

## **Department of Employment**

# **Submission to the Senate Education and Employment Legislation Committee Inquiry into the Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014**

### **Background**

This Bill seeks to amend the *Social Security (Administration) Act 1999* and the *Social Security Act 1991*.

Currently a job seeker on income support is generally required to attend a scheduled appointment with their employment provider at least once a month. If they fail to attend one of these appointments their income support payment may be suspended until they agree to attend a rescheduled (reconnection) appointment. This means that a person can say they will attend a reconnection appointment without any real intention of doing so but still have their payment reinstated on that basis.

From 1 January 2015, the Bill would make a change so that if a job seeker's payment is suspended following a failure to attend an appointment with their provider it would be restored when they actually attended their reconnection appointment, rather than just when they agreed to attend. This will create a greater incentive for the job seeker to attend their appointment. On attendance, the job seeker would receive full back pay.

From 1 July 2015, the Bill would further strengthen these arrangements so that, if the job seeker did not have a reasonable excuse for missing their initial scheduled appointment as determined by the Department of Human Services, they would not be back paid.

Also from 1 July 2015, the Bill would make changes to mutual obligation requirements for job seekers who are 55 years or older to encourage greater participation in the workforce by those who are capable. It would do this by aligning mutual obligation requirements for specified job seekers who are 55 or older with those that are applicable to younger job seekers.

### **Policy rationale for the proposed changes**

#### *Compliance changes*

Attendance rates by job seekers at appointments with their employment providers remain unacceptably low. In the 2013-14 financial year:

- 12.75 million compulsory appointments with employment providers were scheduled;
- of these, 4.47 million were not attended by job seekers;
- only 65 per cent of appointments that job seekers were required to attend were actually attended;

- for 60 per cent of appointments not attended the job seeker did not give an acceptable explanation to their provider; and
- almost 280,000 (or more than one in five) job seekers were found by Human Services to have had no reasonable excuse under social security law for missing an appointment with their provider on at least one occasion.

Having more than one in five job seekers fail to attend one or more appointments in a year with no reasonable excuse is clearly not acceptable. This Bill seeks to address this behaviour.

This poor attendance rate is despite the fact that job seekers are clearly and repeatedly notified of any requirement to attend an appointment. All job seekers are given formal notice in person or in writing about their appointments, which includes information about what will happen if they do not attend. Job seekers are also given informal reminders via email or SMS of any appointments they are required to attend, where they indicate a preference for this.

Given that such mechanisms are already in place to encourage attendance, this Bill aims to provide a greater incentive for job seekers to attend appointments with employment providers by strengthening the consequences of not doing so. This is ultimately to ensure that job seekers are engaging with providers and making the most of the assistance they can offer to help job seekers to find work. The possibility of having some income support payment deducted, instead of just delayed, for the days of non-attendance will provide a greater incentive to job seekers to attend scheduled appointments.

These changes will also reduce the administrative burden (and consequent financial impact) on providers from having to chase up non-attending job seekers and report them to Human Services.

#### *Changes for older job seekers*

Currently, job seekers who are 55 or older can meet their requirements by undertaking 15 hours per week of part-time voluntary work, paid work or a combination of the two, whereas most younger job seekers doing so would have to undertake job search or other activities in addition to their part-time paid or voluntary work.

This Bill will provide that this concession does not apply for job seekers specified in a new legislative instrument. It is intended that the instrument will specify job seekers aged 55-59 who are eligible to participate in Job Services Australia. These job seekers will continue to be able to undertake part-time paid work and, with their provider's approval, voluntary work but they will also be required to look for full-time work, with the aim of no longer being reliant on income support. This brings their requirements into line with job seekers who are under 55 years of age. Given the ageing workforce and the fact that most people aged 55 have many potentially productive years ahead of them, it is no longer acceptable for 55-59 year old job seekers to effectively retire on Newstart while undertaking a bit of voluntary or part-time work.

## **Who will this Bill affect?**

### *Compliance changes*

The majority of job seekers comply with their mutual obligation requirements and do not come into contact with the compliance framework. Of those job seekers on payment at 30 June 2014, 68 per cent had not been reported for non-compliance to Human Services by their providers during the previous 12 months.

