

## **JOBS AUSTRALIA SUBMISSION:**

Senate Education and Employment Legislation Committee inquiry into the Social Security  
Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014

28 OCTOBER 2014

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## 1. INTRODUCTION

### 1.1 ABOUT JOBS AUSTRALIA

Jobs Australia is the national peak body for not-for-profit organisations that assist unemployed people to get and keep jobs. We provide an independent voice for members who range from large charitable organisations to small local community-based agencies. Jobs Australia helps members to make the most effective use of their resources and promotes the needs of unemployed people for the services and support that will help them to participate fully in society.

Jobs Australia is the largest network of employment and related service providers in Australia. We are proud to be fully funded by and accountable to our members.

### 1.2 ABOUT THIS SUBMISSION

Jobs Australia has chosen to respond to the main measures that this bill proposes to implement. The submission does not cover every amendment. A number of amendments are minor or technical in nature and Jobs Australia does not seek to express a view on those measures.

## 2. SUMMARY OF RECOMMENDATIONS

### Recommendation 1:

Jobs Australia supports the measures and recommends that Part 1 of the Bill be supported, with the following exceptions:

- (i) Items 10 and 11 should be opposed, so that the *right* to administrative review is retained (however unlikely it is that anyone will use it); and
- (ii) That an appropriate amendment be made to require the Secretary to lift a suspension if a re-connection cannot be scheduled within two days, or by a date specified in a legislative instrument which can be disallowed by the Parliament.

### Recommendation 2:

Jobs Australia recommends that items 20-32 of Part 2 of the Bill be rejected.

### Recommendation 3:

Jobs Australia recommends that items 13-19 of Part 2 of the Bill be supported.

## 3. PRINCIPLES

### 3.1 INTRODUCTION

At the outset, Jobs Australia takes this opportunity to welcome the Government's decision not to proceed with its plans to shift responsibility for *reasonable excuse* decisions to employment services

providers. Jobs Australia and our member organisations had serious concerns about taking on decisions about the payment of benefits. It is one thing for providers to be reporting on job seeker engagement, knowing that those reports may lead Government to apply benefit sanctions, but it is completely another to have outsourced providers applying making decisions and applying sanctions directly. We are pleased that the Government has taken on board feedback from Jobs Australia, other peak bodies and providers and elected to retain the decision-making within the Department of Human Services.

It is also worth stating at the outset that Jobs Australia supports the principle of mutual obligation. This principle has been a long-standing and widely supported feature of the Australian welfare system. It provides an important signal to benefit recipients that the financial support that the community provides comes with an expectation that those who are able to work actively pursue work.

It is also appropriate that this expectation be reinforced with appropriate sanctions for non-compliance. Exactly what 'appropriate' means in this context is controversial, and it is not a straightforward consideration. At the crux of the issue is the impact that sanctions have on the ability and willingness (motivation) of the job seeker to look for work.

To that end there is a balance to be struck. Welfare payments in Australia are highly targeted and are set at a rate that provides for, at best, a very basic standard of living. Any suspension or reduction of payments is likely to have a large adverse impact on the welfare of the job seeker, as well as anyone else in their household. That impact, if too severe, can make it harder to look for work and drive individuals and families further into poverty.

In a recent example from the UK, [\*an ex-serviceman with diabetes passed away on the floor of his apartment\*](#) – with a pile of job applications beside him – after benefit sanctions left him without enough funds to buy the insulin that he needed to stay alive. The outcry has sparked calls for an inquiry into benefit sanctions in that country.

Rather than seek to penalise job seekers (and risking severe harm), sanctions should seek to encourage engagement in support services, with a view to the job seeker gaining employment as quickly as possible. The design should maximise the behavioural impact, while minimising the financial impact.

There is some evidence from reviews in Australia and elsewhere that overly punitive sanctioning can have the wrong effect on job seeker behaviour. Rather than promote genuine engagement, it can promote grudging compliance. Job seekers end up 'jumping through the hoops', technically meeting their mutual obligation requirements without being genuinely motivated to find employment.

### 3.2 PRINCIPLES FOR SANCTION DESIGN

Jobs Australia endorses the principles that were outlined in the final report of the last major review of benefit sanctions in Australia. This review, which presented its final report to Government in September 2010, was headed by Professor Julian Disney AO, a former law professor and now Chair of the Australian Press Council. The principles that were enunciated in the final report continue to be relevant to the design of sanctions.

Box 1: Independent Review of the Impacts of the new Job Seeker Compliance Framework, September 2010, pp77-78



### SOME UNDERLYING PRINCIPLES

3. In assessing impacts of the new compliance system and making recommendations for strengthening its operation, the Review has sought to apply the following principles.

#### *Obligations on job seekers*

4. Unemployed people who wish to receive income support from the government should be required to make reasonable efforts to obtain employment. These requirements can appropriately include attendance at appointments and activities which are likely to improve the job seeker's prospects of employment, including by assessing the kinds of barriers which he or she may face and the kinds of assistance which may be needed.

