

Senate Standing Committees on Education and Employment

Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021

QUESTION ON NOTICE

Date of hearing: 11 June 2021

Outcome: Employment

Department of Education, Skills and Employment Question No. IQ21-000054

Senator Rachel Siewert provided in writing.

General questions

Question

1. Who did you consult on the changes in this Bill?
2. Why did you cherry-pick recommendations from the Employment Services Expert Advisory Panel?
3. Will you be undertaking any more testing of the online employment services system before rolling it out in July 2022?
4. Why is this bill time critical?

Answer

1. The following agencies have been consulted in relation to the Bill: the Department of Finance, Office of Parliamentary Counsel, Department of Social Services, Department of Agriculture, Water and the Environment, Services Australia, National Indigenous Australians Agency, Australian Government Solicitor and Attorney-General's Department.

The Department of Education, Skills and Employment also briefed the following organisations on the Bill, its schedules, and how existing protections in social security law are retained:

- Australian Council Of Social Service;
- Australian Human Rights Commission;
- National Employment Services Association;
- Jobs Australia;
- AMES Australia; and
- The Australian Labor Party.

Briefings were also offered to the Australian Unemployed Workers' Union and the Salvation Army. The department is available to brief additional organisations on request.

The department also consulted extensively in the development of the New Employment Services Model. Schedule 1 of the Bill supports a critical element of the new model, enabling job-ready job seekers to self-manage their requirements online while increasing investment towards the most disadvantaged. This was a key recommendation of the Employment Services Expert Panel report, *I Want to Work*. The Expert Panel included representatives from the Australian Council of Social Service, the National Employment Services Association and Jobs Australia. The new model was informed by input from over 1400 stakeholders, including employers, employment services providers, job seekers, community organisations, unions, academia and state/local governments, as well intensive user centred design and

trials. Further information about the consultation process for the new model is available at the link below:

[Consultation to inform the new employment services - Department of Education, Skills and Employment, Australian Government \(dese.gov.au\)](https://www.dese.gov.au/consultation-to-inform-the-new-employment-services)

2. The final design of the New Employment Services model (the model) has been informed by the recommendations from the Employment Services Expert Advisory Panel *I Want to Work Report*, and refined through learnings from the New Employment Services Trial, Online Employment Services and other trials. The development of the new model is based on extensive consultation and user-centred design.

A summary of how the new model gives effect to the *I Want to Report* is attached.

While the Bill provides critical support for the New Employment Services Model, commencing July 2022, it is by no means the entirety of the Australian Government's response to the *I Want to Work Report*, nor does the Bill lock in specific policy settings.

3. The Department has been testing key elements since 2018. We will continue to engage with users and settle micro policy ahead of implementation in July 2022. User-testing will continue, particularly as the digital employment services platform has new features added over time.
4. Due to COVID-19, large numbers of job seekers now access employment services online. The legislation is currently constraining the ability to provide the best service to job seekers. For example, currently job seekers who want to enter study or training into their Job Plan need to call the Digital Services Contact Centre to talk to a human delegate.

This is an unnecessary burden on the hundreds of thousands of job seekers currently in online employment services who are job-ready and who can and should be allowed to manage their own requirements online. Having to contact a Government call centre may deter some job seekers from accessing activities that are beneficial to them, which in turn increases the risk of disengagement and a longer period of unemployment.

The Bill streamlines and modernises social security law to better support job seekers currently accessing online employment services and to improve functionality and flexibility for job seekers leading up to the commencement of the New Employment Services Model. Once passed, these changes give job seekers the option to enter study or training into their Job Plan online without needing to talk to a human delegate, if they choose.

The changes will also enable job seekers to have greater agency and flexibility in how they meet their requirements under the new model, as envisaged by the Expert Panel in the *I Want to Work* report.

Aside from the administrative burden to current job seekers accessing online employment services, the provisions supporting better use of digital technology are necessary to allow the ICT systems supporting the new model to be built, tested and improved before the new model commences and without risking unintended consequences for job seekers that could arise if building these systems needs to be rushed.

The Bill is also time critical because it contains amendments which better and more clearly support a number of beneficial changes to operational policy which currently require technical work-arounds to ensure compliance with the legislation. The amendments would provide clearer legislative support for Resolution Time introduced in December 2020 (which allows job seekers two days to take action before a payment suspension is applied), and the exempting of mutual obligations for entire geographic locations during natural disasters or COVID-19 outbreaks.

