

Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011

Referral of inquiry

- 1.1 The Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011 (hereafter referred to as 'the Bill') was referred by the House Selection Committee to the House Standing Committee on Education and Employment on 24 March 2011 for inquiry and report.
- 1.2 This is the second bill referred to the Committee under the new arrangements adopted on 23 September 2010 for the 43rd Parliament, which provide for the Selection Committee, under Standing Orders 143 and 222, to refer a bill to a committee for an advisory report.

The Bill

- 1.3 The Bill amends the *Social Security (Administration) Act 1999* (Cth) to provide that social security payment for job seekers will be suspended when they fail to attend appointments with employment service providers.
- 1.4 A copy of the Bill is provided in Appendix A.

Outline of the Bill

1.5 The general outline is copied below:

This Bill implements the Government's election commitment to introduce tougher rules for job seekers, which was announced on 11 August 2010 as part of the "Modernising Australia's Welfare System" policy statement.

The amendments in this Bill will enhance the current job seeker compliance framework by providing additional incentives for job seekers to engage with their employment services providers and to participate fully in activities designed to improve their employment prospects.

This Bill will introduce suspension of payment for job seekers following an initial failure to attend an appointment or, in some circumstances, an activity such as training or Work for the Dole. As soon as the job seeker agrees to attend this appointment, their payment will be restored with full back payment. All job seekers will be required to attend a rescheduled appointment, regardless of their reason for missing the first appointment. If the job seeker attends the rescheduled appointment, they will not be penalised.

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 appointment, they will incur a reconnection failure and lose payment for each day from the second missed appointment until they do attend a rescheduled appointment. That is, there will be no back payment for this period.

The reconnection penalty will be deducted from the payment for the period in which the job seeker was notified of the failure. This will ensure that the impact of the penalty is more immediate and will provide a more direct deterrent than under current legislation, which requires that the penalty amount be deducted from a later instalment period.

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 have given advance notice that they couldn't attend but didn't do so.¹

1 <http://www.aph.gov.au/house/committee/ee/socialsecurity/tor.htm>

Background

1.6 The Bill was introduced and the second reading moved by the Minister for Employment Participation and Childcare, the Hon. Kate Ellis MP, on 23 March 2011. The Minister explained that the Bill delivers on the Government's election commitment to modernise Australia's welfare system.

1.7 A copy of the Minister's second reading speech is available on the Committee's website.

1.8 In her second reading speech on the Bill, the Minister explained why the Bill was being introduced and the proposed effect of the Bill:

For many years the rate at which job seekers attend appointments with employment service providers has been around 55 per cent. While some job seekers may unavoidably need to miss an appointment because they are genuinely sick, start a job at short notice or have other valid reasons, I believe that attendance at appointments – appointments designed to help job seekers get into work – can and must improve. That is why we made an election commitment to strengthen the compliance system.²

1.9 The Minister added that the Bill is not targeted at punishing Australians who have a valid reason for missing their appointments with employment service providers. Rather, its purpose is to encourage job seekers to actively engage in work experience activities in order to enable them to obtain the skills and experience they need to find a job:

Suspension is not about punishing job seekers for punishment's sake. The job seeker is either paid back in full or payment resumes when they do what is required of them.

But these changes will give the job seeker no choice but to re-engage with employment services and be serious about finding work- if they want to receive income support.

...All Australians on income support should have the opportunity of work – but with opportunity comes responsibility – and with this bill we are going to expect that people meet those responsibilities.³

2 <http://www.aph.gov.au/house/committee/ee/socialsecurity/tor.htm>

3 <http://www.aph.gov.au/house/committee/ee/socialsecurity/tor.htm>

Conduct of the Inquiry

- 1.10 A media release announcing the inquiry and inviting written submissions was disseminated on 25 March 2011. A range of stakeholders, including government departments, job service providers, peak welfare bodies, and consumer rights organisations, were also invited directly to make a submission to the inquiry.
- 1.11 The Committee received sixteen submissions to the inquiry. Submissions and exhibits are listed at Appendix B.
- 1.12 The Committee held two public hearings in Melbourne on 13 April 2011 and in Canberra on 18 April 2011. The list of hearings and witnesses is at Appendix C.
- 1.13 The text of the Bill comprises the inquiry terms of reference.

Scope of the Inquiry

- 1.14 The Committee considers it important to confine the scope of this inquiry to the terms of reference, as outlined above.
- 1.15 Many witnesses, and submissions received by the Committee, discussed broad problems with social security legislation and the welfare and employment services systems.
- 1.16 Although the Committee considers these to be important issues worthy of discussion, it is beyond the scope of this inquiry to consider them. As such, the Committee has only considered those issues raised that directly relate to the Bill.

Main Issues

- 1.17 Several issues arose in evidence received by the Committee, both in public hearings and written submissions, in relation to the measures proposed by the Bill.

Communication, Guidance and Training

- 1.18 The Committee received a considerable amount of evidence indicating that there are serious concerns held by many stakeholders in relation to the complex and confusing nature of the employment services system and the social security system as a whole.
- 1.19 A common and recurring theme across much of the evidence was the impact that the complexity of the compliance system, and the resulting lack of understanding of the implications of non-compliance, may have on job seekers and, indeed, employment service providers (ESPs) and Centrelink staff.
- 1.20 Professor Julian Disney, Chair of the Independent Review of the Impacts of the new Job Seeker Compliance Framework (the Independent Review), stated:
- [t]he system was extraordinarily complex. I think all three of us [members of the Independent Review], including two of us with a lot of experience over the years in different programs, were quite amazed at the complexity of the scheme...[w]e found that really quite remarkable and a major problem.⁴
- 1.21 Two distinct issues arose in relation to communication and the implementation of the measures proposed by the Bill.
- 1.22 Firstly, there appear to be serious issues in relation to the communication of compliance requirements, and indeed the compliance and employment services regimes generally, to job seekers. Secondly, numerous stakeholders raised concerns as to a lack of understanding of compliance requirements and the compliance regime amongst ESPs and Centrelink staff.