However, in 2013-14, employment providers reported job seekers to Human Services for not attending appointments on around 990,000 occasions. This accounted for 85 per cent of all reports of non-compliant behaviour that were made in that year. In 542,132 (54.5 per cent) of cases, Human Services found under social security law that the job seeker did not have, or did not give prior notice of, a reasonable excuse for their non-attendance and applied a "participation failure". That is, they applied either a connection failure (in most cases) or a reconnection failure. Connection failures do not result in an immediate financial penalty, but count towards the number of failures needed to trigger a Comprehensive Compliance Assessment, which may result in the application of an eight week non-payment penalty if the job seeker is found to have been deliberately and persistently failing to meet their requirements. A reconnection failure, which is applied for missing an appointment that has already been rescheduled, results in loss of payment until the job seeker attends a further rescheduled appointment. These participation failures were applied to 279,590 job seekers.

Departmental data indicates that these changes are most likely to impact on younger job seekers. In 2013-14, job seekers under 30 years of age had a 58 per cent attendance rate, compared to 65 per cent for the total activity tested job seeker population and 70 per cent for those 30 years or over. Job seekers less than 30 made up 53 per cent of job seekers who incurred at least one participation failure for not attending an appointment during the year, even though they represented only 32 per cent of the total activity tested job seeker population.

Participation failure rates for young male job seekers for not attending appointments are higher than for young females. While males under 30 made up only 18.7 per cent of the total activity tested job seeker population, they made up 34 per cent of job seekers who incurred at least one participation failure for not attending an appointment in 2013-14. In comparison, females under 30 made up 13.7 per cent of the job seeker population and 19 per cent of job seekers who had incurred at least one participation failure for not attending an appointment. Males under 30 are also more likely to persistently fail to meet their requirements, and in 2013-14 they incurred 55 per cent of serious failures for persistent non-compliance.

At the other end of the data spectrum, Principal Carer Parents are very compliant and therefore least likely to be affected by these changes. While they represented 19 per cent of the total activity tested job seeker population in 2013-14 they made up only 10 per cent of job seekers who had incurred at least one participation failure for not attending an appointment.

These changes are therefore needed to address the high rate of appointment-related non-compliance among young, particularly male, job seekers.

### *Changes for older job seekers*

The changes to arrangements for older job seekers will affect only a small proportion of job seekers in this age category. Whilst there are around 45,000 job seekers aged 55-59 with full-time mutual obligation requirements in Job Services Australia, only around 6,000 of them are currently fully meeting their participation requirements through part-time voluntary work, part-time paid work or a combination of voluntary work and paid work.

### **How will the changes affect individual job seekers?**

#### *Compliance changes*

Maintaining income support payment suspension until a job seeker attends their appointment provides an important failsafe mechanism for ensuring that those who miss an appointment quickly re-engage with their employment provider. Payment suspension provides a means of doing this without the need to impose a lasting penalty where it turns out that the job seeker had a reasonable excuse for their non-attendance. A job seeker who reaches their fortnightly income support instalment day without having reconnected will have their income support withheld, which will prompt them to arrange another appointment. Because they will have to attend the appointment to have their income support payment restored, they will have an incentive to actually do so.

However, in practice, the provisions will not generally result in income support payments being delayed. This is because fortnightly income support payments are made in arrears and job seekers will have an incentive to contact their provider and reconnect before their instalment day. Even so, while more often than not the suspension will not result in an actual delay, the potential for a delay will provide a deterrent to continued disengagement.

Job seekers will also be assisted to reconnect and will not be disadvantaged for reasons beyond their control. Payments will be automatically reinstated if a job seeker is willing to attend a reconnection appointment but the employment provider is unable to conduct one within two days from the date the person contacts them. Providers will also have the flexibility to conduct a reconnection appointment over the telephone when the job seeker first contacts them following their initial missed appointment. These safeguards will be particularly important for job seekers in remote communities.

From 1 July 2015, job seekers who miss appointments without giving prior notice of a reasonable excuse may lose ten per cent of their fortnightly income support payment for each working day from when they fail to attend until they attend a rescheduled appointment. A single job seeker aged 22 or over with no dependents would lose \$51.56 for each working day. This provides a stronger but proportionate deterrent to non-compliance. Those who miss an appointment but who have a reasonable excuse will still just have their income support payment suspended, with full back pay upon attendance, whereas those who do so without a reasonable excuse will actually lose some income support payment.

