13 December 2016. It is recommended that you approve the submission of this report for the SSW meeting.

### Executive summary

- 2 The impact of drug use on employment has been discussed at recent SSW meetings. At the last meeting on 22 September 2016, Ministers asked for further information including the number of people on benefit or returning to benefit due to drug use, the number who have failed a drug test to date and further information on clients with drug convictions. This information is provided in this report. Collecting this data reinforced that information available on the clients who are recreational drug users is limited. A process to collect data will be undertaken in the Northland, Bay of Plenty, East Coast and Nelson regions – officials will provide detail on timing and before the SSW meeting on 13 December 2016.
- 3 The Ministry of Business, Innovation and Employment has provided an aide memoire to you and Hon Michael Woodhouse, Minister for Workplace Relations and Safety with an update on employer views on drug use as requested at the last SSW meeting. An A3 is attached to this report that sets out the pathway for recreational drug users, when they interact with Work and Income, apply for jobs and fail a drug test.

4 s 9(2)(f)(iv)

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## Recommended actions

It is recommended that you:

- 1 **note** that the following information was requested at the Skilled and Safe Workplaces (SSW) Ministers' meeting on 22 September 2016, and is provided in this report:

- how many people stay on a benefit due to drug use
- how many people return to benefit due to drug use or failing a drug test
- how many MSD clients have failed a drug test to date
- what does MSD know about clients with drug convictions

- 2 **note** that the data exercise looking at individual records reinforced that information available on recreational drug users is limited – a process to improve data collection will be completed in the Northland, Bay of Plenty, East Coast and Bay of Plenty regions

3 s 9(2)(f)(iv)

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- 5 **forward** a copy of this report to Hon Michael Woodhouse, Minister for Workplace Safety and Relations

- 6 **approve** the submission of this report for the SSW meeting on 13 December 2016.

Sacha O'Dea  
General Manager  
Working Age Policy

Date

Hon Anne Tolley  
Minister for Social Development

Date

## Background

- 6 The impact of drug use on employment has been discussed at recent Skilled and Safe Workplaces (SSW) Ministers' meetings. At the last meeting on 22 September 2016, Ministers asked for further information and data to be able to quantify the size of the issue.
- 7 Ministers noted the lack of accessible data available as it is held on individual client records. Ministers asked for information on:
  - how many people stay on a benefit due to drug use
  - how many people return to benefit due to drug use or failing a drug test
  - how many MSD clients have failed a drug test to date
  - what does MSD know about clients with drug convictions.
- 8 Ministers wanted information specific to the four areas being considered for further NEET initiatives (Northland, Gisborne, Eastern Bay of Plenty, Hawke's Bay) for all work ready Jobseeker Support clients broken into clients aged 24 years and under, and clients aged 25-64 years.
- 9 The Ministry of Business, Innovation and Employment (MBIE) and WorkSafe were asked to provide an update on employer views on drug use. MBIE has provided an aide memoire with this information to you and Hon Michael Woodhouse, Minister for Workplace Relations and Safety. Ministers also asked about the pathway for people who are recreational drug takers when they interact with Work and Income, apply for jobs and fail a drug test. An A3 that sets out this process is attached as Appendix 1.

## Additional information requests

### *Improving data collection*

- 10 The process to review data on individual client records reinforced that there is limited information available on clients who are recreational drug users and what their needs are. There is variation in how information is collected and recorded under the pre-employment drug-testing policy. MSD proposes to improve data collection by:
  - asking more direct questions at the time someone applies for a benefit about why they left their last job and whether drug use was a contributing factor
  - asking when someone comes onto benefit if they would pass a drug test and if necessary, initiating a drug test referral delay
  - recording more accurate information on clients who fail drug-test obligations and more proactive follow up after the 30 working day referral delay has expired.
- 11 The process to collect data in real time will occur in the Northland, Bay of Plenty, East Coast and Nelson regions. Officials will provide detail on timing and duration of the data collection process before the SSW meeting on 13 December 2016. s 9(2)(f)(iv)

s 9(2)(f)(iv)

### *Number remaining on benefit due to drug use*

- 12 People who are on a benefit due to drug and alcohol abuse are recorded under the Substance Abuse incapacity code. As at the end of September 2016, the total number of clients on a benefit due to drug abuse was 2,255 (the number on benefit due to alcohol abuse was 2,304). This includes all clients on Jobseeker Support – Health Conditions and Disability and Supported Living Payment. This number also includes those who are on prescription medication. Only primary incapacity codes are recorded – Substance Abuse will not be recorded for clients if it is a secondary incapacity. The numbers do not capture recreational drug users or those who have been given a 30 working day referral delay from drug-test obligations.

relating to drugs. A summary of the notes of the three clients in the 18-24 year age group is provided in the table below – none had returned to benefit due to drug use.

Section 9(2)(a) Privacy of Natural Persons

*Number of MSD clients who have failed drug test obligations to date*

- 12 As at the end of September 2016, a total of 330 clients had a previous drug obligation failure since the policy was introduced in July 2013<sup>1</sup>.

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<sup>1</sup> The total number of failures for all obligations across all benefit types for the year ended 30 June 2016 was over 100,000. Drug obligation failures make up a very small percentage of failures.

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- 20 The number who failed drug test obligations by year is:
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- 21 As at the end of September 2016, 167 of the 330 clients who had a previous drug obligation failure were currently receiving a benefit. The majority were in Work Focused Case Management.