Communication with Job Seekers

- 1.23 The National Welfare Rights Network (NWRN) queried whether job seekers will be able to understand how the new system proposed by the Bill will work and what their obligations will be under it.⁵
- 1.24 Similarly, Mission Australia indicated that 'the compliance framework remains excessively complex'⁶ and concerns were raised by Australian Council of Social Service (ACOSS):

4 Professor Julian Disney, *Committee Hansard*, 18 April 2011, p. 37.

5 National Welfare Rights Network (NWRN), *Submission 14*, p. 12.

...many job seekers do not comprehend the value and importance of ... interviews [with their employment service providers]...because they do not understand complex systems, especially people who are new to the system.⁷

- 1.25 Jobs Australia, in their research with the Nous Group, found the following:

[a] lot of the front-line workers in the system...report that people just do not understand it, especially people who are new to the system...people who are new to the system or people who do not have much experience of it are...overwhelmed and confused.⁸

- 1.26 ACOSS further raised the issue of lower literacy levels amongst many job seekers participating in Job Services Australia (JSA) programs and the difficulties faced by people who speak English as their second language, including many Indigenous job seekers:

A little over half of participants in JSA have less than year 12 education, and they are dealing with very complex systems, so that is a part of the problem. Secondly, many people have English as a second language, including many Indigenous people, and interpreters are not always provided. The form of communication is also important. People often do not respond well to letters about appointments if they have low literacy levels, so that needs to be backed up by other means of communication.⁹

- 1.27 Concerns relating to language issues experienced by Indigenous Australians, particularly for those in remote communities, were echoed by the Commonwealth Ombudsman's Office, who indicated that there is a 'need for greater use of Indigenous language interpreters for service delivery to remote and regional Indigenous customers.'¹⁰

- 1.28 Communication of the measures proposed by the Bill is the key to the successful implementation of those measures. As indicated by Mission Australia, the first thing to consider is, 'how to communicate with the job

6 Mission Australia, *Submission 9*, p. 3.

7 Mr Peter Davidson, Senior Policy Officer, Australian Council of Social Service (ACOSS), *Committee Hansard*, 18 April 2011, p. 28.

8 Mr David Thompson, Chief Executive Officer, Jobs Australia, *Committee Hansard*, 13 April 2011, p. 4

9 Mr Davidson, ACOSS, *Committee Hansard*, 18 April 2011, p. 29.

10 Commonwealth Ombudsman's Office, *Submission 7*, p. 2.

seeker.' The next step is, 'doubling that communication...so that they absolutely understand it.'¹¹

- 1.29 The measures and obligations imposed by the Bill must be consistently and effectively communicated to job seekers in order for the Bill to have its intended effect. Already, the Committee has received evidence indicating that there is confusion in relation to the way in which the measures proposed by the Bill will be implemented, particularly around the application and lifting of payment suspensions and the rescheduling of appointments.
- 1.30 For example, there appear to be different interpretations of what will happen to a job seeker following their first missed appointment, if the job seeker does not have a vulnerability indicator. The Department of Education, Employment and Workplace Relations (DEEWR) clarified that, 'all the job-seeker needs to do is to indicate an agreement to attend that next appointment and then the suspension is immediately lifted,'¹² with full back pay.
- 1.31 The nature of this requirement is not immediately clear from the text of the Bill; however, it is clarified in Minister Ellis' second reading speech.¹³ The confusion around this issue, along with other aspects of the Bill, emphasises the importance of adequate communication and explanation to job seekers.
- 1.32 DEEWR has indicated that they will work very closely with Centrelink and ESPs, 'to ensure that job seekers at all relevant contact points with Centrelink or...[employment service] providers are very clearly given the message about the new changes and what that means to them, particularly with regard to the requirement to give prior notice should they be unable to attend an appointment or activity on a day.'¹⁴
- 1.33 DEEWR will also 'be taking advantage of Centrelink's regular personal contact interviews with every job seeker so that they can explain the circumstances or the changed arrangements to them. That will usually be a face-to-face conversation with the job seeker.'¹⁵

11 Dr Prins Ralston, Executive Leader - Employment Solutions, Mission Australia, *Committee Hansard*, 18 April 2011, p. 66.

12 Mr Derek Stiller, Branch Manager, Department of Education, Employment and Workplace Relations (DEEWR), *Committee Hansard*, 18 April 2011, p. 10.

13 *House of Representatives Hansard*, Social Security Legislation Amendment (Job Seeker Compliance) Bill, Wed 23 March 2011 per the Hon. Kate Ellis, p. 10.

14 Mr Stiller, DEEWR, *Committee Hansard*, 18 April 2011, p. 5.

15 Ms Marsha Milliken, Group Manager, DEEWR, *Committee Hansard*, 18 April 2011, p. 12.

- 1.34 The Committee considers that face-to-face communication of the changes to job seekers is a valuable method of ensuring that job seekers understand their obligations under the measures proposed by the Bill.
- 1.35 DEEWR noted:
- ‘[t]here is material that is published on the Centrelink website about the compliance framework, and that will be updated. The formal notifications with job seekers to advise them of appointments and of compliance issues will be updated with the formal arrangements so that we meet the legislative requirements in that way.’¹⁶
- 1.36 The Committee considers it crucial for DEEWR and the Department of Human Services (DHS) to provide plain-English explanations of the measures proposed by the Bill, and how they differ from current arrangements, to every job seeker who may be affected by the changes. Job seekers should be clearly and repeatedly informed of their obligations under the proposed system.
- 1.37 To this end, it would be valuable to develop a brief, plain-English explanation of the changes proposed by the Bill, in the context of the current compliance regime.
- 1.38 In order to ensure that all job seekers have access to a plain-English explanation of the new compliance regime proposed by the Bill, the document could be made available on the Centrelink website in an easy to find location and also in hard copy form at the offices of Centrelink and ESPs. Furthermore, the document could be attached to formal notifications sent to job seekers and to employment pathway plans.
- 1.39 Such documents could also be provided to Centrelink employees in order to ensure that consistent and easy to understand guidance is available to job seekers when they are contacted by Centrelink staff.
- 1.40 The Committee considers it crucial to ensure that adequate translations of the plain-English document into other languages, including Indigenous languages, are made available and that translators are available to discuss the measures proposed by the Bill in a clear and concise manner for those who speak English as a second language or may be experiencing literacy difficulties.
- 1.41 In addition, the Committee heard from numerous stakeholders that the levels of disengagement amongst young people are disproportionately
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high. The Independent Review found that 47 per cent of people who miss appointments are young people.¹⁷ As such, it is important to ensure that any communication strategies in place can be targeted to young people in order to foster reengagement and strong communication ties.

