

**Submission by the  
Department of Education, Employment and Workplace Relations  
to the  
House of Representatives Standing Committee on Education and  
Employment  
inquiry into the Social Security Legislation Amendment (Job Seeker  
Compliance) Bill 2011**

**Background**

Australian unemployment payments are funded from general revenue to provide financial support for people who are unemployed and looking for work. In return for financial support, unemployed people have a responsibility to demonstrate that they are looking for work or undertaking activities to improve their employment prospects, such as vocational training, Work for the Dole and other activities. Social Security law provides for the imposition of financial penalties on those who fail to meet these requirements without good reason, including failing to attend appointments with employment services providers. The current penalty framework is outlined at **Attachment A**.

The *Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011* provides legislative support for the Government's election commitment to introduce measures to improve job seeker attendance at appointments with their employment services providers. This was announced on 11 August 2010 as part of the "Modernising Australia's Welfare System" policy statement.

Job Services Australia and Disability Employment Services, which constitute the Australian Government's national employment services system, provide tailored assistance for job seekers by linking them with training, skills development and work experience. It is important that job seekers participate fully in these services to improve their skills and maximise their employment prospects.

**The objective of the Bill**

The changes to compliance policy that are supported by this Bill are intended to improve job seeker attendance rates at provider and related appointments and activities, primarily through the use of suspension of income support payments.

On 31 May 2010 and 2 July 2010, the then Minister for Employment Participation wrote to Professor Julian Disney AO, chair of the Independent Review of the Job Seeker Compliance Framework, advising him of the Government's intention to use suspension of payment, rather than compliance action, for job seekers who failed to attend the newly introduced personal contact interviews with Centrelink. The Minister invited the review panel to consider extending the use of suspension to job seekers who failed to attend appointments with their employment services providers. The Minister indicated that he was of the view that "suspension of payment utilised in such a way that it complemented the compliance framework could provide a useful tool for improving job seeker engagement."

The Department's submission to the independent review also suggested the panel may wish to consider the extended use of suspension and ways to make the impact of penalties more immediate.

The independent review did give some consideration to this and, in its report released on 30 September 2010, included the following recommendation.

Recommendation 14.

- (1) If further and significant improvements are not achieved within the next 12 months or so in jobseekers' attendance rates at appointments with providers, consideration should be given to Centrelink having a discretion in specified circumstances to suspend payment as the result of a Connection Failure.
- (2) This discretion should be exercisable where
  - the job seeker is in Stream 1 or 2 and is not the subject of a Vulnerability Indicator; and
  - the missed appointment had been agreed with the job seeker by Centrelink (for example, as the result of a Contact Request by the provider).
- (3) The suspension could be for, say, fourteen days subject to payment being restored with full back pay if the job seeker agrees to a new appointment for a date earlier than the end of the suspension period.

Attendance rates at provider appointments are detailed at **Attachment B**. In the first year of the previous Government's Welfare to Work system, 2006-07, attendance rates at appointments with Job Network Providers and Community Work Coordinators (the then equivalent of Job Services Australia Providers) averaged 54%. In the last year of the Welfare to Work system they averaged 56%. The attendance rate improved immediately following the introduction of the current compliance framework in July 2009, reaching 59% in the first quarter of the 2009-10 financial year. However, for the final quarter of 2009-10 and the first quarter of 2010-11, the attendance rate had again fallen to 56% and by the December quarter it had fallen to 55%.

In 2009-10, eleven per cent of job seekers had two or more participation reports submitted to Centrelink, accounting for 72 per cent of all participation reports submitted to Centrelink. Thirteen per cent of job seekers had one participation report while 75 per cent of job seekers had none.

In 2009-10, over 3.7 million appointments were not attended, and in over 2 million cases the job seeker had no valid reason for their non-attendance. In comparison, the total number of participation reports submitted in 2009-10 was 376,798. The volume and proportion of appointments that are not attended without a valid reason indicates that failure to attend appointments is much more widespread among job seekers than the incidence of participation reports. This suggests that, while serious consequences should apply only to persistently non-compliant job seekers (as they do under the current compliance framework), there is a need for an additional, proportionate, response that can be used to encourage engagement by the general job seeker population.

There has been an increase in the number of participation reports submitted to Centrelink by providers for all failure types, including failure to attend provider appointments, and an

increase in the proportion of participation reports that result in the application of a penalty. In the three months to the end of June 2010, 27,955 failures were applied for not attending provider appointments, compared to 37,457 in the three months to the end of September 2010 and 44,832 in the three months to the end of December 2010. However, while this indicates that action is being taken when job seekers fail to attend appointments, there has not been a corresponding improvement in attendance rates. This also reinforces the argument that an additional, proportionate, response is warranted to try to improve attendance rates.

