

Inquiry into the Social Security Legislation Amendments (Further Strengthening Job seeker Compliance) Bill 2015

**Australian Unemployed Workers'
Union (AUWU) Submission to the
Senate Committee**

12 October 2015

Introduction

1. The Australian Unemployed Workers' Union (AUWU) is a national body representing unemployed Australians. The AUWU formed in early 2014 with the primary aim of fighting for the rights and dignity of unemployed workers and has active branches in Melbourne, Sydney, Brisbane and Adelaide. The AUWU has in excess of 200 members across Australia.
2. Since forming, the AUWU has been collecting stories from Newstart recipients regarding their concerns with Employment Service Providers. The vast majority of these stories involve an Employment Service Provider misinforming, unfairly penalizing, and intimidating Newstart recipients. After collecting these stories, the AUWU has made helping Newstart recipients deal with Employment Service Provider a priority. To this end, in October 2015 the AUWU set up a National Advocacy Service to inform Newstart recipients of their rights under social security law and assist them in their dealings with Employment Service Providers.
3. The AUWU welcomes the opportunity to make a submission to this Senate Inquiry. Furthermore, the AUWU seeks the opportunity to appear before the committee. We feel that having the voices of Newstart recipients heard at this Senate Committee is essential in order to achieve measured and appropriate policy in this area.
4. The AUWU strongly recommends that this Bill be rejected in its entirety.

About the Bill

5. The *Society Security Legislation Amendment (Further Strengthening Job Seeker Compliance) Bill 2015* proposes a number of changes to social security law, which as a whole will serve to strip away a number of important rights and protections currently enjoyed by Newstart recipients.
6. The Bill proposes that:
 - Newstart recipients be financially penalised if they refuse to sign their Job Plan at their first Employment Service Provider appointment.
 - Employment Service Providers should be given the power to subject Newstart recipients to instant financial penalties if they act

in an inappropriate manner during an appointment “such that the purpose of the appointment is not achieved”

- the ‘No Show, No Pay’ penalty be significantly expanded to Newstart recipients who fail to attend appointments with specialist service providers, such as Work for the Dole host organisations or training providers
- Employment Service Providers be given expanded powers to financially penalise job seekers who fail to provide adequate proof of their Job Searches
- the conditional 8-week suspension waiver for Newstart recipients who refuse suitable employment be abolished.

7. If enacted, these changes will come into effect 1 July 2016.

Background

8. This bill is a rapid expansion of the proposals carried within the *Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014* which introduced an array of new financial penalties that could be imposed on Newstart recipients.

These changes, and those already introduced, have been done with little consideration of their effects on jobseekers, and without accountability or an independent assessment of their effects so far.

9. The Bill represents a continued attack on the rights of unemployed workers, and should be viewed in that context.

The Australian Unemployed Workers’ Union’s Position

10. By stripping away a number of important rights of Newstart recipients and introducing an array of new financial penalties, the proposed changes will only serve to place increased financial and psychological stress on Newstart recipients.

11. Considering that according to Australian Bureau Statistics¹ and the Department of Employment² there are currently 1.83 million unemployed and under-employed people competing for only 153,000 job

¹ Labour Force, August 2015

² Vacancy Report, August 2015

vacancies – resulting in a record high ratio of 12 job seekers per job vacancy – there is no evidence to suggest that these proposed changes will help Newstart recipients get work. On the contrary, these changes introducing new financial penalties for Newstart recipients and stripping them of their rights will make the job search activities of Newstart recipients considerably more difficult.

12. For the Employment Service Provider system to work effectively it is imperative that it enables Newstart recipients to communicate their needs effectively to their Employment Service Provider. This is essential in order for the Newstart recipient to be motivated in their search for employment.

We wish to point out in the strongest possible terms that the changes proposed by this Bill will significantly reduce the ability of Newstart recipients to communicate their personal circumstances to their Employment Service Provider.