- 1.42 The Committee notes that DHS already utilise a multi-faceted communication system including letters, email, telephone calls and SMS, to contact job seekers¹⁸ and would consider it valuable to extend that system to directly target young people.

Recommendation 1

The Committee recommends that a brief, plain-English explanation of the proposed changes, and the obligations that will stem from them, be produced and made available to all job seekers as soon as practicable.

Guidance and Training

- 1.43 The Committee understands that many elements of the administration of the proposed compliance regime will be codified in guidance material, which is designed to be read with the Bill. This guidance material will provide, amongst other things, information around elements of the Bill that incorporate a discretionary aspect, including the meaning of 'reasonable excuse' and, 'the sorts of matters which might be regarded as special circumstances.'¹⁹
- 1.44 DEEWR advised that specific guidance for Centrelink staff would be provided in, 'Centrelink's internal guidance to its decision makers in its reference material...'²⁰
- 1.45 On this point, DHS stated:

17 Report of the Independent Review, *Impacts of the new Job Seeker Compliance Framework*, September 2010, p. 40.

18 Ms Kate Hay, National Manager, Employment and Participation Programs, Department of Human Services (DHS), *Committee Hansard*, 18 April 2011, p. 19.

19 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 13.

20 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 14.

We do have a comprehensive communication strategy and we will be updating all of our communication products. We develop scripts for our staff so they have got a set of words to use when we have any new initiative. We have drafted some words for staff to use for this. That will be one of the key messages in the first couple of months of the new arrangements.²¹

1.46 In relation to some of the discretionary elements of the measures proposed by the Bill, DEEWR has indicated that decisions as to whether an excuse can be deemed 'reasonable' and whether circumstances will be considered 'special' are 'judgment based' issues.²²

1.47 The Committee also received evidence from DEEWR suggesting that decisions in relation to whether participation reports lead to the recording of a participation failure would, to some extent, come down to the discretion of Centrelink employees:

Following the second missed appointment – and, indeed, any circumstance where a provider submits a participation report to Centrelink, Centrelink makes a determination whether a participation failure should be applied or not.²³

1.48 On this point, DHS stated:

We are still working with the Department of Education, Employment and Workplace Relations on the finer aspects of the policy. There are still a number of aspects where we have not worked through all the detail, and that is certainly one of them. It comes down to the discretion of the individual staff member and how much guidance we give them in situations like that...²⁴

1.49 As well as the apparent discretion given to Centrelink employees in relation to the aspects of the Bill discussed above, ESPs will have the discretion to determine whether or not they submit a participation report to Centrelink when a job seeker misses an appointment.

1.50 DEEWR explained:

If the provider determines that at a particular point in time they do not want to submit a PR [participation report] or have the suspension occurring for job seekers, they can still use the other

21 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 20.

22 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 14.

23 Mr Stiller, DEEWR, *Committee Hansard*, 18 April 2011, p. 4.

24 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 18.

tools available to them...They do not have to move immediately to submitting a participation report...²⁵

- 1.51 Clearly, the potential impact that the decision of an individual staff member at Centrelink or employed by an ESP may have on whether a participation report is submitted and upheld, an excuse considered 'reasonable,' and a set of circumstances regarded as 'special,' highlights the importance of clear guidelines and comprehensive training of Centrelink and ESP staff.
- 1.52 The Committee places a high level of importance on ensuring that all elements of the Bill are adequately and clearly explained to job seekers, ESPs, and Centrelink staff.
- 1.53 To this end, the guidelines being developed to accompany the Bill should be clear, comprehensive, and disseminated to ESPs, Centrelink staff, and all other relevant stakeholders as soon as possible in order to enable adequate preparation for the commencement of the measures proposed by the Bill.
- 1.54 In addition, it appears from the evidence provided by DEEWR that two, or possibly more, sets of guidance material are being prepared in the form of internal Centrelink guidance material and the guide that is being prepared by DEEWR to be read alongside the Bill.²⁶ A crucial element to any guidance material disseminated to EPSs, Centrelink staff, consumers, and other relevant stakeholders is consistency.
- 1.55 The Committee heard from numerous witnesses about the difficulties faced by organisations and individuals when dealing with what appears to be a complex and multi-faceted social security system. Any inconsistency in guidance material provided in relation to the application and implementation of the measures proposed by the Bill will only exacerbate these issues further and should be avoided.
- 1.56 On this point, Mission Australia indicated that there appears to be a disconnect between the guidance provided to ESPs and Centrelink staff around the submission of participation reports:

[P]roviders and Centrelink [must be] in sync so that when we actually issue a participation report it is not rejected...Our people do not issue participation reports just for the hell of doing it. They go through a significant amount of emotional anxiety about issuing a participation report. Then when they see that turned

25 Mr Stiller, DEEWR, *Committee Hansard*, 18 April 2011, p. 9.

26 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 13.

over by somebody at Centrelink, that means that the disengagement process is reinforced. Then we have to start the re-engagement process with the job seeker all over again, because our people have now lost credibility with the job seeker... It is consistency and follow-through with these people that counts. So there is that significant issue about there being consistency in the way that we go about working with both Centrelink and our job seekers.²⁷

- 1.57 In addition, the CPSU indicated that there appears to be a lack of cohesion between different Government departments and ESPs:

In terms of the system's alignment, we have identified work effectiveness in relation to how the job service provider system interacts with other government departments. This has seen... people being required to give their information to the government a number of times. It has also been seen to retard the ability to make appointments between Centrelink and the job service providers. There are definitely issues here.²⁸

- 1.58 It is clear that a unified and consistent approach to any guidance material provided to Centrelink staff, ESPs, and any other relevant stakeholders, is crucial for the successful implementation of the measures proposed by the Bill.

