



# Inquiry into the Social Security Legislation Amendment - (Stronger Penalties for Serious Failures) Bill 2014

July 2014



Presented by:

National Employment Services Association

Level 8, 20-22 Albert Road,

South Melbourne 3205

Contact: Ms Sally Sinclair CEO

P: (03) 9624 2300 | F: (03) 9686 3660

E: [nesa@nesa.com.au](mailto:nesa@nesa.com.au) | W: [www.nesa.com.au](http://www.nesa.com.au)

Vision, Voice, Support for the Employment Services Industry

## **Introduction**

Established in 1997, the National Employment Services Association (NESA) is the peak body for all Australian employment services. NESA members have extensive coverage of Job Services Australia (JSA), Disability Employment Services (DES) and the Remote Jobs and Communities Programme (RJCP) as well as other critical complementary employment related programmes such as the Indigenous Employment Programme (IEP), Australian Apprenticeship Centres (AAC), Group Training Organisations (GTO) and New Enterprise Incentives Scheme (NEIS).

NESA membership includes community, not-for profit and private organisations delivering services across the breadth of Australian employment and related services. NESA's representation reflects our unique perspective on the functioning and development of the broader employment services policy and programme framework as well as in-depth understanding of individual programmes and operating environments.

NESA welcomes the opportunity to provide feedback to the Inquiry into the Social Security Legislation Amendment - (Stronger Penalties for Serious Failures) Bill 2014. Providers of employment and related services are an important stakeholder in the job seeker compliance framework. NESA has consulted with members in the preparation of this submission.

## **Background**

Australians value and support the social safety net provided through our Social Security mechanisms and their contribution to a cohesive and civil society. There is also clear support for the principle that individuals should take responsibility for undertaking steps to improve their circumstances and not be dependent on the welfare system to the extent they have the capacity to do so.

There are however varied perspectives about the most sustainable and effective welfare models and the balance between responsibility and obligation. The compliance and breach penalty system in particular has attracted attention for many years, with a range of inquiries and research exploring implementation and outcome of compliance measures.

There has also been significant reform undertaken to strengthen the efficacy of the job seeker compliance regime over time. This current Bill intends to introduce a stronger compliance framework for job seekers with a more rigorous approach to the application of penalties to job seekers who refuse a job offer, including by failing to commence the job or who are persistently non-compliant.

As indicated in the Schedule 1 Amendments, currently:

- there are two types of serious failures. The first is a serious failure for persistent non-compliance with participation obligations - see section 42M. The second type involves refusing or failing to accept an offer of suitable employment (section 42N);
- if the Secretary determines that a person commits a serious failure and has determined that section 42NC applies, a participation payment is not payable to the person during the person's serious failure period (section 42P). A serious failure period is 8 weeks unless the Secretary ends the period earlier under current section 42Q;
- section 42NC applies if the Secretary determines that a person commits a serious failure unless the Secretary is satisfied that the person does not have the capacity to undertake any serious

failure requirement and that serving the serious failure period would cause the person to be in severe financial hardship; and

- subsection section 42Q(1) provides that the Secretary may end a person's serious failure period if the person begins to comply with a serious failure requirement imposed on the person, or the Secretary determines that the person does not have the capacity to undertake any serious failure requirement and that serving the serious failure period would cause the person to be in severe financial hardship.

The key focus for change are the amendments to the current Act (Division 3A – Part 3) specifically:

- Job seekers who incur eight week non-payment penalties for persistently failing to meet their participation requirements will only be able to have their eight week non-payment penalty waived once while in receipt of an activity tested income support payment (Section 42M).
- Job seekers who incur an eight week non-payment penalty for refusing or failing to commence work without good reason will no longer be able to have the penalty waived under any circumstance but will instead be required to serve the eight week penalty in full (Section 42N).

NESA seeks to provide feedback on these proposed changes. Central to this feedback is the view that there must continue to be a focus on individual responsibility through a compliance and penalty system and an emphasis on the value of employment participation.

