CHAPTER 2

Introduction

2.1 The key purpose of the bill is to assist job seekers to gain work by simplifying the job seeker compliance framework and improving its effectiveness:

> The package of changes in the bill will help ensure more effective and consistent compliance arrangements are in place for each stage of a job seeker's pathway into work. This will lead to more job seekers undertaking the appointments and activities that will assist them in moving into work and reducing their reliance on income support. The bill will also simplify the compliance framework, making it easier for job seekers to understand their obligations and the consequences of non-compliance.[1]

2.2 Submitters supporting the bill premised their position on the fact that the principle of mutual obligation is a long-standing feature of Australia's welfare system that enjoys both community and bipartisan political support:

> According to that principle, people who require access to the welfare safety net can access it, but in return must meet certain obligations such as preparing for and looking for work. Mutual obligation helps maintain community support for the safety net and ensures that people receiving unemployment benefits have a strong incentive to undertake job search and other activities to keep their period of unemployment as short as possible. The principle of mutual obligation enjoys broad support across the political spectrum.[2]

2.3 These submitters further noted that Employment Pathway Plans (EPPs) form the crux of a job seeker's mutual obligation requirements. In order for it to be effective in helping job seekers secure work, it is therefore essential that the EPP is both appropriate for the individual and that its requirements are complied with.[3]

2.4 Nevertheless, there was opposition to certain elements of the bill, in particular the removal of the waiver provisions,[4] but also measures related to inappropriate behaviour and the adequacy of job search efforts.[5]

2.5 Opponents of the bill pointed to the lack of jobs available to job seekers and argued that the focus of government should be on job creation. These submitters took exception to what they regarded as an unnecessarily punitive approach to job seekers.[6]

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1 Department of Employment, *Submission 14*, p. 1.

2 Jobs Australia, *Submission 8*, p. 3.

3 Department of Employment, *Submission 14*, p. 1.

4 Jobs Australia, *Submission 8*, p. 5.

5 National Welfare Rights Network, *Submission 13*, p. 4.

2.6 Concern was also expressed about significant legislative detail being reserved for delegated legislation rather than being contained in the primary legislation (the bill for an Act).[7]

2.7 There were also calls for a thorough review of the compliance system prior to further changes being effected.[8]

2.8 These issues are discussed in greater detail below.

Key issues

Who will be affected and how

2.9 While the majority (61.6 per cent) of job seekers comply with their mutual obligation requirements, the data indicates that young male job seekers are most likely to come into contact with the compliance framework. In 2014–15, male job seekers made up 50 per cent of the activity tested job seeker population, but incurred over 70 per cent of the compliance failures. At the same time, job seekers aged under 30 years old made up 30 per cent of the activity tested job seeker population, but incurred over 66 per cent of the compliance failures. In effect, the measures contained in the bill will primarily target the non-compliance activities of young male job seekers.[9]

2.10 The bill makes no changes to the current penalty amounts. Job seekers who fail to comply with a specified requirement may lose ten per cent of their fortnightly income support payment for each working day until they comply. For example, a single job seeker aged 22 years or over with no dependents would lose $52.34 for each working day.[10]

2.11 In 2014–15, the average penalty duration for job seekers who incurred a reconnection failure was 2.8 days. The Department of Employment therefore pointed out that a job seeker who responds promptly and re-engages is unlikely to lose more than a couple of days' income support payment. Further, payments including mobility allowance, telephone allowance, utilities allowance and family tax benefit payments are not affected by financial penalties for non-compliance.[11]

2.12 Jobs Australia made the point that enforcing compliance with the principle of mutual obligation necessarily targets people who are already suffering financial

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6 Australian Unemployed Workers' Union, *Submission 6*, pp 3–4; St Vincent de Paul Society, *Submission 11*, pp 2–5.

7 National Welfare Rights Network, *Submission 13*, pp 8 and 16.

8 Australian Council of Social Service, *Submission 5*, pp 2–3.

9 Department of Employment, *Submission 14*, p. 8.

10 Department of Employment, *Submission 14*, p. 8.

11 Department of Employment, *Submission 14*, p. 1.

disadvantage and, therefore, the compliance framework must be carefully calibrated and applied fairly:

> The compliance framework must carefully balance the need for mutual obligations to be enforced with the negative impact that enforcement can have on the welfare of the people whom the system is intended to support. It must be applied fairly, and not in an arbitrary way.[12]

2.13 The Australian Association of Social Workers (AASW) criticised the paucity of evidence that the legislation will lead to more people getting a job. The AASW observed that the clients of many social workers complained 'about jumping through rigid bureaucratic hoops to avoid having welfare payments withdrawn, while at the same time finding that there is little real support to get a job'.[13]

2.14 The Australian Unemployed Workers Union (AUWU) argued that there is no evidence that the changes proposed in the bill will help job seekers to get work and that the new penalties would make the job search activities of income support recipients 'considerably more difficult'.[14]

2.15 The St Vincent de Paul Society echoed these sentiments arguing that the bill was 'fundamentally misguided', unnecessarily punitive, and did not address the underlying issues of unemployment.[15]

Safeguards

2.16 The bill makes no change to the current discretion that an employment service provider has to not report a job seeker's non-compliance to the Department of Human Services. If the employment service provider believes that reporting the non-compliance would be unproductive, the discretion may be exercised even where a job seeker does not give a valid reason for a failure to comply.[16]

2.17 Further, a penalty for a participation failure cannot be applied if a job seeker had a reasonable excuse for non-compliance and, therefore, the Department of Human Services 'discusses the matter with the job seeker before imposing any failure or penalty in order to establish whether or not the job seeker had a reasonable excuse'. Job seekers are also able to apply for an exemption from their mutual obligations if they are unable to participate in their requirements for an extended period.[17]

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12 Jobs Australia, *Submission 8,* pp 3–4.