- 1.59 To this end, the Committee considers that it would be valuable for DEEWR, DHS, and ESPs to work together to ensure that all guidance material provided is consistent and clear. Furthermore, the Committee considers that DEEWR and DHS should consult with stakeholders in the course of developing the guidance material and notes the importance of involving job seekers in this process:

In the development of the guidelines the first point...would be to go to the customer, in this case the job-seekers, and work with them to understand how best to communicate this and come from the bottom up... what we would like to see is that we work with the job-seekers – not with Centrelink, not with the providers but with the job-seekers – to see how it is that they will understand and receive this stuff and actually consume it.²⁹

27 Dr Ralston, Mission Australia, *Committee Hansard*, 18 April 2011, p. 66.

28 Ms Lisa Newman, Deputy National President, Community and Public Sector Union (CPSU), *Committee Hansard*, 18 April 2011, p. 58.

29 Dr Ralston, Mission Australia, *Committee Hansard*, 18 April 2011, p. 65.

- 1.60 Similarly, the training provided to Centrelink staff and ESPs must be consistent and comprehensive. The Committee anticipates that training provided to Centrelink and ESP staff will be based on the guidance material being developed, thus, as with the guidance material, the training material should be developed collaboratively to minimise the risk of inconsistency.

Recommendation 2

The Committee recommends that the Department of Education, Employment and Workplace Relations, the Department of Human Services, employment service providers, and other stakeholders work together to develop consistent guidance and training material to accompany the Bill.

- 1.61 Although the Committee understands that both DEEWR and DHS are intending to provide guidance material to staff and ESPs, it is also crucial to ensure that, where possible, front-line staff are provided with interactive training rather than merely having to rely on written guidance material. As explained by Professor Disney, front-line staff 'have a lot of work and they cannot be reading the guidelines all the time – 50 or 100 pages.'³⁰
- 1.62 The CPSU indicated that they held serious concerns as to whether the training provided to Centrelink staff would be sufficient, particularly in an environment characterised by budget pressures:

'Unfortunately, this department, along with most others, is operating under an efficiency dividend. It means that there are budget pressures normally. We are expecting these to increase, particularly in the next budget. When things are tight and staffing levels go down, the first thing that we see is a reduction in training. That is a real concern with the workload now. With any changes, such as we are contemplating here today, obviously that is going to be amplified. It is absolutely a live concern.'³¹

30 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 45.

31 Ms Newman, CPSU, *Committee Hansard*, 18 April 2011, p. 62.

- 1.63 On staff training, DHS stated: '[i]n our training for our customer service advisers, we will focus on case studies and scenarios using that policy to go through what action to take in certain situations.'³²
- 1.64 The Committee is encouraged by the fact that DHS have indicated their preparedness and willingness to provide training. The training of all relevant staff members should be both comprehensive and comprehensible in order to ensure that the measures proposed by the Bill are implemented consistently and fairly.
- 1.65 Furthermore, DHS indicated that they are working closely with ESPs:
- We have regular six-weekly meetings now between providers, Centrelink and representatives from the Department of Education, Employment and Workplace Relations where we talk about the big changes that are happening in each agency. We work together to make sure we all have the same understanding and that we understand the changes.³³
- 1.66 The ongoing communication between Centrelink, DEEWR, and ESPs is encouraging and should continue in order to ensure that Centrelink, DEEWR, and ESPs are working collaboratively and providing the best available service to job seekers.

Recommendation 3

The Committee recommends that Centrelink and employment service provider staff are provided with comprehensive training in relation to the measures proposed by the Bill and the guidelines that will accompany the Bill.

- 1.67 The Committee has some concerns about the nature and quality of the training that will be provided to ESPs in relation to the changes proposed by the Bill. As discussed above, ESPs have the discretion to determine whether or not they submit a participation report for a missed appointment, thereby potentially triggering a payment suspension.

32 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 18.

33 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 20.

Professor Disney noted that, '[s]ome providers will be very tough on this. Some providers will probably be too easy.'³⁴

- 1.68 ESPs have the discretion to determine whether or not a participation report is submitted. Mission Australia noted that ESPs work with job seekers on a more regular basis than Centrelink staff and have an opportunity to interact with job seekers on a one-on-one basis more frequently.³⁵ Thus, ESPs are arguably in a better position to determine whether or not submitting a participation report will have the desired reengagement effect or whether other mechanisms are more appropriate.
- 1.69 On the other hand, the NWRN noted that there are a number of key factors that work against the supposition that ESPs will utilise their discretion to the benefit of job seekers by employing methods such as contact requests, rather than submitting participation reports:
- ...significant pressure is applied to providers from the DEEWR contract management arrangements which require quick decisions to be made about applying Participation Reports or if not, providing reasons why the failure should not be applied. The DEEWR system demands quick, immediate responses, and given large caseloads, micro-management of the contracts, and the extremely time-consuming nature of meeting DEEWR requirements...many providers may push the key stroke for generating a participation failure.³⁶
- 1.70 It is vital that ESPs develop a comprehensive understanding of their jobseekers' circumstances in order to ensure that they utilise their discretion fairly, equitable, and correctly. Furthermore, it is crucial that DEEWR and ESPs work together to develop an understanding of ESP discretion and how it is intended to operate in connection with DEEWR requirements and systems. Guidance and training around the use of ESPs discretion, combined with stakeholder consultation, is necessary.
- 1.71 The guidance and training provided to ESPs must be consistent and provide information as to when ESPs should and should not consider submitting a participation report for a missed appointment. Inconsistency on this point could worsen any apparent disconnect between Centrelink and ESPs and lead to an unequal application of the compliance regime proposed by the Bill.