### **Changes to the job seeker compliance framework that will be made by the Bill**

#### *Suspension of payment following failure to attend an appointment or, in some circumstances, an activity*

This Bill will allow for the immediate suspension of a job seeker's income support payment following a failure to attend an appointment. Providers will notify Centrelink as soon as a job seeker does not attend and has not notified them in advance. Suspension of payment will occur as soon as Centrelink is notified of the job seeker's failure to attend, after which Centrelink will contact the job seeker.

Providers will also have the option of requesting that a job seeker's payment be suspended when reporting potential no show no pay failures for failure to participate in an activity (such as Work for the Dole or training) if they are concerned that the job seeker has disengaged from the activity. In this circumstance, the potential no show no pay failure will be processed as it currently is, but the job seeker will also be required to reconnect with their provider to discuss their participation in the activity.

Job seekers who have been identified by Centrelink as vulnerable (for example, those who are homeless or who have a mental illness) will not have their payment suspended following an initial failure to attend an appointment or following disengagement from an activity.

After suspension occurs, the job seeker will be contacted by Centrelink and a re-engagement appointment will be scheduled with their provider. Centrelink will explain clearly the consequences of not attending the re-engagement appointment. If the job seeker agrees to attend this appointment, their income support payment will be immediately restored, with full back payment.

The job seeker's reason for not attending the first missed appointment will also be assessed and a connection failure will be applied if they are found not to have had a reasonable excuse. As with the current system, the application of a connection failure will not result in a financial penalty but will contribute to the count of failures for the purposes of determining whether or not the job seeker has been persistently non-compliant.

#### ***How does suspension work?***

Suspension of a job seeker's income support payment is not a penalty, in that it does not result in permanent loss of payment. When a suspension is applied, the job seeker's payment is withheld until they do what is required of them, at which point it is restored and they receive full back payment. Because job seekers are paid fortnightly in arrears, this restoration of payment generally occurs before the job seeker is due to be paid and the suspension consequently has no impact on the timing of their payments.

If contact with a job seeker is not successfully established before their pay day and the job seeker misses a payment, they generally contact Centrelink immediately (the initiation of such contact being the primary purpose of suspension). Once they do so and agree to attend their re-engagement appointment, the suspension is lifted and they immediately receive the payment they have missed (i.e. they do not have to wait until their next scheduled fortnightly pay day).

### *The rationale for suspension*

Suspension should provide an effective initial step in encouraging job seekers to attend provider appointments. A job seeker whose payment has been suspended has no option but to agree to re-engage if they want their payment to be restored. Suspension does not have the potentially counter-productive effect of depriving the job seeker of income support they may need in order to meet their requirements.

Over time, the use of suspension should have a behavioural impact as job seekers learn that the best way to avoid interruptions to their payments is to attend all appointments or to advise their provider beforehand of a valid reason for not being able to do so. This should be helped by the legislated requirement that job seekers be fully informed, whenever they are given a requirement, of the consequences of not meeting it.

Despite the effectiveness of suspension, it is still necessary to provide for an escalation in the consequences of repeated non-compliance, through the application of compliance penalties. If suspension were the only sanction, it would be possible for job seekers to repeatedly fail to attend appointments when required but avoid any consequences by ensuring that they did so before they were due to be paid.

### *Reconnection penalty for failure to attend a rescheduled appointment*

Following suspension for not attending an initial appointment, the job seeker will be required to attend a reconnection appointment, regardless of their reason for missing the first appointment.

If the job seeker does not attend the rescheduled appointment, payment will again be suspended but this time, if they do not have a reasonable excuse for missing the re-scheduled appointment, they will incur a reconnection penalty and will lose payment for each day from and including the day of the missed reconnection appointment until the day before the day on which they attend a rescheduled appointment. After missing a reconnection appointment, if the job seeker, when in contact with Centrelink, indicates that they are willing to attend a further reconnection appointment but none is available within two business days, the reconnection penalty will be ended. This is so that the job seeker does not continue to lose payment through no fault of their own, which is particularly important in regional areas where providers may not have appointments available at short notice.

Reconnection penalties are a feature of the current system. However, under current arrangements, a job seeker can only be given a reconnection requirement if a connection failure has been applied: that is, only where they had no reasonable excuse for missing their initial appointment.

***What is a reconnection penalty?***

Unlike suspension, a reconnection penalty means an actual loss of income support payment. The job seeker loses their daily rate of participation payment (that is, one fourteenth of their fortnightly payment) for each calendar day from and including the day of the missed reconnection appointment until the day before the day on which they attend a rescheduled appointment. Rent assistance and family payments are not affected by a reconnection penalty, so the job seeker does not generally lose all welfare payments for the period.