13. The AUWU's position on each proposal of the bill is as follows:

- Unfair Job Plan Process

By proposing that Newstart recipients be financially penalised if they refuse to sign their Job Plan at their first Employment Service Provider appointment, this Bill will take away the essential right of Newstart recipients to negotiate a fair and reasonable Job Plan (formerly Employment Pathway Plan).

Under the current system, Newstart recipients can only be financially penalised by the Employment Service Providers for failing to sign their job plan after the second refusal to sign. This gives Newstart recipients the right to take their Job Plan home and review it carefully before being required to sign.

This is a reasonable expectation in a society governed by laws and justice and indeed common sense, and its removal could be contrary to law and therefore subject to a legal challenge.

As recent figures show that 1 in 4 Newstart recipients have a significant

disability,³ it is essential that Newstart recipients be allowed the time to carefully consider their Job Plan in order to ensure their personal circumstances are being taken into account.

If Newstart recipients are denied this necessary time to consider the job plan – known in the government’s Job Plan Guideline as ‘*think time*’ – vulnerable job seekers will be at risk of signing Job Plans that do not accurately reflect their personal circumstances, potentially resulting in mental distress, injury and other serious consequences.

According to Assistance Minister for Employment Luke Hartsuyker, Newstart recipients who do not initially sign a Job Plan “are essentially saying to the taxpayer, ‘I will take your money but don’t expect anything in return from me.’ No worker would be able to demand that of an employer—so why should a job seeker be able to demand that of the taxpayer?”

What Mr Hartsuyker seems to forget is that no employer would threaten employees with financial penalties if they fail to sign a contract on the spot. So why should Newstart recipients be subjected to such punitive measures?

- Penalising ‘inappropriate behaviour’

By proposing that Employment Service Providers should be given the power to subject Newstart recipients to instant financial penalties if they act in an inappropriate manner during an appointment “such that the purpose of the appointment is not achieved”, this Bill will take away the essential right of Newstart recipients to partake in an equal negotiation with their Employment Service Provider.

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 the demands of their Employment Service Provider. Such a disagreement could mean that the “purpose of the appointment is

³ ‘One in Four on Newstart have Significant Disability’, *The Australian*, 3 October 2014

not achieved”, which under the proposed bill may result in Newstart recipients being financially penalised.

The Australian Unemployed Workers’ Union strongly objects to this measure noting that it will lead to a vast increase of instances in which Employment Service Provider’s bully Newstart recipients into accepting unfair mutual obligation requirements.

According to Mr Hartsuyker, “an employee who misbehaves at work and fails to participate would not be paid by their employer”. However, in most cases employees who make mistakes at work are given warnings before they are sacked or docked wages. Under this bill, Newstart recipients have been denied this important right to a warning.

- Expansion of ‘No Show No Pay’ Penalties

As noted above, this bill proposes to expand the ‘No Show, No Pay’ penalty to Newstart recipients who fail to attend appointments with specialist service providers, such as Work for the Dole host organisations or training providers. Much like the ‘no show, no pay’ penalties introduced in July 2015 which subjected Newstart recipients to permanent financial penalties if they missed Job Search appointments with their Employment Service Providers, these proposed ‘No Show, No Pay’ penalties will expand upon existing financial penalties.

The proposed introduction of immediate ‘No Show, No Pay’ penalties significantly impedes the important right Newstart recipients have to review the compliance decisions of Employment Service Providers.

The Australian Unemployed Workers’ Union wishes to point out in the strongest possible terms that expanding the already excessive penalising powers given to Employment Service Providers is completely unnecessary and will only serve to push more disadvantaged Australians deeper into poverty.

It will also exacerbate the power imbalance between employees of Employment Service Providers and those who are seeking assistance, not punishment.

- Refusing Work and Insufficient Job Searches

Finally, this Bill proposes that Employment Service Providers be given expanded powers to financially penalise job seekers who fail to provide adequate proof of their Job Searches. Additionally, Newstart recipients will no longer be able to have 8-week suspensions waived if they agree to undertake a new activity.

Yet again, this Bill is expanding already existing powers that Employment Service Providers have to penalise Newstart recipients for non-compliance. The Australian Unemployment Union strongly opposes this heavy handed approach as it will only serve to push Australia's most disadvantaged deeper in poverty, and ultimately, away from employment.