34 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 42.

35 Dr. Ralston, *Mission Australia, Committee Hansard*, 18 April 2011, p. 65.

36 NWRN, *Submission 14*, p. 14.

- 1.72 It is important to emphasise that a payment suspension should not be utilised as a punitive measure. The Government has indicated that the focus of the measures proposed by the Bill is not punishment, but re-engagement.³⁷
- 1.73 Guidance given to ESPs on this point should cover whether a participation report for a missed appointment should be submitted in a situation where other methods may be used to successfully reengage the job seeker. ESPs should be guided and encouraged to consider utilising all mechanisms available to them.
- 1.74 In addition to concerns relating to communication with jobseekers and guidance and training for staff, the Committee also heard from many witnesses that concerns exist regarding the timing of payment suspensions.
- 1.75 In particular, there appear to be concerns around the unequal application of payment suspensions depending on whether the suspensions are applied at the beginning, middle, or end of a job seeker's payment cycle.³⁸
- 1.76 The Committee considers that it is important to include information as to the application and timing of payment suspensions in the proposed guidance and training material to avoid any inequality in the application of payment suspensions.

Recommendation 4

The Committee recommends that employment service providers be given clear and comprehensive guidance as to how to utilise their discretion to submit a participation report in relation to a missed appointment.

37 *House of Representatives Hansard*, Social Security Legislation Amendment (Job Seeker Compliance) Bill, Wed 23 March 2011 per the Hon. Kate Ellis, p. 10.

38 See, for example, Commonwealth Ombudsman's Office, *Submission 7*, p. 6; NWRN, *Submission 14*, p. 8.

Data

- 1.77 A recurring theme throughout the course of the inquiry related to the lack of available data available in relation to why job seekers who did not have a reasonable excuse for missing appointments with providers and Centrelink were missing those appointments.
- 1.78 DHS indicated that the reasons why individuals without what are considered reasonable excuses miss appointments, 'is not something that is really captured a lot in our data.'³⁹
- 1.79 DEEWR provided information on the reasonable excuses that job seekers have for missing appointments and indicated that they have data on the reasons that providers submit participation reports; however, it appears that no comprehensive data is available to explain why job seekers without reasonable excuses are missing appointments.
- 1.80 The apparent lack of data in this area is concerning. This problem should be remedied in order to provide a more comprehensive understanding of why job seekers miss appointments when they do not have a reasonable excuse. Additional information in this area is crucial to ensure that all possible steps are being taken to engage job seekers and to manage and control any unidentified barriers to employment participation.
- 1.81 The importance of accurate and comprehensive data in this area is amplified, given that the Bill under consideration will implement a compliance regime that responds to missed appointments with the possibility of payment suspension,.
- 1.82 DHS indicated that Centrelink is working with non-government organisations and other community partners to gather information in relation to why individuals do not attend appointments.⁴⁰ The scope of the working group is broader than considering non-attendance at Centrelink appointments and will look at non-attendance at a range of appointments, including those with doctors, housing authorities, Centrelink, and employment service providers.⁴¹
- 1.83 The Committee recognises the importance of gathering information on non-attendance at appointments. The information that will be collected as a result of the actions of the working group will go some way to remedying the data deficit; however, further work needs to be done, not

39 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 25.

40 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 17.

41 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 18.

only in relation to the collection of data in this area, but also the accuracy, presentation, and explanation of data that is already collected.

Recommendation 5

The Committee recommends that the Department of Education, Employment and Workplace Relations and the Department of Human Services collect and publish data in relation to why job seekers without reasonable excuses miss appointments.

- 1.84 Professor Disney expressed concern about the data that he and the other members of the Independent Review were provided with during the course of conducting the review:

There was almost no data being given to us that we could rely on...there was a fair degree of confusion on the part of those both collecting and analysing the data. The extent to which the data was being misunderstood both within the department and within the ministerial office was a matter of great concern...⁴²

- 1.85 The Committee understands that DEEWR reports on a quarterly basis in relation to participation failures and serious failures by job seekers in receipt of social security payments and publishes its data on the internet.⁴³ Professor Disney raised concerns as to a lack of clarity in the presentation of the data collected and published by DEEWR.

- 1.86 To remedy this, Professor Disney recommended that the quarterly data published by DEEWR 'should be published in the same format as we [the Independent Review] had published the data,' because this format 'enables you to see the history and enables you to be absolutely sure you are looking at consistent things.'⁴⁴

- 1.87 The Committee was provided with copies of updated data presented in the format suggested by Professor Disney and reviewed the presentation

42 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 36.

43 DEEWR, Job Seeker Compliance Data, <http://www.deewr.gov.au/Employment/ResearchStatistics/JobSeekerComplianceData/ComplianceData/Pages/home.aspx>.

44 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 40.

of the relevant data in the Independent Review, as well as the data published on a quarterly basis by DEEWR.