Another beneficial change in the Bill is that it allows for the speedier implementation of new programs. The authority for expenditure on employment programs currently sits with the Finance Minister and the Department of Finance. The administrative processes required to seek authority for expenditure on a new employment program, or variation of an existing program, can lead to delays in implementing these programs and assisting vulnerable job seekers.

Expert Advisory Panel Recommendations	Proposed approach in the New Employment Services Model
<p>1. Build trust</p> <p>A system in which job seekers, employers, providers, and government have confidence.</p> <p>A system where users believe that the priority is to improve outcomes for them.</p> <p>A system which is transparent and accountable.</p>	<p>Key elements of the new model have been trialled and tested in the New Employment Services Trial since 2019, with early evaluation findings showing that it is delivering for job seekers, employers and providers.</p> <p>Employment outcomes will remain a key focus of the provider payment model, though the introduction of progress payments will ensure all job seekers continue to move forward along the pathway to work.</p> <p>Feedback from job seekers and employers will form a key part of the provider performance framework, helping to increase transparency and accountability.</p>
<p>2. Be user -friendly</p> <p>Put users at the centre of the system, with services designed to support their needs.</p>	<p>The development of the new model is based on extensive consultation and user-centred design. User-testing will continue, particularly as the digital platform has new features added over time.</p> <p>A single digital platform will offer comprehensive assistance to job seekers and employers, with less red tape than under current arrangements. This includes tools developed by the National Skills Commission to assist job seekers assess their skillset and direct them to matched employment and training opportunities.</p>
<p>3. Be personalised</p> <p>Personalise services to enable job seekers to access the support they need, the way they need it.</p>	<p>A dynamic job seeker assessment process will ensure job seekers are receiving the service that is right for them. New online assessment tools, improved use of administrative data and analytics will provide additional insight into job seeker servicing needs to help tailor services and support to the individual in real time.</p> <p>A range of safeguards will ensure digitally serviced job seekers continue to be suitable for online servicing. Analytics will be used to trigger reassessments based on job seeker's characteristics and online engagement, Digital Services job seekers who need or prefer face-to-face servicing may move to a provider at any time.</p>
<p>4. More help for those that need it</p> <p>Increased focus and investment in job seekers who need the most help.</p> <p>More resources and provider time to support these job seekers.</p> <p>This is enabled by redirecting savings from smaller caseloads due to digital self-servicing.</p>	<p>Continued investment, directed towards the most disadvantaged, will assist more Australians to transition from welfare to work. Enhanced Services will provide an intensive mix of activities focused on improving work readiness and access to a wide range of support under the Employment Fund, including wage subsidies.</p> <p>Reduced provider caseloads and new provider payments to increase investment in job seekers will support more effective individual case management for the hardest to place job seekers.</p> <p>Cohort specialist providers will operate in selected regions, offering a more targeted service to disadvantaged groups, and helping to support other government priorities e.g. in Closing the Gap.</p>
<p>5. Empower through personal responsibility, choice and independence</p> <p>Job seekers have a responsibility to find work. The community expects job seekers to do everything they can to find work.</p> <p>To encourage greater personal responsibility job seekers will have more control.</p> <p>Job seekers will have input into job pathways and activities, be empowered through digital servicing, and be supported to make informed choices between employment services providers. To find work faster.</p>	<p>Mutual obligations remain a key part of the new model, and the Targeted Compliance Framework will ensure there are consequences for those who persistently and wilfully fail to meet their requirements.</p> <p>The new Points Based Activation System (PBAS) will improve the way mutual obligations are managed, with job seekers given more choice from a set of approved activities, such as job search, attending interviews, study and training and voluntary work, or an intensive activity.</p> <p>Job seekers will have an informed choice about the provider they are referred to, as well as the ability to change provider if they wish to.</p> <p>Quality job search will remain a core requirement for all job seekers, and there will be a mandatory requirement to participate in an intensive activity after several months, to make sure job seekers are engaged and moving towards employment. Digital Services job seekers not in education or work will be transitioned to a provider in Enhanced Services after 12 months.</p>