We understand that non-attendance at a provider appointment accounts for the highest volume of reports that providers submit to the Department of Human Services. Changes to reasonable excuse provisions and application of penalties is intended to encourage individuals to accept responsibility for their actions and also achieve red tape reduction for employment services providers.

It is essential that there is sufficient flexibility in all aspects of the compliance framework to consider a range of information about an individual's genuine circumstances within compliance processes, and that job seekers who face the significance of an 8 week payment penalty have an opportunity to present extenuating circumstances, as is currently the case. It is important from NESA's perspective that those job seekers with greatest issues and in challenging circumstances are not penalised due to their disadvantage by a blanket approach to serious non-compliance.

#### **Item 1**

NESA notes the current requirement for the Secretary to determine that section 42NC applies unless satisfied that the person does not have the capacity to undertake any serious failure requirement and that serving the serious failure period would cause the person to be in severe financial hardship. It is also noted that the purpose of current section 42NC is so that serious failure periods will not commence until a determination has been made regarding financial hardship. If there is a delay in the Department of Human Services assessing financial hardship, current section 42NC will prevent a serious failure period from commencing until that assessment has been completed. This ensures that job seekers are not penalised due to administrative delays that are beyond their control.

Under the proposed changes section 42NC would not apply to a serious failure (under section 42N) consisting of refusing an offer of suitable employment. This means that refusal of an offer of employment is not subject to the same consideration as other reasons for serious failure.

There are some mixed views from NESA members on the proposed change to the current provisions. On the one hand providers believe that the measure, by bringing a more direct focus on refusing a job, could help move some job seekers to take individual responsibility and more quickly engage with work. On the other hand, a different view was that the same provisions for review should be retained rather than treating refusal of employment differently. Given the complexity of job seeker individual circumstances

and the time it can take to ascertain all relevant circumstances, some degree of flexibility and discretion is needed in the decision-making and determination process.

## **Item 2**

Item 2 would replace existing subsection 42P(1) outlining the consequences of serious failure to reflect the amendment made by Item 1. As per comments for Item 1, there are differing views about this proposal.

Ensuring that job seekers are provided with notice about the potential consequences of failing to comply as a fundamental element of the framework does not mitigate against a range of scenarios that may impact on compliance. However, as previously indicated, some providers believe this change would increase the motivation for job seekers to participate, while others feel that maintaining the status quo is preferable.

## **Item 3**

Under current 42Q(1), the Secretary may end a person's serious failure period if the person begins to comply with a serious failure requirement, or the Secretary determines the person does not have the capacity to undertake any serious failure requirement and serving the serious failure period would cause severe financial hardship.

Item 3 would insert new subsections 42Q(4), (5) and (6). 42Q(4) provides that the Secretary's power to end a person's serious failure period under subsection 42Q(1) would no longer apply to serious failure periods arising from a person's refusal of, or failure to accept, an offer of suitable employment.

Members recognise it is essential to have sufficient deterrents to persistent and/or serious acts of non-compliance, however there are again mixed views on the provisions under new subsection.

The effect of subsection 42Q(5) would be that the Secretary may only end a serious failure period under subsection 42Q(1) once in relation to a continuous period in respect of which a person receives participation payments, regardless of the number of serious failures under subsection 42M(1) in the continuous period.

This blanket approach may not consider the complexity in circumstances that may occur over a period of time, particularly with the most vulnerable individuals. The current provision for an individual to be subject to a serious failure requirement to undertake a particular intensive activity for eight weeks in lieu of serving the eight week serious failure period is considered by some an appropriate measure to provide the incentive to reengage. Activities which could fulfil a serious failure requirement include Work for the Dole, part-time work, work experience, approved training or intensive job search.

## **Item 4**

The provisions of 42R(1) allows the Secretary to determine that, despite a person's serious failure period, a participation payment is payable to a person that informs the Secretary that they intend to comply with a serious failure requirement.

Item 4 inserts a new subsection 42R(4), which would have the effect that the Secretary no longer has this discretion for a person that person refuses or fails to accept an offer of suitable employment.

As with previous comments, there are mixed views about this change.