13 Australian Association of Social Workers, *Submission 2,* p. 2.

14 Australian Unemployed Workers' Union, *Submission 6,* p. 4.

15 St Vincent De Paul, *Submission 11,* p. 3.

16 Department of Employment, *Submission 14,* p. 9.

17 Department of Employment, *Submission 14,* p. 9.

2.18 Finally, the Department of Employment also outlined the additional safeguards that will continue to apply to vulnerable job seekers:

> Vulnerable job seekers are identified on the IT systems used by employment providers and [the Department of] Human Services by a Vulnerability Indicator, which ensures that providers and DHS [Department of Human Services] staff are aware that the job seeker's personal circumstances may impact on their capacity to meet their requirements. A Vulnerability Indicator does not exempt a job seeker from their requirements or from being subject to compliance action if they fail to meet them, but it must be considered by providers when deciding whether an activity is appropriate and achievable for the job seeker. A Vulnerability Indicator also needs to be taken into account by a provider when they are deciding whether to exercise their discretion not to initiate payment suspension and compliance action when the job seeker has failed to meet a requirement, even if they have done so without a valid reason.
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> Identified Vulnerabilities are also carefully taken into consideration by Human Services when determining whether the person has a reasonable excuse under social security law and therefore whether they should incur a participation failure or not.[18]

Simplification of the system

2.19 The bill would simplify the current compliance arrangements by categorising various participation failures as 'no show no pay' failures and providing for a single short-term 'no show no pay' penalty. For each day that a job seeker fails to participate in an activity or attend a job interview (without a reasonable excuse), there would be a one day penalty. Similarly, where a job seeker refuses to enter an EPP or misses an appointment, a one day penalty will apply for each day 'from when the job seeker is notified of the failure until they attend a rescheduled appointment'.[19]

2.20 Jobs Australia stated that streamlining the compliance framework would benefit job seekers and produce better outcomes:

> Simplification is desirable because a compliance framework that is more consistent and more readily understood is more likely to result in job seeker compliance. That means fewer payment suspensions and less financial harm, and greater engagement in services that support people into work.[20]

2.21 While noting that the bill could deliver a simpler compliance system, the Australian Council of Social Service (ACOSS) was concerned that streamlining was being achieved with a harsher and potentially inappropriate approach:

> While we acknowledge that that bill could deliver a simpler compliance system, this would be achieved in part by imposing more immediate and

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18 Department of Employment, *Submission 14*, p. 9.

19 Department of Employment, *Submission 14*, p. 7.

20 Jobs Australia, *Submission 8*, p. 4.

> severe payment suspensions and sanctions which are likely to increase financial hardship unless balanced by other reforms to the system. Further, it is not clear whether the new sanctions are appropriate to the participation 'failures' they aim to prevent.[21]

2.22 Currently, penalties cannot be deducted from a job seeker's next fortnightly income support payment. This can result in significant delays between an incidence of non-compliance and the receipt of a penalty. The bill does not change the penalty amounts deducted from a job seeker's payments. It does, however, allow for the payment to be deducted in the very next fortnightly payment. By creating a stronger link between compliance failure and penalty, the more immediate consequences will increase a 'job seeker's motivation to comply with their participation requirements by attending activities and job interviews in the future'.[22]

2.23 The National Welfare Rights Network (NWRN) was generally supportive of the measures in the bill that would 'create a more equitable and simplified compliance system'.[23] Nevertheless, the NWRN remained concerned that the ability to apply more immediate penalties might mean that job seekers would incur additional penalties from third parties because they would have less time to vary payment deadlines or alter regular deductions (such as direct debits) from their payments.[24]

2.24 The NWRN therefore recommended that 'the department draw up guidelines for where it would be appropriate to use the discretion to apply the penalty in the later fortnight' (for example, where a person had indicated their rent or other essential expenses were due in the next pay fortnight). The NWRN also urged the Department of Human Services to monitor the impacts of the change to immediate penalties to ensure that vulnerable job seekers were 'not pushed into deeper financial hardship'.[25]

2.25 Concerns were also raised about the process for notifying lateness or non-attendance at appointments. Willing Older Workers stated that their organisation had received 'many reports that the MyGov site does not work properly'. Willing Older Workers recommended instead that a dedicated 1800 number be established for job seekers to record their lateness or non-attendance at appointments and activities.[26]

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21 Australian Council of Social Service, *Submission 5*, p. 2; see also Australian Unemployed Workers' Union, *Submission 6*.

22 Department of Employment, *Submission 14*, p. 4.

23 National Welfare Rights Network, *Submission 13*, p. 4.

24 National Welfare Rights Network, *Submission 13*, p. 8.

25 National Welfare Rights Network, *Submission 13*, p. 8.

26 Willing Older Workers, *Submission 7*, p. 4; Mrs Marilyn Dorothea King, President, Willing Older Workers, *Proof Committee Hansard*, 13 November 2015, p. 19.

Committee view

2.26 The committee notes the concerns about the MyGov website and raised these matters with the Department of Employment at the public hearing. The committee looks forward to the departmental response.

Strengthening and aligning penalties for failing to enter an EPP

2.27 The Department of Employment noted that under the *Social Security Act 1999*, job seekers are required to enter an EPP and that the activities set out in an EPP are designed to improve a job seeker's job prospects. However, despite the central role of an EPP, no immediate penalty exists for refusing to enter into an EPP.[27]

2.28 By allowing for a payment to be suspended immediately for a refusal to enter into an EPP, and allowing for the imposition of a penalty in cases of continued refusal to enter an EPP without good reason, the bill will ensure job seekers enter into an EPP as soon as possible. This will in turn 'ensure job seekers are getting the support they need and doing whatever is necessary to give them the best possible chance of finding a job'.[28]

2.29 The Department of Employment pointed out that similar provisions within the compliance framework have already produced significant improvements:

> A similar approach implemented on 1 January 2015 for job seekers who miss provider appointments has been successful in reducing the time before job seekers reengage with their provider. Between the September 2014 and March 2015 quarters, the average suspension duration fell from 5.2 business days to 3.1 business days.[29]

2.30 The NWRN was of the view that the positive outcomes cited above by the Department of Employment had been achieved by a combination of legislative and administrative changes, in particular the change in September 2014 that allowed job seekers to reschedule appointments directly with employment service providers. The NWRN therefore concluded:

> The positive outcomes suggest that building collaborative relationships by improving connections between job seekers and providers are the key to improving attendance rates. They also show that smaller, more immediate penalties in a framework with robust safeguards is an effective model.[30]

2.31 However, the NWRN did not support the institution of a 'no show no pay' penalty for a first refusal to sign an EPP. Rather, they considered that 'suspension with full back-payment on compliance is the appropriate penalty for a first refusal' and that

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27 Department of Employment, *Submission 14*, p. 1.