<p>6. Reflect how employers work</p> <p>Get them the right employee, fast.</p> <p>Support proactive employer engagement to ensure the system offers value to employers and better connections to the right job seekers.</p>	<p>The digital platform will provide better applicant matching and dynamic servicing, offering employers the ability to search for and filter job applications, and pre-screen applicants among other free online services. This will reduce the high burden employers currently experience receiving high volumes of poorly targeted job applications from unsuitable job seekers.</p> <p>Enhanced Services Providers will connect employers with suitable recruits from their caseloads, offering a range of support such as required training, as well as post placement support.</p> <p>Workforce Specialists, building on the Panel's recommendation for Industry Specialists, will proactively connect job seekers to large employers and key industries and occupations with high demand for workers.</p>
<p>7. Be grounded in digital</p> <p>Develop a user-centred digital and data ecosystem which reflects how job seekers and employers work.</p> <p>Deliver better connections between job seekers and employers, advanced analytics and insights, and integration with existing services and data.</p>	<p>Job seekers using the digital platform will be able to access online tools to help them make informed choices about their job search, link to training, and identify additional support services they are eligible for. Insights from real-time data analytics underpinning the platform will help guide job seekers to the right services.</p> <p>Enhanced Services providers are expected to have stronger connections to complementary services and employers in the local community, recognising the positive impact this can have on outcomes.</p> <p>The department is working with other government agencies to streamline services to job seekers and employers, including improving data linkages with Services Australia and the Australian Tax Office (ATO).</p>
<p>8. Enable employment service providers to maximise results</p> <p>Enable greater competition and diversity between providers without compromising market stability.</p> <p>Introduce a licensing framework and improved payment and performance model.</p> <p>Allow providers more scope to invest in job seekers, staff capabilities and establishing local partnerships.</p> <p>Ensure that providers are held accountable for achieving results.</p>	<p>A new licensing system will reduce the cost of regular procurement processes, making it easier for new and innovative organisations to enter the market and easier to exit low performing providers. High performing providers will be rewarded with regular licence extensions, removing the burden of successive tenders.</p> <p>The new payment model recognises providers will be servicing the most disadvantaged job seekers and incentivises investment in more intensive and personalised servicing of the unemployed. Higher upfront payments will support early intervention, while progress payments will reward continued investment in moving a job seeker towards the end goal of sustainable work.</p> <p>A streamlined Employment Fund will cut red tape, freeing up provider staff to focus more on their client.</p> <p>A new provider performance framework will be introduced, with key performance indicators that will drive outcomes, quality and collaborative servicing.</p>
<p>9. Support local solutions</p> <p>A universal service will be developed.</p> <p>The system requires enough flexibility to ensure that local communities, including Indigenous communities, can contribute to local solutions.</p>	<p>The procurement of Enhanced Services will have a strong focus on identifying providers with expertise and experience working within the local community, including maintaining close relationships with local employers and complementary services (e.g. housing, health and rehabilitation services).</p> <p>The licensing system and provider performance framework will take into account regional variation.</p> <p>Relocation Assistance will be streamlined, making it easier for all Digital and Enhanced job seekers to relocate for work, including through upfront payments directly to suppliers.</p>
<p>10. Invest funding targeted, in smart ways</p> <p>Ensure appropriate resources are available to invest in the new model.</p> <p>Redirect efficiencies to enable more intensive services for job seekers who need the most help.</p>	<p>Modelling indicates provider services are financially viable and will support more intensive services whilst overall costs will remain within the jobactive funding envelope.</p> <p>The new model will cut red tape in many areas. For example, the new referral process will streamline the registration, eligibility and referral process and promptly connect job seekers to the most appropriate service type. The licensing system will cut red tape across the procurement process.</p>
<p>11. Keep listening, Keep evolving</p> <p>Begin transitioning to a new digital system now to de-risk implementation.</p> <p>Ensure the system is continually innovating and learning about what works, and is responsive to changes in the labour market.</p>	<p>This model was developed following extensive consultation with stakeholders and user-centred design. Key elements of the model are being tested in the New Employment Services Trial, which have shown to be effective, responding well to labour market shocks experienced in 2020 due to COVID-19 and the bushfires.</p> <p>The build of the new digital platform has already begun, and new functionality will be added over time once it has been developed and thoroughly tested.</p> <p>A comprehensive communication and transition strategy are currently being planned, for implementation from well in advance of July 2022. This will ensure disruption to service users is minimised.</p> <p>A range of performance monitoring, evaluation and assurance activities will be conducted as part of the model to ensure it is effective and meeting its intended objectives.</p>

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QUESTION ON NOTICE

Date of hearing: 11 June 2021

Outcome: Employment

Department of Education, Skills and Employment Question No. IQ21-000055

Senator Rachel Siewert provided in writing.