- 1.88 The Committee found the data presented in the same format utilised by the Independent Review clearer than the data provided by DEEWR, particularly as it enabled the Committee to readily view statistics from previous years and identify trends. Furthermore, the quarterly data provided by DEEWR contains no summary or breakdown of the statistics collected and published, which does not aid in the understanding or analysis of such data.
- 1.89 In addition to altering the format in which the data is presented, Professor Disney suggested that there was a need to start breaking down the data into various categories, for example what kinds of appointments are being missed and the extent to which those missing appointments are young people:
- [w]e need less of the huge aggregate approach to data and more of a focussed approach to, firstly, find out what the problem is and address it and, secondly, to see the extent to which you have achieved improvement.⁴⁵
- 1.90 The Brotherhood of St Laurence echoed Professor Disney's sentiment, stating, 'we need a more considered understanding through research of the reasons why the various subgroups, subpopulations, of job seekers are actually not connecting well with their services.'⁴⁶
- 1.91 The Committee agrees with Professor Disney's recommendations in this regard and considers that careful consideration must go into the collection, presentation, and explanation of compliance data in order to facilitate ease of understanding and effective analysis.
- 1.92 It is important to note that the Committee does not seek to prescribe how the data should be collected; however, it notes that the data needs to be presented in a manner that is clear, accurate, and accountable.

45 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 41.

46 Mr Michael Horn, Senior Manager, Research and Policy Centre, Brotherhood of St Laurence, *Committee Hansard*, 13 April 2011, p. 26.

Evaluation

- 1.93 As explained by the Explanatory Memorandum to the Bill, section 42ZA of the *Social Security (Administration) Act 1999* (Cth) will be repealed, as the review required by that section has been completed.
- 1.94 The Committee understands that no review will be undertaken in order to evaluate the effectiveness and impact of the measures proposed by the Bill; however, DEEWR will work with Centrelink 'to consider the impact of the policy on job seekers and on Centrelink performance.'⁴⁷
- 1.95 According to DEEWR, '[a] key measure of the effectiveness of this bill will be job seeker attendance rates.'⁴⁸ Furthermore:

[t]he key indicator of the legislation's success in terms of affecting more attendance at appointments by job seekers will be the data itself. That will become evident over time...[DEEWR] will be publishing that data on a quarterly basis.⁴⁹
- 1.96 The Committee received some evidence indicating concerns around the unknown impact that the measures proposed by the Bill may have and the lack of guidance as to how the success of the measures will be evaluated. ACOSS stated that, 'the impact is unknown, and we would be interested to hear exactly how the impact of the changes is going to be evaluated.'⁵⁰
- 1.97 The Brotherhood of St Laurence echoed the sentiments expressed by ACOSS:

In light of the changes proposed to the compliance system and the lack of evidence on sanctions, we would recommend that...the requirement for an independent review be reinstated to ensure further independent assessment of the framework is undertaken to monitor progress and ensure public access to compliance performance data.⁵¹
- 1.98 Professor Disney also commented on this point:

Perhaps the last thing to emphasise is about checking the success of this [the Bill]. The department mentioned that improvement... would be assessed by determining the improvement in the rate of

47 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 5.

48 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 3.

49 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 5.

50 Mr Davidson, ACOSS, *Committee Hansard*, 18 April 2011, p. 34.

51 Mr Horn, Brotherhood of St Laurence, *Committee Hansard*, 14 April 2011, p. 21.

appointments... I do not think that would be an appropriate measure at all unless the data has been greatly cleaned up in its accuracy and in its targeting. It would be much better now to look at the particular groups of concern and focus on them.⁵²

- 1.99 Given the concerns raised above in relation to the lack of data around job seekers who miss appointments without a reasonable excuse, and Professor Disney's comments as to the unreliability of compliance data, the Committee considers it prudent to undertake a review of the compliance regime proposed by the Bill that goes beyond the quarterly statistical reporting undertaken by DEEWR.
- 1.100 As DEEWR have already indicated that they, in cooperation with Centrelink, will consider the impact of the measures proposed by the Bill, the Committee is of the opinion that it would be valuable to extend this consideration to a broader review of the impact of the proposed compliance regime.
- 1.101 Beyond considering the broad impact that the measures proposed by the Bill are having on job seeker attendance at appointments, the review should also take into consideration the impact on job seekers successfully finding employment and consult with ESPs to obtain a more comprehensive view of the impact of the proposed compliance regime.
- 1.102 Additionally, it is important that the review considers the impact that the new compliance regime is having on subpopulations for which concerns were expressed by many witnesses and in a number of submissions, particularly vulnerable job seekers, Indigenous Australians and young people.
- 1.103 The Committee notes Professor Disney's statement as to the timing of the review that he chaired:
- In many ways perhaps the inquiry was a little premature because it was not really until towards the end of the year we were meant to be reviewing that you could say with any confidence at all that you were really looking at how the system would operate when it was fully up and running.⁵³
- 1.104 Given Professor Disney's comments, the Committee considers that a review of the compliance regime proposed by the Bill should only be undertaken after the compliance regime has been operating for a long

52 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 40.

53 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 36.

enough period to enable a full year of data relating to the impacts of the new compliance regime to be collected and analysed.

Recommendation 6

The Committee recommends that the Department of Education, Employment and Workplace Relations and the Department of Human Services undertake a review of the impact of the measures proposed by the Bill after one full year of data has been collected under the proposed compliance regime.

Vulnerable Job Seekers

- 1.105 Many stakeholders and witnesses expressed concern as to how the changes to the compliance framework proposed by the Bill will impact on vulnerable job seekers.
- 1.106 Vulnerable job seekers are identified by virtue of a vulnerability indicator, which is recorded on a job seeker's record by Centrelink following the receipt of evidence suggesting that a vulnerability, or multiple vulnerabilities, could potentially impact upon a job seeker's ability to comply with their participation requirements.
- 1.107 Vulnerability indicators may include, but are not limited to, homelessness, drug or alcohol dependency, mental illness, or language, literacy, or numeracy difficulties.⁵⁴
- 1.108 The St Vincent de Paul Society recommended that 'a person flagged with a vulnerability indicator should never experience a suspension or reconnection failure' due to the risks associated with the non-payment of income support to vulnerable job seekers.⁵⁵ The NWRN indicated that 'it is distressing that people who are vulnerable, experiencing mental illness or homelessness will be caught in the compliance system.'⁵⁶
- 1.109 The Committee recognises the importance of ensuring that appropriate and effective measures and safeguards are in place to prevent any adverse

54 Mr Stiller, DEEWR, *Committee Hansard*, 18 April 2011, p. 11.

55 St Vincent de Paul Society, *Submission 15*, p. 2.

56 NWRN, *Submission 14*, p. 10.

effects flowing to vulnerable job seekers as a result of the measures proposed in the Bill.