28 Department of Employment, *Submission 14*, p. 2.

29 Department of Employment, *Submission 14*, p. 2.

30 National Welfare Rights Network, *Submission 13*, p. 3.

the 'no show no pay' penalty was appropriate for a second or subsequent refusal (without reasonable excuse) to sign an EPP.[31]

2.32 The Department of Employment also emphasised that the following essential safeguards related to entering into an EPP will be in place:

- Providers will retain discretion not to submit a recommendation for a suspension or penalty if they do not think the suspension or penalty is necessary to get a job seeker to enter an EPP. Job seekers who do not wish to accept a plan immediately will continue to be allowed 48 hours 'think time' before any payment suspensions or financial penalties are submitted.
- Where a job seeker's payment has been suspended for refusing to enter into an EPP, the job seeker may request that the Department of Human Services conduct a review. If the Department of Human Services finds the EPP was not appropriate for the job seeker, the suspension will be lifted and the job seeker will receive full back-pay.
- The Department of Human Services will always review the appropriateness of an EPP a job seeker has refused to enter into as part of deciding if any financial penalty should be applied This occurs regardless of whether the job seeker has requested a review or not.

2.33 While generally supportive of the changes in the bill, Jobs Australia noted that there was some risk that employment service providers might act inappropriately with regard to an EPP. Jobs Australia was, however, reassured by retention of the 48 hours 'think time':

> In general, the changes effected by the bill are desirable. In relation to the failure to enter into a Job Plan, there is some risk that frontline employment services staff may seek to use the new rules to compel job seekers to enter Job Plans that have not been adequately negotiated and explained. A Job Plan is meant to be a document that is negotiated with the job seeker and tailored to their needs, rather than a standard set of requirements dictated by the provider. Most frontline staff do take the time to engage their client in the development of the Job Plan, but we have heard anecdotal evidence of some staff inappropriately insisting that their clients sign a Job Plan in which they have had little or no input.
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> We understand, however, that existing provisions for 48 hours 'think time' will still be available to job seekers who wish to take a draft Job Plan away to think about it or consult a third party. The availability of 48 hours 'think time' is an important qualification that mitigates the risks associated with the amendments.[32]

2.34 The Department of Employment also pointed out that the changes would ease the administrative burden on employment service providers by making the process

31 National Welfare Rights Network, *Submission 13*, p. 5.

32 Jobs Australia, *Submission 8*, p. 4.

and penalties for missing a required appointment with an employment service provider the same as for missing an appointment with other organisations. Providing for the immediate suspension of a payment for failing to attend an appointment with an employment service provider will result in a reduction in employment service providers 'having to chase up non-attending job seekers' and report them to the Department of Human Services.[33]

2.35 However, safeguards would remain in place regarding re-scheduling appointments:

> As now, providers will be able to conduct reengagement appointments over the telephone and where an appointment cannot be scheduled to occur within two working days of contact occurring with the provider, the job seeker's suspension and also a possible penalty period will end immediately.[34]

2.36 There was some confusion about how the provisions would operate with regard to whether a job seeker would be required to sign their EPP on their first appointment. Both the Shadow Minister for Employment Services, the Hon Julie Collins MP and the AUWU were under the impression that the bill would require income support recipients to sign the EPP at their first ESP appointment.[35]

2.37 Noting that a quarter of all Newstart recipients had a significant disability, the AUWU argued that denying a job seeker the opportunity to properly consider their EPP would remove the right of an income support recipient to negotiate a fair and reasonable EPP. This would risk job seekers being forced to sign plans that did 'not accurately reflect their personal circumstances, potentially resulting in mental distress, injury and other serious consequences'.[36]

2.38 Mr Alex Portnoy also argued that job seekers need sufficient time to understand their EPP including time to reflect on the requirements and ask questions. He proposed that signing an EPP should occur on the second meeting with the employment service provider.[37]

2.39 Willing Older Workers expressed concern about the potential for immediate penalties around the acceptance of an EPP given that some of their members experienced difficulty in fully understanding their EPP, while other members interpreted their EPP differently from their case manager.[38]

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33 Department of Employment, *Submission 14*, p. 3.

34 Department of Employment, *Submission 14*, p. 3.

35 Hon Julie Collins MP, Shadow Minister for Employment Services, *House of Representatives Hansard*, 13 October 2015, p. 84; Australian Unemployed Workers' Union, *Submission 6*, p. 4.

36 Australian Unemployed Workers' Union, *Submission 6*, pp 4–5.

37 Mr Alex Portnoy, *Submission 1*, p. 1.

38 Willing Older Workers, *Submission 7*, p. 3.

2.40 In order to provide older workers an opportunity to read, understand and, if necessary, seek help regarding their EPP, Willing Older Workers proposed a four week EPP Review Period be implemented during which income support payments could not be withheld.[39]

Committee view

2.41 The committee acknowledges there has been some confusion over whether the new provisions require a job seeker to sign their EPP on their first appointment with an employment service provider. The committee notes that the evidence from the Department of Employment indicates that job seekers who do not wish to accept a plan immediately will continue to be allowed 48 hours 'think time' before any payment suspensions or financial penalties are submitted.

2.42 The committee is of the view that the 48 hours think time is a reasonable timeframe to allow a job seeker to reflect on their EPP and, if necessary, seek assistance to determine the appropriateness of their EPP to their personal needs.

Inappropriate behaviour at appointments

2.43 The measures around inappropriate behaviour at an appointment are designed to improve the outcomes being achieved. The Department of Employment pointed out that 'simply attending an appointment is of little benefit if the job seeker's behaviour prevents their provider from doing their job'.[40]

2.44 The bill will extend the application of penalties for misconduct at job interviews and activities to appointments with employment service providers. The change will assist employment service providers 'to help manage job seekers whose behaviour makes it impossible for the provider to carry out their appointments'.[41]

2.45 Various safeguards are included in the system to ensure that job seekers are not unfairly penalised:

> Reasonable excuse provisions will still apply, so that vulnerable job seekers are not penalised where the behaviour was not within their control. For example, if a job seeker's behaviour was due to a psychological or psychiatric condition, or because they were unable to understand their provider's instructions, no penalty will apply. As with failures to attend appointments, DHS [Department of Human Services] will contact the job seeker and review the circumstances that led to the failure before any financial penalty decisions are made.[42]

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39 Willing Older Workers, *Submission 7*, p. 3.