#### *Requirements for individual job seekers*

5. The requirements placed on a job seeker should take reasonable account of his or her individual circumstances. This includes a job seeker's existing or potential aptitudes as well as circumstances such as health status or family responsibilities which may limit their capacity to take advantage of some types of opportunity or to comply with some types of requirement.

#### *Enforcement of requirements*

6. Requirements should be enforced in order to maximise job seekers' prospects of obtaining employment and to support people and organisations which are engaged to help job seekers to do so. Enforcement is also necessary to prevent abuse of the social security system, unjustifiable loss of government revenue, and erosion of public support for assisting unemployed people to survive financially and to find work.

#### *Methods of enforcement*

7. Enforcement should be pursued in ways which recognise the characteristics and record of the individual job seeker in question. This includes sensitivity to the great difficulty which some job seekers experience in understanding and complying with requirements that may seem simple to others. It also includes vigorous scrutiny of people who appear to have no reasonable excuse for persistent non-compliance.

#### *Focus on engagement*

8. The main purpose of seeking to enforce requirements should be to achieve or restore active engagement of job seekers with processes and activities which have a reasonable likelihood of improving their employment prospects. Sanctions should be designed and applied to achieve this purpose, not merely to punish, except where it has become clear that the job seeker is persistently and deliberately failing to meet reasonable requirements.

#### *Impacts on providers*

9. The design and enforcement of requirements on job seekers should take reasonable account of the interests of people providing assistance to job seekers. In particular, they should be clear, consistent, and not subject to arbitrary change. They should not impose unreasonable administrative burdens on providers or unjustifiably hamper providers' ability to deliver appropriate assistance.

#### *Accountability and efficiency*

10. The design and enforcement of requirements on job seekers, providers and public servants

should be consistent with due public accountability and efficient administration. The requirements should be expressed clearly and succinctly, and they should be readily accessible to anyone with a reasonable interest in them. Key elements should be specified in legislation or other material after being available in draft form for public comment. In order to facilitate ongoing review of the compliance system by Parliament and the public, detailed statistics about its operation should be made available promptly and publicly.

#### *Responding to mistakes*

11. It is inevitable that mistakes will be made by people operating within large and complex systems of this kind. A high priority should be given to promptly identifying and rectifying mistakes, as well as reducing the likelihood of recurrence by improving relevant rules, training or work practices. Job seekers and other people who may be adversely affected by mistakes should have ready access to independent review of decisions relating to them.

## 4. SPECIFIC MEASURES IN THIS BILL

### 4.1 SUSPEND UNTIL ATTEND (EFFECTIVE 1 JAN 2015)

Jobs Australia broadly supports this measure, but with some concerns about aspects of the detail.

Our understanding of the changes is that they apply to appointments with employment providers (and not to other appointments, such as appointments with counsellors or other appointments that may be required as part of a job seeker's Employment Pathway Plan) and would mean that a suspension of payments for non-attendance would not be lifted until the job seeker actually re-connects with their provider, rather than when they indicate an intention to re-connect.

This reinforces the link between the failure of the mutual obligation requirement and the suspension, and may result in more job seekers reconnecting with their provider.

The practical effect of the changes proposed in the Bill need to be understood in conjunction with other administrative arrangements. From the information that we have been provided in briefings with the Department of Employment, we understand that, in practice, when a job seeker fails to attend an appointment with their provider:

- The provider has complete discretion as to whether or not to report the failure to attend. This gives providers the freedom to use more positive engagement strategies and not rely entirely on sanctions, which can undermine the relationship between the provider and the job seeker. If the provider does choose to submit a Non-Attendance Report (NAR), then (in accordance with administrative changes that have been made this year) the job seeker's payment will automatically be suspended by the Department of Human Services.
- Whether a NAR is submitted or not, the provider is contractually required to attempt to make contact with the job seeker and re-schedule the appointment. If contact cannot be made, then the provider would likely report the non-attendance and issue a notice to the job seeker of a requirement to re-connect.
- If a suspension has been applied and the appointment is rescheduled within two days and the job seeker attends the appointment, then the suspension will be lifted. If this occurs

within a payment fortnight, then there will be no impact on the job seeker's payment because the suspension will be lifted before the benefit is due to be paid. If the non-attendance occurs close to a payment date and the suspension results in a payment being delayed, then it will be paid as soon as the job seeker attends the reconnection appointment with full back-pay.

- If the appointment is not able to be rescheduled within two business days, then the suspension will be lifted automatically. We understand this will be managed through the IT system supplied to providers by the Department of Employment, so that if a provider books a re-connection appointment more than two business days after the Non-Attendance Report, the IT system will automatically result in the suspension being lifted.

Jobs Australia believes these arrangements strike an appropriate balance between providing an incentive for job seekers to reconnect with their provider and ensuring that vulnerable job seekers (and their families) are not unduly harmed.