<b>Case Management Service</b>	<b>Current</b>
Work Focused Case Management (WFCM)	65
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*What MSD knows about clients with drug convictions*

- 22 MSD has access to Department of Corrections data that can partially identify the number of clients with previous drug convictions. As at the end of December 2015, 6.57 per cent or 19,788 clients were identified as having a drug and alcohol conviction<sup>2</sup>. Jobseeker Support had the highest number of clients with drug and alcohol convictions of all client groups (8.75 per cent or 10,756). The liability of clients with criminal convictions was included in the last valuation. Those with a

<sup>1</sup> The total number of failures for all obligations across all benefit types for the year ended 30 June 2016 was over 100,000. Drug obligation failures make up a very small percentage of failures.

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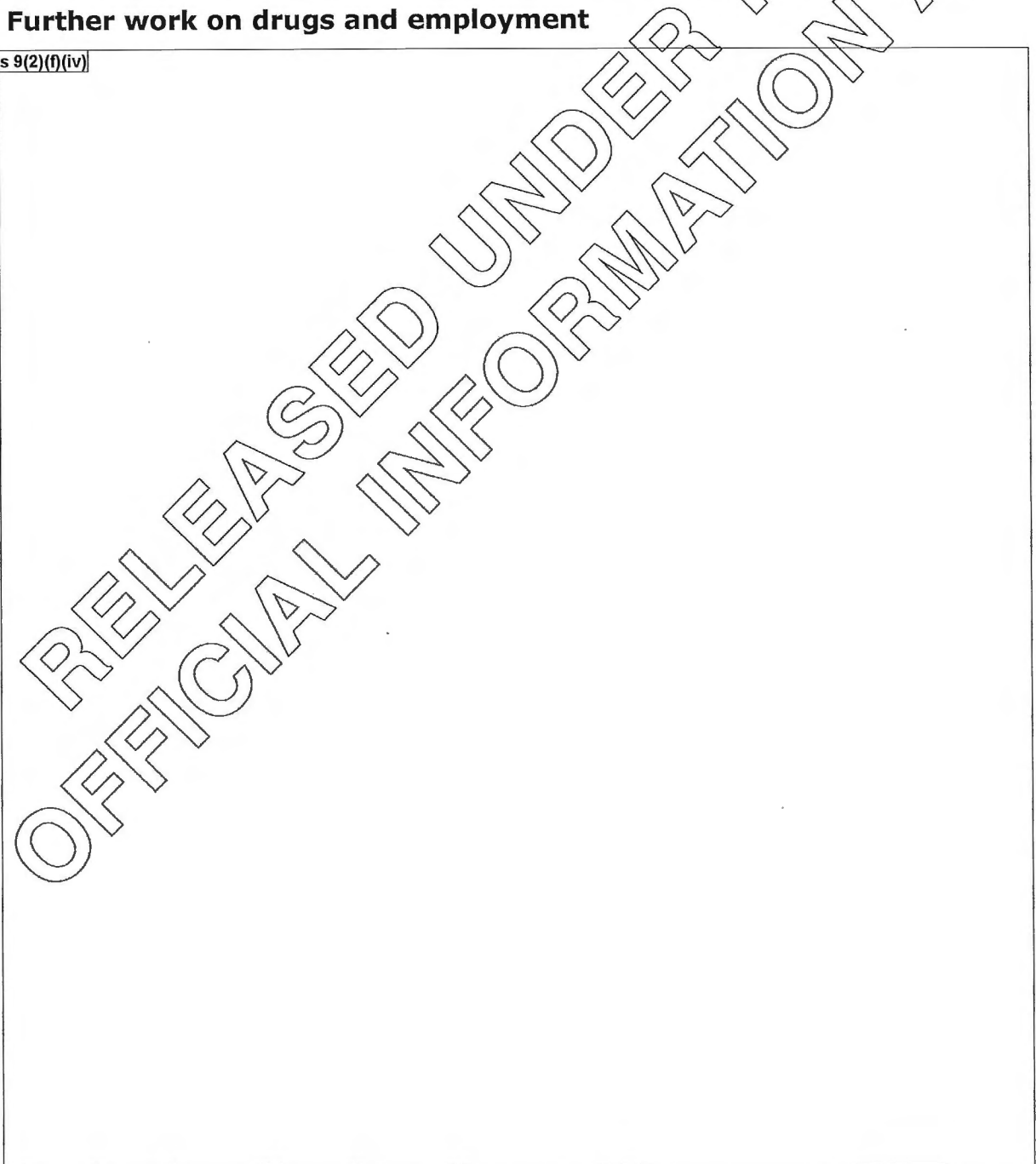
Corrections history have an average future lifetime welfare cost that is over \$37,000 higher than those without.

#### *Employer views on drug use*

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- 24 The findings in the survey reflect employer views at a national level. MSD is aware that in some regions the rate of drug use is higher and the concerns from employers are significant. For example anecdotal evidence from Work and Income staff in the Northland region indicate that a high number of vacancies are in industries where drug testing is required. The pool of available job seekers to be referred to those vacancies is reduced as a number of clients in the region are not drug-free.

#### **Further work on drugs and employment**

s 9(2)(f)(iv)



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s 9(2)(f)(iv)

## Appendix

### 39 Work and Income pre-employment drug testing policy

Author: s 9(2)(a) Senior Policy Analyst, Working Age Policy

Responsible manager: s 9(2)(a) Policy Manager, Working Age Policy

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