However, the same arrangements for ensuring that suspended job seekers are not disadvantaged for reasons beyond their control will also apply to job seekers who are actually losing some income support payment due to not having provided a reasonable

excuse. Providers will be able to conduct reconnection appointments over the telephone and where an appointment cannot be scheduled to occur within two working days the job seeker's penalty period will end immediately. It is unlikely that a job seeker who responds promptly to a request to contact their provider and re-engages following a missed appointment will lose more than a couple of days' income support payment.

### *Changes for older job seekers*

As indicated above, relatively few job seekers will be affected by the changed arrangements for job seekers who are 55 and older. The measure will only affect those in Job Services Australia and who are under 60 years of age. Affected job seekers will generally be able to continue in their current activities but will also need to look for full-time work and participate at a level expected of younger job seekers. This measure complements other Government initiatives such as Restart, which provides a wage subsidy of up to \$10,000 for an employer who takes on an eligible older worker.

## **Safeguards**

### *Compliance changes*

Providers have full discretion not to report a job seeker's non-attendance to Human Services. Even where job seekers fail to attend an appointment without giving a valid reason, providers have the discretion to not take this any further if they believe it will not help in ensuring the job seeker's future attendance. In 2013-14, there were 1,274,822 appointments missed by job seekers without a reasonable excuse that were not reported to Human Services by providers. This represents 29 per cent of all missed appointments.

Under social security law, it has always been the case that no participation failure that will result in a financial penalty can be applied if the job seeker has a reasonable excuse for their non-compliance. This means that, wherever possible, 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.

The meaning of the term 'reasonable excuse' is not defined in legislation, so as not to limit the discretion of the decision-maker. However, the policy intention is that if the circumstances that resulted in the job seeker's failure to comply were either unforeseeable or outside the job seeker's control the job seeker will generally be taken to have a reasonable excuse. As is currently the case, job seekers who are unable to attend an appointment but give prior notice of a reasonable excuse for not attending (when it is reasonable to expect them to do so) will not be penalised under this Bill.

The definition of reasonable excuse included in policy guidelines covers a wide range of potential circumstances including, but not limited to, where a job seeker was working, was incapacitated due to illness or injury, had unexpected transport difficulties, had a death in the family or had unforeseen caring responsibilities, such as needing to look after a sick child. Broader aspects of the job seeker's circumstances are also taken into account, such as any mental health or substance abuse issues, homelessness and literacy problems, where these may have impacted on the job seeker's capacity to comply.

Job seekers who are unable to participate in employment services for extended periods can also apply for exemptions from their mutual obligation requirements, and will not be penalised for the duration of their exemption.

Although reasonable excuse provisions apply to all job seekers, they are intended primarily to ensure that vulnerable job seekers are not penalised for actions that are beyond their control or are a direct consequence of their vulnerability. For this reason, a legislative instrument requires decision-makers to take specific vulnerabilities, such as homelessness and mental health issues, into account when considering reasonable excuse.

Additional safeguards for vulnerable job seekers will also continue to apply. Vulnerable job seekers are identified on the IT systems used by employment providers and Human Services by a Vulnerability Indicator, which ensures that providers and 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 can also 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.

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.

Data indicates that job seekers with Vulnerability Indicators have a poorer attendance rate than the general job seeker population (62 per cent compared to 65 per cent) and are more likely to be reported for non-compliance (42 per cent had at least one participation report requiring investigation by Human Services in 2013-2014, compared to 32 per cent of the general population). However, they are no more likely than other job seekers to incur participation failures for non-attendance at appointments (representing around 14 per cent of the job seeker caseload and a similar proportion of job seekers who incurred one or more failure for non-attendance in 2013-14). This shows that these safeguards are working.

#### *Changes for older job seekers*

Using a legislative instrument to specify which job seekers will be required to meet full participation requirements allows this measure to be targeted to those who are in Job Services Australia and therefore most able to meet full requirements. Job seekers who are in Disability Employment Services or the Remote Jobs and Communities Programme will not be subject to the measure. Separate provisions in the Social Security Act that allow job seekers with a partial capacity to work to meet their requirements through reduced participation will not be affected by this Bill.