As these organisations have been created to help people into employment, it is inappropriate to allow them to operate in a way which will do the opposite.

14. Since forming in early 2014, the single biggest concern of the AUWU has been the behavior of unscrupulous Employment Service Providers who financially penalise Newstart recipients for minor infringements. Even more concerning is the high number of cases where Newstart recipients were financially penalized through an error on the behalf of the Employment Service Provider. Cases where Employment Services Providers fail to give the necessary information to Newstart recipients about their rights under social security law are rife.

AUWU Recommendations

15. As it is the firm opinion of the AUWU that this Bill will significantly strip away a number of important rights of Newstart recipients integral to achieving a fair negotiating process between Newstart recipients and their Employment Service Provider, the AUWU recommends that this Bill be rejected in its entirety.
16. Furthermore, we would like to note that the previous *Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014* – which gave Employment Service Providers the power to impose new financial penalties on Newstart recipients – has had a profoundly negative effect on the psychological and physical health of Newstart recipients. This has in turn served only to push them further away from employment, as instead of devoting their time to looking for

work, many breached Newstart recipients have to concern themselves with keeping their heads above water financially. The AUWU knows of a number of people whose risk of homelessness has been increased by these measures.

By significantly expanding the array of financial penalties and sanctions that Employment Service Provider can impose on Newstart recipients, the *Society Security Legislation Amendment (Further Strengthening Job Seeker Compliance) Bill 2015* will place further strain on the psychological and physical health of Newstart recipients.

Human Rights Concerns

17. In the explanatory memorandum that accompanies the bill, it is argued that the proposal to give Employment Service Providers expanded powers to financially penalise Newstart recipients is “compatible with human rights and freedoms recognised or declared in the internal instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.”

According to the ‘Statement of Compatibility with Human Rights’ contained with the explanatory memorandum, the bill engages with three human rights. These are as follows:

- *the right to social security in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);*
- *the right to an adequate standard of living in article 11 of the ICESCR;*
- *and the right to work in article 6 of the ICESCR.*

18. Despite the overwhelming evidence that the Coalition government is systematically denying Newstart recipients these basic human rights, the explanatory memorandum states that the bill is compatible with human rights “because it promotes the right to work, and to the extent that it may limit human rights, the impact is for a legitimate objective, and is reasonable, necessary and proportionate.”

Considering that according to recent figures from the Australian Bureau Statistics and the Department of Employment there are currently 1.83 million unemployed and under-employed people competing for only 153,000 job vacancies – resulting in a record high ratio of 12 job seekers per job vacancy – there is no evidence to suggest the Coalition government is promoting the right to work.

On the contrary, the Coalition Government's response to this growing unemployment crisis – which has involved significantly expanding the punitive powers of Employment Service Providers while allowing the Newstart allowance to stagnate at \$277 per fortnight below the poverty line⁴ – has in fact led them to not only abandon the right to work principle, but also to abandon the other two human rights listed in the memorandum.

For the sake of the 1.83 million Australians currently looking for full-time work, and for the sake of Australian society more broadly, the Australian Unemployed Workers Union asks you to recommend that this heavy-handed and punitive Bill be withdrawn in its entirety. What unemployed Australians need is a helping hand into work, not more punishments.

The AUWU wishes to point in the strongest possible terms that the only real lasting solution to Australia's growing level of unemployment – currently at a 12-year high and widely expected to increase further – is Government-administered public sector job creation. No matter how extreme punishments are for those locked out of the job market, this will only have the effect of further victimising an already extremely disadvantaged group.

With more than two and a half million people, including more than 600,000 children, now living below the austere poverty line in Australia,⁵ we should be focusing on poverty alleviation as a priority, as other countries have done effectively. It is not appropriate to just focus on unemployed people and their families for further attacks and punishments. This will be both counter-productive and ineffective and should be abandoned.

⁴ Poverty in Australia Report 2014, *Australian Council of Social Service*

⁵ *Ibid.*,