Other aspects to the arrangements, however, cause us some concern. These mainly relate to accountability and are more matters of principle than practical effect. They are:

**1. Removal of the availability of administrative review of the decision to suspend payments.**

While it is undoubtedly easier for a job seeker to simply re-connect with their provider than it is to appeal the suspension, it is Jobs Australia's view that an important principle is at stake. The denial of review rights reduces accountability in the system and may encourage less prudent decision-making. In practice, we would anticipate that very few people, if any, would bother to appeal a decision to suspend and the cost or other burden arising from appeals is likely to be negligible. The only situation that we can imagine someone seeking to appeal is one in which a provider mistakenly reports non-attendance – a situation which is more likely to be simply corrected than result in a review. But the message it sends about accountability is a poor one, and we believe that any decisions that affect a person's payments should be reviewable as a matter of principle.

- 2. No legislative requirement for the suspension to be lifted.** We understand that the *intention* of the Department of Employment and the Secretary of the Department of Human Services is to lift suspensions automatically if an appointment is not rescheduled within two days. This is not part of the legislation, however, and the 'intention' will be given effect through administrative arrangements. There is no guarantee that the two-day limit will be what actually ends up being put in place, or that it will not be changed at a later date. Small changes to the administrative arrangements could significantly alter the practical effect of this bill and it is appropriate that Parliament retain oversight of enough of the settings to guard against the possibility that an entirely reasonable sanction regime could be turned into an oppressive and harmful one. An appropriate time limit, such as the two days that it is clear that the Government intends to apply, should be set either in the legislation or by a disallowable legislative instrument.

**Recommendation 1:**

Accordingly, Jobs Australia supports the measures and recommends that Part 1 of the Bill be supported, with the following exceptions:

- (iii) Items 10 and 11 should be opposed, so that the *right* to administrative review is retained (however unlikely it is that anyone will use it); and
- (iv) That an appropriate amendment be made to require the Secretary to lift a suspension if a re-connection cannot be scheduled within two days, or by a date specified in a legislative instrument which can be disallowed by the Parliament.

#### 4.2 NO EXCUSE, NO BACKPAY (EFFECTIVE 1 JUL 2015)

Jobs Australia opposes this measure.

Our understanding, which is again informed by detailed and comprehensive briefings from the Department of Employment, is that this measure would effectively mean that, in addition to the immediate, automatic suspension of payments upon receipt of a Non-Attendance Report, the Department of Human Services would assess whether the job seeker had a *reasonable excuse* for their non-attendance and, if not, then a sanction would be applied at the rate of one tenth of the job seeker's payment for each business day until they re-connect with their provider. In effect, this means that if the job seeker does not have a reasonable excuse, then they will not receive back-pay for the period in which their payment was suspended.

Jobs Australia believes the suspension of payments provides a significant incentive for job seekers to attend their appointments and, more importantly, to re-connect with their provider if they miss an appointment. We understand that administrative changes which now mean that providers contact job seekers who miss an appointment (pursuant to new requirements in their contracts) are already improving the re-connection rates.

The need for additional penalties has not been made out. If a job seeker's payment is suspended for non-attendance, then that job seeker has a strong incentive to re-connect. The addition of a 'no-excuse, no backpay' provision seems to be intended to create a deterrent effect, such that job seekers will ensure they turn up to the first appointment to avoid the risk of losing a portion of their payment. This assumes that the job seekers who miss appointments are making some sort of calculated analysis of the sanctioning regime, so that they can do the minimum required of them to continue receiving payments. Jobs Australia is not aware of any evidence that this is the case. Moreover, if any job seekers are actually making such a calculated assessment, they will likely respond to a change in the rules and continue to 'jump through the hoops' to ensure they comply.

There is a risk that genuine job seekers will be caught out and penalised, rather than those to whom the penalty is intended to apply. It is notable that vulnerable job seeker cohorts (including Indigenous job seekers) are consistently over-represented in sanction statistics, both in Australia and overseas.

Accordingly, Jobs Australia believes that the 'no excuse, no back-pay' provisions fail the principle that sanctions should be designed to have a maximum impact on behaviour while incurring the least possible harm to vulnerable job seekers.

#### Recommendation 2:

Jobs Australia recommends that items 20-32 of Part 2 of the Bill be rejected.

#### 4.3 MATURE AGE JOB SEEKER OBLIGATIONS (EFFECTIVE 1 JUL 2015)



Jobs Australia supports this measure.

Our understanding is that this measure will extend job search requirements to people receiving a participation payment aged 55 to 59 years who undertaking 30 hours per fortnight of voluntary and/or paid work. At the moment, people in that category are not required to search for work.

Extending job search requirements to this group means that from 1 July 2015 they will be required to look for work while continuing to undertake paid and/or unpaid part-time work.

This is consistent with arrangements in the Employment Services 2015-2020 tender and means that participation requirements will be the same for all job seekers up to the age of 60 years. While more could be done to address the particular barriers faced by mature age job seekers (particularly age discrimination), we do not believe that the need for additional assistance justifies a different set of job search obligations for people in the 55-59 age group.

**Recommendation 3:**

Jobs Australia recommends that items 13-19 of Part 2 of the Bill be supported.