*The rationale for more immediate reconnection requirements*

Giving Centrelink the capacity to issue a reconnection requirement to any job seeker who has missed an initial appointment, regardless of whether or not they had a reasonable excuse for doing so, will provide a more rapid escalation in the potential consequences of repeated non-attendance.

Under current arrangements, a job seeker can fail repeatedly to attend appointments and, as long as they are found by Centrelink to have had a reasonable excuse for doing so, the consequence of their next failure always remains a connection failure, which has no financial impact and therefore provides less incentive to comply. Under the arrangements in the Bill, if a job seeker has failed to meet a reasonable requirement once, the consequence of their next failure without a reasonable excuse will be a reconnection penalty. If the job seeker has a reasonable excuse, no penalty will be applied though the job seeker will still be required to reconnect. As with any requirement, the job seeker will be fully informed beforehand of the consequences of not meeting it.

Additionally, the new arrangement will allow Centrelink to reconnect a job seeker with their provider without waiting for the outcome of the connection failure determination, which can take some time if the job seeker needs to provide evidence of a reasonable excuse. Not having to wait means that the job seeker can be re-engaged much more quickly.

*More immediate deduction of reconnection penalty amount*

If a reconnection penalty is applied, it will be deducted from the payment for the period in which the job seeker was notified of the failure, which means they will have their next income support payment reduced. Under current arrangements, the reconnection penalty would be deducted from the second payment due to the job seeker following the notification of the failure.

*The rationale for more immediate penalty deductions*

The current arrangement whereby a reconnection penalty cannot be deducted from the job seeker's next payment is intended to give the job seeker time to budget for the impending loss of payment. However, the effect of this delay can be to disconnect, in job seekers' minds, the penalty from the failure, as they may not begin to lose payment for at least a fortnight and sometimes more than a month after their failure to comply. This can be exacerbated by the fact that reconnection penalties can be for relatively small amounts that may go unnoticed by a job seeker whose income support payment varies from fortnight to fortnight anyway, for example because of casual earnings or debt repayments.

Allowing the reconnection penalty amount to be deducted from the job seeker's next payment will ensure that the impact of the loss is more immediate and should provide a more direct deterrent than the current arrangements and consequently have a greater impact on job seeker behaviour.

#### *Tightening of reasonable excuse provisions*

Reasonable excuse provisions will also be tightened so that, even if a job seeker has a reasonable excuse on the day for not attending an appointment or activity, it will not be accepted if they could reasonably have given advance notice that they could not attend the appointment or activity but did not do so.

#### ***What is a reasonable excuse?***

A longstanding principle of Social Security law is that no penalty can be applied if the job seeker has a reasonable excuse for their non-compliance. The meaning of the term reasonable excuse is discretionary but the excuse must be one that an ordinary member of the community would accept as reasonable in the circumstances. The failure must not simply be a deliberate act of non-compliance. If the circumstance that prevented the job seeker from meeting their requirement was unforeseeable or outside the person's control, it provides a reasonable excuse. However, this does not necessarily mean that a circumstance that was foreseeable or was within the job seeker's control does not constitute a reasonable excuse. It is also important to establish that the requirement the job seeker was supposed to undertake was reasonable, was within their capacity and that the job seeker was notified correctly.

#### *The rationale for tightening the reasonable excuse provisions*

Under current arrangements, if a job seeker has a reasonable excuse for not attending at the time of their appointment, they cannot be penalised, regardless of whether or not they could have given prior notice that they would be unable to attend. The intention of this amendment is to encourage job seekers to give such notice, to allow providers to reschedule appointments before they are missed. Allowing job seekers to miss appointments without notice undermines the efficiency of employment services providers and makes it easier for non-genuine job seekers to repeatedly avoid meeting their requirements. Giving prior notice of absence is a courtesy that is expected of any employee, so requiring job seekers to do the same will reinforce acceptable workplace behaviour. There will be no requirement to give prior notice where it is unreasonable to expect the job seeker to do so.

## **The current job seeker compliance framework**

The job seeker compliance framework was introduced on 1 July 2009. The penalty structure of the framework, which applies once a job seeker becomes subject to formal compliance action, is described below.

A key principle underpinning the current legislation, as described in its object clause, is that the purpose of the compliance framework is to encourage engagement with employment services. The amendments included in the Bill remain true to this principle.

### *Failure to participate in an activity*

If a job seeker, without a reasonable excuse, fails to participate in an activity that they are required to participate in on a particular day, they may incur a “no show no pay” failure. This results in the application of a penalty amount equivalent to one “working day” of a person’s income support payment (that is, 10 per cent of a person’s 14 day instalment) for each day on which the job seeker fails to participate. This penalty amount is deducted from the job seeker’s second payment which falls due after the failure is determined.