40 Department of Employment, *Submission 14*, p. 3.

41 Department of Employment, *Submission 14*, pp 3–4.

42 Department of Employment, *Submission 14*, p. 3.

2.46 However, ACOSS expressed concern that the sanctions for inappropriate behaviour 'are likely to be applied inconsistently and to penalise behaviour related to underlying mental health, alcohol and drug or other underlying complex issues'.[43]

2.47 The NWRN was not convinced that the current safeguards (review by the Department of Human Services) outlined by the Department of Employment (see above) would be sufficient to ameliorate their concerns regarding unfair or unreasonable decisions, particularly where the behaviour resulted from:

- an underlying mental health problem or behavioural problem;
- an intellectual disability or acquired brain injury;
- chronic pain from physical injuries;
- drug and alcohol dependence;
- cultural practices or misunderstandings;
- the person expressing a legitimate consumer complaint;
- stress and difficulty coping with personal circumstances; or
- other complex underlying causes.[44]

2.48 Noting that the proposed penalty was based on a subjective assessment which had 'the potential to be applied inconsistently', the NWRN provided a series of examples to illustrate how some of the underlying causes noted above could lead to unfair penalties being applied for behaviour deemed to be inappropriate.[45]

2.49 In a similar vein, Willing Older Workers noted that people interpret inappropriate behaviour differently and that, sometimes, personalities clash. Given these differences, Willing Older Workers proposed that inappropriate behaviour 'be defined in a simple, clear and easy to understand document to be given to all Newstart applicants'. Willing Older Workers further proposed that reported inappropriate behaviour 'be reviewed by an independent Advocate or by a Centrelink staffer who has proven advocacy skills' and that income support payments not be suspended during the review period.[46]

2.50 Concern was expressed about how the new provisions regarding inappropriate behaviour could be interpreted with regard to achieving the purpose of an appointment. The AUWU argued that:

> Under the current system, Newstart recipients have the right to negotiate suitable mutual obligation requirements that take into account their personal circumstances. In some cases, this means they will be in disagreement with

43 Australian Council of Social Service, *Submission 5*, p. 2.

44 National Welfare Rights Network, *Submission 13*, pp 6–7.

45 National Welfare Rights Network, *Submission 13*, pp 7 and 8.

46 Willing Older Workers, *Submission 7*, p. 3.

> the demands of their Employment Service Provider. Such a disagreement could mean that the 'purpose of the appointment is not achieved', which under the proposed bill may result in Newstart recipients being financially penalised.

2.51 The AUWU also stated that the ability to impose sanctions for behaviour deemed to be inappropriate would exacerbate the already uneven power dynamics that exist between employment service providers and job seekers and could lead to an increase in income support recipients being coerced 'into accepting unfair mutual obligation requirements'.[47]

Committee view

2.52 The committee notes the concerns about the potential for unfair decisions being made, particularly where inappropriate behaviour is a manifestation of a deeper underlying issue. However, the committee also notes that the bill retains the reasonable excuse provisions to ensure that vulnerable job seekers are not penalised where behaviour deemed to be inappropriate was outside the person's control. The committee is reassured that the Department of Human Services will contact the job seeker and review the circumstances that led to the failure for inappropriate behaviour before any decisions about a financial penalty are made.

2.53 On balance, the committee is persuaded that the safeguards in place are sufficient to allay the concerns of most submitters regarding the application of the inappropriate behaviour provisions.

Suspension of payments for inadequate job search

2.54 It was the view of the Department of Employment that the current arrangements for inadequate job search activities were 'cumbersome, protracted and ineffective'. This perspective was supported by the NWRN:

> We agree that the current process, which uses job seeker diaries and employer contact certificates, is onerous, cumbersome and can stigmatise job seekers and be counterproductive in building positive relationships between job seekers and potential employers.[48]

2.55 Furthermore, the Department of Employment noted that during the periods of 2013–14 and 2014–15, not a single penalty was applied for poor job search efforts. It was the Department of Employment's view, therefore, that the immediate suspension of a job seeker's social security payments for inadequate job search efforts would encourage earlier engagement in the job seeking process by providing the necessary incentives.[49]

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47 Australian Unemployed Workers' Union, *Submission 6*, p. 6.

48 National Welfare Rights Network, *Submission 13*, p. 9.

49 Department of Employment, *Submission 14*, p. 5.

2.56 However, the Department of Employment also pointed out that job seekers could avoid any lasting financial penalty because a job seeker could be eligible to receive full back pay once adequate job search efforts had been proven to have resumed. Further, because income support payments are paid a fortnight in arrears, a prompt resumption of job search activities may not even result in a delay in income support payments.[50]

2.57 A repeated failure to look for work can result in a job seeker undergoing a Comprehensive Compliance Assessment. Persistent and wilful non-compliance can result in an eight week non-payment period, but the bill does not affect the possibility of a job seeker receiving a waiver of this penalty.[51]

2.58 While supporting in principle the suspension of payments for inadequate job search, the NWRN pointed out that assessing what would constitute inadequate job search was potentially highly subjective. The NWRN was therefore concerned that guidance on these matters would be contained in a legislative instrument and not in the Act[52] (the inclusion of certain matters in delegated legislation is covered in a later section).

2.59 The nexus between an appropriately tailored EPP and adequate job search was emphasised by Jobs Australia who stressed the need for employment service providers to appropriately match job search requirements to the job seeker and their circumstances:

> It is important that the number of job searches specified in the Job Plan takes into account all the circumstances of the job seeker. Although 20 per month is the standard requirement, the job seeker and their provider can negotiate a lesser number if appropriate. Again, it is important that frontline employment services staff tailor the Job Plan and do not seek to compel job seekers to enter into a standard plan.[53]

Committee view

2.60 The committee is concerned that the current provisions in the Act around adequate job search are manifestly inadequate and unworkable. It is clear to the committee that the Act as it currently stands fails both the taxpayer and the job seeker in terms of providing an adequate incentive for job seekers to engage with the process.