Partial capacity to work and principal carer

Question

There is no guarantee that people with partial capacity to work and principal Carers will NOT be required to work more than 15 hours - is this the case?

Answer

The Bill preserves current protections in social security law, including for people with partial capacity to work and principal carer parents. Below is an outline of the protections for these cohorts in three areas of mutual obligations: ways to fully meet requirements; the setting of mutual obligation requirements for those not fully meeting them; and unsuitable work.

Ways to fully meet requirements

Consistent with existing provisions in social security law, section 40R in the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021 specifies that principal carers, those with a partial capacity to work or aged 55 and over fully meet their requirements if working 30 hours per fortnight (15 hours per week). This means these job seekers cannot be required to look for additional work.

Existing provisions regarding those aged 55 and over fully meeting requirements through approved volunteer work are also replicated.

Setting of mutual obligation requirements for those not fully meeting them

The Bill retains existing protections which require that in setting mutual obligation requirements, the job seeker's capacity to comply must be considered. This includes the impact of any disability, illness, mental condition or physical condition, or the person's family and caring responsibilities, as well as other factors such as the person's education, experience, skills and age (see 40F of the Bill).

Unsuitable work

In addition, the Bill retains existing protections regarding what work is considered unsuitable for job seekers, including specific protections for principal carers and those with a disability. These include provisions that specify that work is unsuitable if adequate childcare is not available for a principal carer (section 40X(1)(c)) or if an illness, disability, or injury would be exacerbated (section 40X(1)(b)). Work would also be considered unsuitable if it exceeded a person's assessed work capacity.

It is also intended that the current legislative instrument that provides additional circumstances in which work is unsuitable for principal carers or those with a partial capacity to work, the Social Security (Unsuitable Work) Determination 2016, will be re-made implementing the current policy contained in this instrument (such as work not being considered suitable if after providing appropriate childcare principal carers are not financially better off accepting the work).

Senate Standing Committees on Education and Employment

Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021

QUESTION ON NOTICE

Date of hearing: 11 June 2021

Outcome: Employment

Department of Education, Skills and Employment Question No. IQ21-000056

Senator Rachel Siewert provided in writing.

Delay of income support payment until you sign a job plan online

Question

1. How will people be notified if they have 'failed' to complete their online job plan? Could this notification process lead to delays in payment start date?
2. Have you tested these processes with diverse cohorts of people including First Nations peoples, culturally and linguistically diverse people and older people?
3. How quickly will online jobseekers be able to access human decision-makers, reviews and appeals? Can online jobseekers seek reviews through the AAT?
4. The legislation doesn't specifically say in the clause enabling automated decision making that people have choice and ability to instantly change a plan. I understand this is an administrative decision is this the case and that there is no guarantee in the legislation?

Answer

1. The specific notification processes for the measure are yet to be developed and will be finalised ahead of the 1 July 2022 implementation date.

Schedule 8 sets out that a job seeker's payment start date will not be delayed when the delay in completing their job plan is for a reason beyond their control.
2. As for question 1, the specific notification processes for the measure are yet to be developed and will be finalised ahead of the 1 July 2022 implementation date.

The development of these processes will be informed by the 2018 implementation of a similar RapidConnect process for job seekers referred to an employment services provider.
3. Job seekers will be able to immediately contact the Digital Services Contact Centre or choose to opt out of Digital Services and be connected to an employment services provider. All decisions under social security law are reviewable, including through the Administrative Appeals Tribunal. This would include any potential delays in payment as a result of Schedule 8 of the Bill.
4. The Bill does not contain any provisions enabling automated decision making. Rather, the provisions allow job seekers to self-manage online. The provisions include that job seekers may vary their Job Plan using the same processes that enable them to enter Job Plans online, and also a legislative requirement that if they request a variation of their Job Plan this must be considered (section 40V in the Bill).