### *Failure to attend an appointment*

If a job seeker, without a reasonable excuse, fails to attend an appointment with their employment services provider they may incur a connection failure. There is no immediate financial penalty as a consequence of a connection failure, but the job seeker is required to attend a reconnection appointment. A connection failure also contributes to the job seeker’s count of failures for the purposes of determining whether or not the job seeker has been persistently non-compliant (see below).

If the job seeker, without a reasonable excuse, fails to attend this reconnection appointment, a reconnection failure period applies from the day they fail to attend until they attend a further reconnection appointment. The job seeker loses payment for each calendar day during the reconnection failure period (that is, 1/14 of a person’s 14 day instalment for each day they do not attend a further reconnection appointment). This penalty amount is deducted from the job seeker’s second payment that falls due after the failure is determined.

### *Other features of the current compliance framework*

The above features of the current compliance framework will be directly affected by the *Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011*, as outlined in the body of this submission. Other features of the current framework will not be affected and will continue to apply as they currently do. These are as follows.

**No show no pay** penalties will continue to apply for non-attendance at job interviews and activities.

**Serious failures**, which result in an eight week non-payment period, will continue to apply for refusing an offer of - or failing to commence - suitable work, or for persistent and wilful non-compliance.

A job seeker can only be found to have been persistently and wilfully non-compliant if they have incurred three or more connection, reconnection or no show no pay failures during the previous six months and they have undergone a **comprehensive compliance assessment**. During this assessment, Centrelink investigates why the job seeker has been failing to meet their requirements and attempts to identify any previously unidentified barriers to employment and possible alternative service options, which may assist the job seeker to re-engage. If no such barriers are identified, the job seeker can be found to have been persistently non-compliant.

A non-payment period applied for a serious failure can be waived if the job seeker agrees to undertake a **compliance activity** (generally 25 hours per week for up to eight weeks of Work for the Dole or a similar Work Experience activity).

A job seeker can be subject to an **unemployment non-payment period**, which means that they will not receive an income support payment for eight weeks, if they are voluntarily unemployed without good reason or unemployed due to misconduct. For job seekers who leave or are dismissed from a job after having been paid relocation assistance to take up the job, the unemployment non-payment period is twelve weeks. A job seeker cannot have an unemployment non-payment period waived by undertaking a compliance activity, as they can for a serious failure, but specified categories of vulnerable job seekers who are in financial hardship can have the penalty waived.

#### *Non-legislative features of the current compliance framework*

The Bill does not alter the principle underpinning the current legislation that the purpose of the compliance framework is to encourage engagement with employment services. In keeping with this, certain non-legislated aspects of the current framework will continue to operate as they currently do. These include the capacity for providers to choose not to report a job seeker's non-compliance but to try to re-engage them in some other way. One such way is to submit a **contact request** to Centrelink. This requires Centrelink to contact the job seeker (which Centrelink is often able to do more easily than the provider) and re-engage them with their provider without taking any formal compliance action.



## ATTACHMENT B

### Attendance at Job Network and Community Work Co-ordinator appointments under Welfare to Work

Appointment Result	2006-07		2007-08		2008-09	
	number	%	number	%	number	%
Attended	3,409,623	54%	3,436,094	56%	3,776,954	56%
Did not attend - invalid	1,679,724	26%	1,196,080	19%	1,272,141	19%
Did not attend - valid	1,258,473	20%	1,516,363	25%	1,646,414	25%
Total	6,347,820	100%	6,148,537	100%	6,695,509	100%

Note: Community Work Co-ordinator appointments are included to make the data more comparable with the data in the following table. Community Work Co-ordinators ceased to exist from 1 July 2009 but their functions were largely taken on by Job Services Australia providers.

### Attendance at Job Services Australia provider appointments under the current compliance system

Appointment Result	2009-10		2010-11(Jul-Dec)	
	number	%	number	%
Attended	5,186,495	58%	2,690,048	55%
Did not attend - invalid	1,059,984	12%	703,893	14%
Did not attend – valid	1,746,392	20%	1,008,131	21%
Did Not Attend – Discretion*	957,391	11%	479,096	10%
Total	8,950,262	100%	4,881,168	100%

\*Did not attend – Discretion indicates that the provider has chosen not to take formal compliance action against the job seeker, even though they appear to have had no valid reason for their non-attendance. The current system encourages providers to exercise such discretion where they believe the job seeker is likely to comply if given another chance.

It is important to note that, due to changes to program arrangements as well as limitations for 2006-09 data, the above numbers are not DIRECTLY comparable across the two tables. However, the data does give some indication of the attendance rates and demonstrates that, since 2006, there has been little change in total non-attendance rates or in the proportion of valid and invalid failures.

Comprehensive job seeker compliance data, including data up to the December quarter of 2010, is available on the DEEWR internet site at:

<http://www.deewr.gov.au/Employment/ResearchStatistics/JobSeekerComplianceData/ComplianceData/Pages/home.aspx>