2.61 The committee is of the view that the immediate suspension of payments for inadequate job search will improve outcomes by providing the essential and clear link between failure (to comply with job search requirements) and consequences

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50 Department of Employment, *Submission 14*, p. 5.

51 Department of Employment, *Submission 14*, p. 5.

52 National Welfare Rights Network, *Submission 13*, p. 9.

53 Jobs Australia, *Submission 8*, p. 4.

(suspension of payments) that will encourage job seekers to actively engage in the process of job seeking.

2.62 Nevertheless, the committee acknowledges the importance of employment service providers and job seekers working collaboratively to ensure that the employment pathway plan is individually tailored to the needs of the individual and can therefore provide a sound basis for productive job search activity.

Removal of waivers for serious penalties

2.63 The Department of Employment expressed considerable disquiet that the current provisions that allow for the waiver of serious penalties for a refusal to accept suitable work 'essentially allow job seekers to refuse suitable work with impunity'.[54]

2.64 The Department of Employment noted that in 2014–15, 73 per cent of non-payment periods applied for refusing work were waived, effectively allowing the job seeker to immediately return to income support payments. Further, in 2009–10 when waivers were first introduced, 45 per cent of penalties were waived. Given that the number of serious failures for refusing or failing to accept suitable work has increased from 644 in 2008–09 (the year before waivers were introduced) to 1 412 in 2014–15, the percentage increase in the number of waivers granted between 2009–10 and 2014–15 indicates that a significantly larger number of job seekers are now taking advantage of the waiver provisions.[55]

2.65 Safeguards are in place to ensure that penalties are not applied inappropriately. Importantly, the Department of Human Services must establish the job seeker did not have a reasonable excuse for their failure, and that the job was suitable for the job seeker (see below), before any penalty is applied.[56]

2.66 The following criteria are used to assess the suitability of work for a particular job seeker. For example, work is considered unsuitable, and no penalty can be applied, if the work:

- requires particular skills, experience or qualifications that the person does not have, and appropriate training will not be provided by the employer;
- might aggravate a pre-existing illness, disability or injury and medical evidence has been provided;
- involves health or safety risks and would contravene an occupational health and safety law;
- involves terms and conditions that are less generous than the applicable statutory conditions;

54 Department of Employment, *Submission 14*, p. 6.

55 Department of Employment, *Submission 14*, p. 6.

56 Department of Employment, *Submission 14*, p. 7.

- involves commuting from home to work that would be unreasonably difficult (including, for principal carer parents, any time taken to access child care);
- would require a principal carer of a child or children to work during hours when appropriate care and supervision of the child/children is not available;
- involves working more hours than a person's assessed capacity;
- involves enlistment in the Defence force or the Reserve forces;
- is the subject of industrial disputation;
- would require the person to change their residence; or
- in the Secretary's opinion, is unsuitable for any other reason (for example, on the basis of moral, cultural or religious grounds).[57]

2.67 The removal of the waiver provisions was particularly contentious. While generally supportive of the measures in the bill, Jobs Australia opposed the removal of waivers for serious penalties. Jobs Australia contended that the case for removing the waivers had not been made, that the change was not supported by the evidence, and that the removal of the waiver was harsh and disproportionate:

> Serious failures result in an eight week non-payment period — a penalty that most wage-earners would find hard to survive, let alone a person relying on income support. We do not accept the contention in the Explanatory Memorandum that the availability of a waiver creates an 'incentive for non-compliance'. Job seekers have strong incentives to accept work that is suitable — including a strong financial incentive, given that even minimum wages are significantly greater than welfare payments.
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> Moreover, the case for removal of the waiver is not made out by the data presented. The number of serious failures for not accepting suitable work is small. If the argument is that too many penalties have been inappropriately waived, then that is something that may best be dealt with by reviewing the training and guidance offered to the decision-makers rather than simply removing the waiver altogether. The response seems disproportionate to the problem outlined in the Explanatory Memorandum.
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> Jobs Australia is opposed to the removal of the waivers for serious penalties incurred for failing to accept a suitable job.[58]

2.68 The NWRN also opposed the measure noting that, on the Department of Employment's figures, while only one per cent of all 'serious failures' were waived in the first quarter of 2015, the people involved were 'extremely vulnerable'.[59]

2.69 It was also pointed out that a person may not be aware of the consequences of rejecting a job and the devastating impacts of eight weeks on non-payment 'including

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57 Department of Employment, *Submission 14*, p. 7.

58 Jobs Australia, *Submission 8*, p. 5.

59 National Welfare Rights Network, *Submission 13*, p. 9.

homelessness, indebtedness, decline in mental and physical health, social exclusion, deterioration of personal relationships and destitution'.[60]

2.70 The NWRN stated that a 'more proportionate response would have been tightening the waiver provisions' such as limiting the number of times that a person may have a waiver applied.[61]

2.71 The NWRN also observed that an increase in the use of the waiver provisions could be explained by other factors, and that the waiver provisions themselves could in fact save money and encourage quicker re-engagement with the compliance system:

> Greater utilisation of waiver provisions could also be explained by increased familiarity and understanding and awareness of the new penalty system, by providers, the Department of Human Services staff, and by job seekers. NWRN has observed in its casework that people who consider the penalty was applied incorrectly, and would in the past have appealed against the penalty, now choose to 'work off' the penalty because it is easier and often quicker than seeking internal review.
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> In this way, the waiver provisions achieve a number of important ends: the job seeker is re-engaged quickly via a compliance activity, and the costs associated with internal review to ARO and external review to the Administrative Appeals Tribunal are avoided. The wider costs to the community, in terms of emergency relief, legal and casework services, health costs etc. are also avoided.
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> Removal of the waiver provisions is likely to result in an increase in appeals and other wider costs to the community.[62]

2.72 The NWRN also pointed out that the ability to work off a penalty, at least once, would permit the Department of Human Services to 'issue clear warnings in an interview about the consequences of subsequent failures'. Furthermore, this 'would have the double benefit of creating a first warning system, as well as better targeting the group the government should be concerned with, namely, persistent job refusers'.[63]

2.73 Finally, the NWRN questioned the need to change the 'work off' waiver provisions given that, on the Department of Employment's figures, there had been a 61 per cent decrease in the number of eight week penalties from the September 2013 quarter to the March 2015 quarter.[64]

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60 National Welfare Rights Network, *Submission 13*, p. 10.