Senate Standing Committees on Education and Employment

Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021

QUESTION ON NOTICE

Date of hearing: 11 June 2021

Outcome: Employment

Department of Education, Skills and Employment Question No. IQ21-000057

Senator Rachel Siewert provided in writing.

Lack of protections for workers undertaking employment programs

Question

1. Can you explain why jobseekers engaged in employment programs are not afforded the protection of occupational health and safety legislation?
2. Can you explain why employment programs need to be determined by legislative instruments and not primary legislation?

Answer

1. For many years, social security law has specified that a person is not to be treated as an employee or worker for a variety of Commonwealth laws when undertaking an activity (that is not paid work) as part of their mutual obligation requirements.

When these provisions were introduced in their original form in the *Social Security Legislation Amendment (Work For The Dole) Act 1997*, it was recognised that the Commonwealth has a responsibility for protection for all participants in Work for the Dole projects, but not as employees. This is because it is not appropriate for the Commonwealth, nor any other body, to be an employer in these circumstances. Participants are unemployed people supported by but not employed by the Commonwealth. These provisions were amended in 2009 to cover activities included in a Job Plan (the original provisions covered only Approved Programs of Work). The form of the provisions has remained largely unchanged since.

Even without these provisions it would generally be unlikely that a person engaged in unpaid activities could be considered a worker or employee for the purposes of those laws, but these provisions clearly specify this.

However, it is recognised that the Commonwealth, providers and host organisations have responsibilities to protect the work health and safety of individuals participating in Commonwealth employment programs. Providers and host organisations have a legal requirement to ensure the workplace and the activity being carried out meets all work health and safety obligations under relevant legislation and program requirements, and must maintain insurances as outlined in their relevant Deed and understand the coverage available to them under their own insurance policies.

The Government also purchases personal accident insurance and combined liability insurance to cover job seekers who undertake Work for the Dole and other activities, including travel to and from these activities. The insurance policies cover personal injuries to participants engaged in approved activities, and job seeker liability from negligence causing injury or damage to property at an activity.

These arrangements will not change under the proposed consolidation of existing provisions in social security law.

2. Under the New Employment Services Model, job seekers will have more flexibility in how they choose to meet their requirements through the Points Based Activation System. This will mean that some job seekers do not directly put all activities that they participate in individually in their Job Plan. As the Points Based Activation System is new, Schedule 6 makes clear that participating in an employment program is covered by these provisions, even if the participation is not directly entered into the Job Plan.

Specifying employment programs in a notifiable instrument reflects the need to be able to vary what programs people undertake; to maintain flexibility in what job seekers may undertake as part of their mutual obligation requirements, while allowing flexibility for the activity not to be directly in a person's Job Plan.

As mentioned in the Explanatory Memorandum, this does not broaden the application of these provisions to job seekers undertaking employment programs as part of their Job Plan because job seekers usually participate in Commonwealth employment programs in accordance with a term of a Job Plan and / or the program is an approved program of work. Also, even without these provisions it would generally be unlikely that a person engaged in unpaid activities could be considered a worker or employee for the purposes of those laws.

Senate Standing Committees on Education and Employment

Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021

QUESTION ON NOTICE

Date of hearing: 11 June 2021

Outcome: Employment

Department of Education, Skills and Employment Question No. IQ21-000058

Senator Rachel Siewert provided in writing.

Digital code of ethics for employment services

Question

Have you considered putting in place a legislated code of digital ethics for employment services?

Answer

The Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021 (the Bill) does not enable automated decision making or decisions by computers. Rather, the Bill enables job seekers more agency to better manage their own requirements, and greater choice. Provisions in the Bill ensure that job seekers will always have the option to enter a Job Plan with a person. Job seekers will have this option when given the requirement to enter a Job Plan or if they choose to vary their Job Plan (see for example sections 40A(3), 40E(2)). The Bill therefore provides more choice and flexibility for job seekers in how they manage their requirements without removing protections.

In addition, information collected and held about users of employment services is subject to a range of protections that restrict its use and disclosure. For example, job seekers' privacy will continue to be protected by law, including under the *Privacy Act 1988*.

Accordingly, the Bill does not require a digital code of ethics.