61 National Welfare Rights Network, *Submission 13*, pp 9–10.

62 National Welfare Rights Network, *Submission 13*, p. 11.

63 National Welfare Rights Network, *Submission 13*, p. 10.

64 National Welfare Rights Network, *Submission 13*, pp 11–12.

Committee view

2.74 The committee acknowledges the concerns raised by submitters and witnesses regarding the removal of the waiver provisions. Nevertheless, the committee is of the view that the reasonable excuse provisions and the criteria used to assess the suitability of work for a particular individual, combined with the review processes of the Department of Human Services, are sufficient to ensure that vulnerable people will continue to be protected and that the removal of the waiver provisions will target only those that wilfully refuse to accept suitable work.

Removal of safeguards in the legislation

2.75 Section 42NC of the Social Security (Administration) Act 1999 provides:

> If the Secretary determines that a person commits a serious failure, the Secretary must also determine that this section applies unless the Secretary is satisfied that:
>
> the person does not have the capacity to undertake any serious failure requirement; and
>
> serving the serious failure period would cause the person to be in severe financial hardship.[65]

2.76 The AASW was particularly concerned about the repeal of this section, stating that section 42NC 'provides important protections to ensure that people are not penalised for refusing jobs that they cannot do' and that it 'also has a role in protecting individuals from financial destitution'.[66]

2.77 The AASW further noted that section 42NC had the potential to prevent mistakes before they occurred and therefore repealing the 42NC removed 'a safeguard against faulty decision making in complex cases'.[67]

Impacts on Indigenous job seekers

2.78 Between 2007 and 2013, there was a toughening of the job seeker compliance framework and the removal of the remote area exemption. The NWRN noted that between 2007 and 2013, the rates of compliance failures for Indigenous job seekers increased at a higher rate (from 33 to 62 per cent) than for non-Indigenous job seekers (from 39 to 55 per cent).[68]

2.79 Furthermore, participants in the Remote Jobs and Communities Program (RJCP) were overrepresented in the non-compliance and penalty figures:

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65 *Social Security (Administration) Act 1999*, section 42NC.

66 Australian Association of Social Workers, *Submission 2*, p. 1

67 Australian Association of Social Workers, *Submission 2*, p. 1

68 National Welfare Rights Network, *Submission 13*, p. 13.

> Remote Jobs and Communities Programme (RJCP) participants make up around 5% of the total pool of activity tested people, yet in the last quarter 15% of all financial penalties, 20% of no show no pay penalties related to non-attendance at activities, and 26% of serious non-compliance penalties (eight weeks) were applied to people in the program.[69]

2.80 It was further noted that 'even once the limited availability of work and education options in remote areas is taken into account, RJCP clients are less than half as likely to have their obligations suspended'. The NWRN suggested that the imbalance in the figures could be attributed to a 'failure to identify or recognise factors that might prevent participation', such as the health, housing and social issues in many remote communities.[70]

Impacts on carers

2.81 Carers Australia noted that many individuals with significant caring responsibilities receive Newstart Allowance and Youth Allowance (in 2009, an estimated 17 887 carers received Newstart Allowance).[71]

2.82 Carers Australia noted that unpaid caring responsibilities may impact a person's ability to commute, attend job interviews, job search activities and Work for the Dole, give prior notice of an inability to attend a mandatory interview (because of unforeseeable caring emergencies), and accept certain job offers (that would compromise their caring responsibilities).[72]

2.83 Accordingly, Carers Australia stated 'appropriate and adequate safeguards' were needed to prevent income support recipients with unpaid caring responsibilities being unfairly penalised.[73]

Impacts on people with disability

2.84 Australian youth unemployment (young people aged 15 to 25 years) in September 2015 was 12.9 per cent, over twice the total unemployment rate of 6.2 per cent. However, young people with a disability face additional disadvantage with regard to employment with a much lower proportion (38 per cent) of young people aged 15–24 years with disability either working or studying or doing a combination of both compared to 56 per cent of young people without disability.[74]

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69 National Welfare Rights Network, *Submission 13*, p. 13.

70 National Welfare Rights Network, *Submission 13*, p. 15.

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

72 Carers Australia, *Submission 4*, pp 1–2.

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

74 Children with Disability Australia, *Submission 10*, p. 1.

2.85 Children with Disability Australia (CDA) argued that young people with disability have experienced 'highly unfair, unplanned and uncoordinated' post school transition planning, and that discrimination and a lack of opportunities for learning and skill development has created barriers to further education and employment.[75]

2.86 CDA was of the view that the bill was unfair and did 'not take into account the significant and systemic barriers to employment experienced by young people with disability'. CDA therefore proposed that policy should focus on broader reform and prioritise 'systemic issues relating to education, post school transition and employment'.[76]

Impacts on volunteering organisations

2.87 Volunteering Victoria noted that while government expects the volunteering sector to play a key role in the social welfare system (by hosting activity places for job seekers to do voluntary work and Work for the Dole), the sector receives very little funding to support this role.[77]

2.88 Consequently, Volunteering Victoria was particularly concerned that imposing more immediate non-attendance penalties on job seekers could result in a reduced number of voluntary work and Work for the Dole places being available for job seekers to fulfil their activity requirements:

> For the proposed legislation to have the desired effect, host organisations would need to report noncompliance immediately (or at least before the next fortnightly payment is processed). This will significantly add to their administrative burden, which is likely to deter some organisations from participating in these activities in the future. It may also pose an ethical dilemma for some organisations, who see 'dobbing' as incompatible with their mission to assist job seekers. This could have a significant impact on the number of activity places that are available for job seekers to fulfil their activity requirements by doing voluntary work and WfD [Work for the Dole].[78]

Reviewing the policy process and its implementation

2.89 ACOSS had concerns about the job seeker compliance policy process. Noting that the previous independent review was released in 2010 (prior to the changes made in the 2014 Act), ACOSS therefore recommended the government commission an independent review of the compliance system to identify:

- trends in compliance and sanctions for different populations of job seekers since the Independent Review, and evidence regarding the impact of different

75 Children with Disability Australia, *Submission 10*, pp 2–3.

76 Children with Disability Australia, *Submission 10*, p. 3.

77 Volunteering Victoria, *Submission 3*, p. 2.

78 Volunteering Victoria, *Submission 3*, p. 2.

elements of the compliance system on compliance and people's financial circumstances;

- the reasons for non-compliance and whether activity requirements and their administration should be adjusted to encourage improved engagement;
- whether the current system strikes an appropriate balance between providing incentives for people to comply with job search and other participation requirements and ensuring there is a basic safety net available to prevent poverty and hardship; and
- ways in which the system can be simplified for people and for service providers, while maintaining an appropriate balance in the overall policy framework.[79]

2.90 Given its concern about the impacts of the bill on Indigenous job seekers in particular, the NWRN recommended 'a review of how the current compliance system and its administration impact on Indigenous, remote and vulnerable job seekers'. The NWRN suggested the review should consider equity in the treatment of job seekers under different employment services networks, for example, mainstream jobactive, disability employment services, and the RJCP.[80]

2.91 Jobs Australia also voiced concerns about the inappropriate implementation of the compliance framework with respect to Job Plans and the potential for the inconsistent interpretation and application of the 'reasonable excuse' rules. Jobs Australia therefore suggested that additional training for employment service providers ahead of the amendments coming into effect could be beneficial as well as a review of certain activities conducted by delegates of the Secretary of the Department of Human Services:

> The new *jobactive* contract has proved challenging for many providers. The anecdotal evidence may suggest that provider staff need additional training ahead of the amendments in this Bill coming into effect and a degree of monitoring afterwards to ensure that the compliance framework is applied in practice as it is intended on paper.
>
> Present training may not be entirely adequate. The online Learning Centre training on Reasonable Excuse determinations, for example, does not go through the detailed and technical requirements of the Reasonable Excuse rules laid out by the Secretary of the Department of Human Services. Rather, employment services consultants are encouraged to use a much simpler test: whether a member of the public would consider the excuse 'reasonable'. Clearly, there is scope for such a test to be applied inconsistently.

79 Australian Council of Social Service, *Submission 5*, p. 2; see also Australian Unemployed Workers' Union, *Submission 6*, p. 3.

80 National Welfare Rights Network, *Submission 13*, p. 15.

> It is important that checks and balances are maintained within the system, to help ensure that job seekers are fairly treated and have their personal circumstances adequately taken into account. Jobs Australia would support some investigation of the way that frontline staff are exercising discretions and making decisions as delegates of the Secretary of the Department of Human Services, to determine whether current training and guidance is adequate and with a view to improving the training and guidance. Job seekers are entitled to expect that the compliance framework will be applied as intended.[81]

2.92 Ms Kathy Dora, a job seeker, was critical of her treatment by individuals and agencies operating in the job seeker sector and the harsh and punitive nature of the compliance framework. She argued for 'a thorough examination of current practices' and the formulation of 'a more inclusive approach in consultation with those individuals who are at the living end of policy'.[82]

2.93 In terms of improving the interactions between employment service providers and job seekers, the Department of Employment gave evidence at the public hearing that it had conducted 'train the trainer' training across the country with employment service providers 'in relation to the new jobactive providers as well as disability employment and what is now called the Community Development Program'.[83]

2.94 The sessions were designed so that those who attended would subsequently be able to train the other front-line staff in their offices using the training materials provided. The Department of Employment also stressed that it was a requirement for all employment service personnel acting under the job seeker compliance framework to pass an online training module, and that this would be monitored:

> It was a fairly extensive session, by the way. I think it was around five to 5½ hours in length, where we ran through the participation and compliance framework, particularly highlighting the changes from 1 July, and gave those attendees a lot of material, so they could take it back to their own offices and train their other people. It is that two-way 'train the trainer' approach and then every single person—not just those who attended the face-to-face training but every single person in jobactive provider offices who needs to take action under the participation and compliance framework—needs to do and pass this module, and that is something the department is monitoring.[84]

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81 Jobs Australia, *Submission 8*, p. 5.

82 Ms Kathy Dora, *Submission 9*, p. 2.

83 Mr Derek Stiller, Branch Manager, Job Seeker Compliance and Activation, Department of Employment, *Proof Committee Hansard*, 13 November 2015, p. 36.

84 Mr Derek Stiller, Branch Manager, Job Seeker Compliance and Activation, Department of Employment, *Proof Committee Hansard*, 13 November 2015, p. 36.

Committee view

2.95 The committee is mindful of the concerns raised by submitters with regard to the potential impacts of the bill on a range of citizens and organisations. The committee also notes that several submitters have called for a review of the job seeker compliance framework, and have also recommended additional training for employment service providers ahead of the bill coming into effect.

2.96 The committee notes the evidence of the Department of Employment at the public hearing that it had recently conducted training in relation to the new jobactive providers, disability employment, and the Community Development Program.

2.97 The committee expects that this additional training will ensure that employment service providers are capable of exercising reasonable discretion and judgment with regard to the often complex circumstances that citizens find themselves in.

Significant matters included in delegated legislation

2.98 The Senate Standing Committee for the Scrutiny of Bills (the Scrutiny of Bills committee) has examined the bill.[85] The Scrutiny of Bills committee noted that proposed new subsections 42SA(5), (6) and (7) would allow the Secretary, by legislative instrument, to determine matters that the Secretary must consider when deciding whether a job seeker has acted in an inappropriate manner at an appointment (the consequences of which will be suspension of payments). The Scrutiny of Bills committee noted that the explanatory memorandum does not explain why these matters cannot be included in the bill (the primary legislation).[86]

2.99 Further, the Scrutiny of Bills committee noted that while subsection 42SA(5) empowered the Secretary to make a legislative instrument to determine what matters must be taken into account, it did not require that such an instrument be made. In addition, subsection 42SA(7) provides that matters additional to any prescribed by such a legislative instrument could also be taken into account by the Secretary.[87]

2.100 Noting that the Secretary had a broadly framed discretionary power to determine what constituted inappropriate behaviour at an appointment, the Scrutiny of Bills committee therefore raised concerns that rights, liberties or obligations may be

85 Under new Standing Order 25(2A), legislation committees, when examining bills or draft bills, shall take into account any comments on the bills published by the Standing Committee for the Scrutiny of Bills.

86 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 10, 16 September 2015, p. 5.

87 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 10, 16 September 2015, pp 5–6.

unduly dependent upon insufficiently defined administrative powers and that legislative powers may have been inappropriately delegated.[88]

2.101 The committee notes the following response from the Minister for Employment to the Scrutiny of Bills:

> It is intended that a legislative instrument would be made to prescribe the mandatory relevant considerations that the Secretary must take into account when deciding whether a job seeker has acted in an appropriate manner during a relevant appointment.
>
> Providing for the detail of this matter in the Bill would add excessive complexity to the *Social Security Administration Act 1999*. However, I confirm that the Government will give careful consideration to amending the relevant provisions to require the Secretary to make the legislative instrument.[89]

2.102 In its report of 11 November 2015, the Scrutiny of Bills committee commented on the response from the Minister for Employment:

> The committee would welcome an amendment which *requires* the Secretary to make a legislative instrument prescribing the mandatory relevant considerations because without such an instrument the Secretary has a very broadly framed power to determine what constitutes inappropriate behaviour at an appointment (emphasis original).
>
> …
>
> In addition, providing for matters in delegated legislation means that the level of Parliamentary oversight of this discretionary power will be more limited than if the matters were provided for in primary legislation.[90]

2.103 The Scrutiny of Bills committee drew the broad discretionary power and the committee's comments to the attention of the Education and Employment Legislation Committee.[91]

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88 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 10, 16 September 2015, p. 6. The Australian Council of Social Service also expressed concern about the 'reference of significant definitional issues to legislative instrument, including the adequacy of job search for which serious penalties apply': see The Australian Council of Social Service, *Submission 5*, p. 2.

89 Senate Standing Committee for the Scrutiny of Bills, *Report*, No. 12, 11 November 2015, p. 728.

90 Senate Standing Committee for the Scrutiny of Bills, *Report*, No. 12, 11 November 2015, p. 729.

91 Senate Standing Committee for the Scrutiny of Bills, *Report*, No. 12, 11 November 2015, p. 729.

Committee view

2.104 The committee notes that the Scrutiny of Bills committee has drawn the issue of including a broad discretionary power in delegated legislation to the attention of this committee. At the public hearing, therefore, the committee asked the Department of Employment whether the Minister for Employment had responded to the comments in the Scrutiny of Bills committee report. The committee looks forward to learning of the Minister's response.

Other matters

Participation of older workers in the Work for the Dole program

2.105 Willing Older Workers made several suggestions regarding the participation of older workers in the Work for the Dole program including:

- the Work for the Dole program be reviewed and that each position on a Work for the Dole project be made a Mentoring opportunity, with an older and a younger participant job sharing and learning from each other;
- the Work for the Dole program employ mature-aged, unemployed workers as the Supervisors on projects; and
- a register of skilled older workers be kept in a data base at Centrelink, to be supplied to the Work for the Dole coordinators in each area. Willing Older Workers would be prepared to help establish this data base.[92]

2.106 The committee also received evidence from the NWRN that some job seekers over 55 years of age are being given incorrect advice about being required to undertake Work for the Dole.[93]

Asset testing

2.107 Willing Older Workers argued that the current asset testing criteria for income assistance caused undue hardship for both younger and mature-aged job seekers and made the following proposals:

- all applicants aged eighteen and over be assessed on their own worth and not that of their parents; and
- the criteria for receiving Newstart be reviewed such that if a person has assets, they be given a HECS style benefit so they are not forced to become extremely poor before they qualify for assistance.[94]

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92 Willing Older Workers, *Submission 7*, pp 4–5.

93 National Welfare Rights Network, *Question on notice*, No. 1 (received 19 November 2015).

94 Willing Older Workers, *Submission 7*, p. 4.

2.108 Willing Older Workers also recommended that the qualification criteria for Centrelink registration be amended to allow all mature-aged job seekers to register with Centrelink even if they have assets and do not qualify for a benefit, and to allow all mature-aged job seekers to get assistance from employment service providers.[95]

Conclusion

2.109 Australia's income support payments are based on the principles of reciprocity and mutual obligation, principles that have wide community support as well as bipartisan political support.

2.110 Although the previous bill[96] achieved significant improvements, the system remains overly complex and unwieldy. The bill addresses these shortcomings by simplifying the job seeker compliance framework, improving both its consistency and effectiveness.

2.111 The committee is confident that the bill will assist job seekers to more easily understand their obligations and the consequences of non-compliance. The committee is therefore persuaded that the bill puts in place clear, immediate, and appropriate incentives that will lead more job seekers to undertake the appointments and activities that will assist them to move into work and reduce their reliance on income support.

2.112 The committee is reassured that job seekers who do not wish to accept an EPP immediately will continue to have 48 hours 'think time' before being required to sign their EPP. The committee considers this is a reasonable amount of time that allows a job seeker to reflect on their EPP, seek assistance where required, ensure the EPP is individually tailored, and mitigate against any undue pressure to sign an EPP that is not appropriate to their personal needs.

2.113 The committee is persuaded that adequate safeguards are in place to prevent unfair penalties being applied for behaviour deemed to be inappropriate, noting that the bill retains the reasonable excuse provisions with regard to vulnerable job seekers, and that the Department of Human Services will contact the job seeker and review all such cases before any financial penalty decisions are made.

2.114 While it acknowledges the concerns about the removal of the waiver provisions, the committee notes that this measure is aimed at people that wilfully refuse to accept suitable work. The committee is of the view that the reasonable excuse provisions, the criteria used to assess the suitability of work for a particular individual, and the review processes of the Department of Human Services will continue to protect vulnerable people from being unfairly targeted.

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95 Willing Older Workers, *Submission 7*, p. 4.

96 Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014.

2.115 Having considered all the evidence put forward in the inquiry, the committee considers that the bill will build on previous amendments and will drive improved compliance with the job seeker framework, and in turn, assist job seekers with their transition to work.

Recommendation 1

2.116 The committee recommends that the Senate pass the bill.

Senator Bridget McKenzie

Chair