1.110 DEEWR and DHS referred to a number of safeguards already exist within the employment services system to prevent vulnerable job seekers from being disadvantaged by existing compliance measures and participation requirements.

1.111 DEEWR explained:

[T]hose elements of the current framework that are designed to give added protection to vulnerable job seekers will continue to do so... [including] the legislated requirement to consider the job seeker's circumstances and explanations for their actions before taking any compliance action, comprehensive compliance assessments to identify barriers to participation and recommended appropriate services or compliance action, and provisions designed to allow the waiving of penalties for job seekers identified as vulnerable for specified reasons.⁵⁷

1.112 In addition, as per the explanatory memorandum accompanying the Bill and the Minister's second reading speech, job seekers with a vulnerability indicator will not have their payment suspended as a result of their first missed appointment. DEEWR indicated that, instead of payment suspension, the first compliance failure would trigger contact from Centrelink.⁵⁸

1.113 The Committee considers that the contact between Centrelink and the job seeker at this point in time would provide Centrelink staff with an engagement opportunity that they can use to explain the measures proposed in the Bill and reiterate the consequences of missed appointments. This would assist vulnerable job seekers to understand the compliance regime and enhance their ability to engage with it. The Committee also considers that, in the case of job seekers with a vulnerability indicator, this contact should occur on a one-on-one basis via telephone or in person.

1.114 As per the Committee's comments and recommendations above in relation to communication, any opportunity to communicate with job seekers should be used to provide clear, plain-English explanations of the changes flowing from the measures proposed in the Bill. This is all the more important in the case of job seekers with a vulnerability indicator.

57 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 3.

58 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 4.

- 1.115 The CPSU indicated that its members held serious concerns as to the impact that the measures proposed by the Bill would have in vulnerable job seekers and 'expressed the need for compliance arrangements to be flexible to take into account individual circumstances.'⁵⁹ The importance of flexibility in the compliance regime proposed by the Bill, particularly in relation to vulnerable job seekers, was echoed by a number of organisations.⁶⁰
- 1.116 As discussed above, ESPs will have the discretion to decide whether or not they consider it appropriate and necessary to report to Centrelink if a job seeker with a vulnerability indicator fails to attend an appointment or comply with a participation requirement.
- 1.117 DEEWR explained:
- If the provider determines that at a particular point in time they do not want to submit a PR [participation report] or have the suspension occurring for job seekers, they can still use the other tools available to them if they think those tools will better facilitate the re-engagement of the job seeker. The provider could submit a contact request. That will not suspend the job seeker's payment. That is just about getting the job seeker to re-establish contact and re-engage with their provider.⁶¹
- 1.118 DEEWR provided details of the information given to JSA providers in relation to job seekers with a vulnerability indicator. This information indicates that where a job seeker fails to meet their participation requirements and this failure related to an identified vulnerability, compliance action is unlikely to be the most appropriate means of re-engaging the job seeker.⁶²
- 1.119 There appears to be some scope for flexibility in the application of the compliance regime in this regard. Thus, particularly in the case of vulnerable job seekers, the Committee considers that the guidance provided to ESPs should provide that submitting a participation report against vulnerable job seekers is a discretionary measure that should only be used after other reconnection and reengagement mechanisms have been attempted.

59 CPSU, *Submission 10*, p. 5.

60 See, for example, NWRN, *Submission 14*, pp. 10-11; Mission Australia, *Submission 9*, p. 2-3; Commonwealth Ombudsman's Office, *Submission 7*, p. 3.

61 Mr Stiller, DEEWR, *Committee Hansard*, 18 April 2011, p. 9.

62 DEEWR, Email Correspondence, 28 April 2011.

Recommendation 7

The Committee recommends that employment service providers should be advised to utilise all re-engagement mechanisms available to them in relation to vulnerable job seekers before considering compliance action and should carefully consider the implications of the possible imposition of a financial penalty on this group.

Vulnerable Job Seekers without a Vulnerability Indicator

1.120 Concerns were also raised in relation to individuals who do not have a vulnerability indicator, and thus will not benefit from the safeguards available to those who do, but arguably suffer from an undisclosed or unrecognised vulnerability.

1.121 Jobs Australia raised concerns in relation to the identification of individuals suffering from a vulnerability:

[T]here remains questions about whether the system is doing the best it can to identify and flag all those people. A lot of the factors that go to making somebody vulnerable are not necessarily disclosed by people in the course of routine Centrelink interviews and other interventions that they have.⁶³

1.122 The NWRN indicated that,

People who have failed to disclose sensitive and personal information about problems such as sexual abuse, bullying, mental illness or mild intellectual disability or an acquired brain injury will be faced with a major dilemma if this Bill proceeds. They may face a financial penalty because they fail to disclose or recognise the existence of [a] barrier...the situation will also be difficult for a person who may not recognise the existence of a medical or mental health condition or be unwilling to accept that they have a specific vulnerability.⁶⁴

1.123 DHS indicated that Centrelink is able to consider implementing additional support for an individual exhibiting a vulnerability, even if they do not have a vulnerability indicator recorded. DHS noted that if a job seeker fails

63 Mr Thompson, Jobs Australia, *Committee Hansard*, 13 April 2011, p. 4.

64 NWRN, *Submission 14*, p. 10.

to attend an appointment and they do not have a vulnerability indicator recorded, the payment suspension and subsequent contact with Centrelink provides an opportunity to assess the job seeker's situation and determine the best way forward.⁶⁵

- 1.124 The CPSU noted that although Centrelink staff have the ability to implement additional support mechanisms for individuals who exhibit vulnerabilities, it appears to be underused and staff require additional support in this regard:

We would like to see consideration given to more active identification of people that do not currently have identified barriers. Our members see these people all the time. They have undiagnosed psychiatric or mental illnesses and the comments we often get is that someone is reading a file in a PST team they will be able to judge from that file and the notes on that file whether or not that person is likely to have participation failures or not. At the moment the referral process to assist people without identified conditions is lacking. If there could be improvements into this process that would certainly assist and more tailored approach to complex case management.⁶⁶

- 1.125 The Committee considers that it is crucial for Centrelink and ESP staff to remain aware of the potential for individuals without vulnerability indicators to suffer from a vulnerability and to consider the repercussions of compliance action thoroughly before proceeding.
- 1.126 Specific challenges will be faced by those with a vulnerability that has not yet been recorded by Centrelink; however, the compliance regime proposed by the Bill has the potential to create opportunities for such vulnerabilities to be identified and managed appropriately, if Centrelink staff have training and resources available to them to enable such identification and management.

65 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 17.

66 Ms Newman, CPSU, *Committee Hansard*, 18 April 2011, pp. 58-59.

Recommendation 8

The Committee recommends that additional training and resources be provided to Centrelink staff to raise awareness of job seekers with undisclosed vulnerabilities to ensure that their needs are identified and managed appropriately.

- 1.127 Some stakeholders expressed concern in relation to job seekers being initially placed into the incorrect streams and the apparent inability for job seekers to be reassessed and placed into different streams when the initial allocation leads to an inadequate level of servicing and support.
- 1.128 It is beyond the scope of this inquiry to consider issues pertaining to the allocation of job seekers into streams; however, the Committee notes that stakeholders indicated that this was an area of concern.

Job Seekers in Remote Areas

- 1.129 The Committee recognises the concerns raised by the Commonwealth Ombudsman's Office in relation to the unique challenges faced by job seekers in remote communities as a result of 'limited education, poor health, inadequate housing, competing cultural requirements and limited access to mainstream services.'⁶⁷
- 1.130 The Committee also recognises the difficulties that many job seekers in remote communities face when attempting to engage with the employment services system, including issues that relate to limited job opportunities and training courses.⁶⁸
- 1.131 DEEWR has indicated that being in a remote community is not, in and of itself, a vulnerability indicator; however,
- ...things like homelessness, drug or alcohol dependency, mental illness or language, literacy or numeracy difficulties are the sorts of things that are vulnerability indicators. Job seekers living in remote areas can access those, as can any other job seeker.⁶⁹

67 Commonwealth Ombudsman's Office, *Submission 7*, p. 4.

68 Commonwealth Ombudsman's Office, *Submission 7*, p. 4.

69 Mr Stiller, DEEWR, *Committee Hansard*, 18 April 2011, p. 11.

1.132 The requirement that Centrelink book an appointment for a job seeker with their provider within two days of contacting the job seeker following a missed appointment⁷⁰ appears to be at the core of many concerns held for job seekers in remote communities.

1.133 The Commonwealth Ombudsman's Office commented on this point:

...we have received feedback that employment service providers are often unable to attend communities as expected, whether due to unexpected difficulties or community events. This is a significant issue if, under the proposed amendments, the ability for job seekers to actually attend interviews impacts upon the reinstatement of their payments. If so, this will need to be managed properly to ensure individuals are not adversely affected.⁷¹

1.134 DEEWR has indicated that if a job seeker is unable to be booked into an appointment with their provider within the two day limit through no fault of their own, and they are the subject of a payment suspension, their payment suspension will not continue:

...where contact with Centrelink is established with the job seeker, Centrelink needs to book an appointment with the provider in the next two working days. Now, if the provider is not in the community or in that area in that time frame, and therefore it is outside the job seeker's control to have an appointment quickly, then if the job seeker is in a situation of financial penalty the penalty immediately stops being incurred on the day on which the job seeker speaks with Centrelink. So there are safeguards built into the system to ensure that job seekers in remote areas are not penalised for something that is outside their control.⁷²

1.135 The safeguards discussed by DEEWR are contingent upon Centrelink contacting the job seeker which, the Committee recognises, may prove challenging in relation to job seekers in remote communities. DEEWR noted:

In remote areas a lot of job-seekers do interact with Centrelink by the phone...The key thing to note is that...once the participation report is submitted contact currently needs to happen with the job-seeker before their next payment can be made. The new

70 As explained by Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 12.

71 Commonwealth Ombudsman's Office, *Submission 7*, p. 4.

72 Mr Stiller, DEEWR, *Committee Hansard*, 18 April 2011, p. 4.

arrangements do not change anything for remote job seekers in that regard.⁷³

- 1.136 The National Employment Services Network also raised the issue of communication with job seekers in remote areas and noted:

The one area, though, that will require special consideration in all of this is in the remote communities, because, even if people have mobile phones – if you were considering those sorts of mechanisms – you cannot actually contact them because they do not have reception. You also have to have flexibility so that it is when they come to town to lodge their Centrelink form that you can get everything lined up, or, as has happened in some trials that they have been doing in the Top End, you get all the stakeholders going out to the communities together.⁷⁴

- 1.137 As discussed above, communication is vital to the success of the measures proposed by the Bill and it is important for Centrelink and ESP staff to remain aware of the unique challenges faced by job seekers in remote communities. The Committee considers that, in the case of job seekers in remote communities, a degree of flexibility is necessary and both Centrelink and ESPs should consider creating more opportunities for job seekers to engage with their ESPs on a regular basis.

- 1.138 Furthermore, Centrelink and ESPs should take into consideration the unique difficulties, particularly in relation to communication, experienced by job seekers in remote communities when utilising their discretion as to the submission of participation reports and the application of payment suspensions.

Staff and IT Resourcing

Staff

- 1.139 Centrelink and ESP staff will be at the centre of the implementation and administration of the measures proposed by the Bill, as explained by Professor Disney:

You can tell how effective a lot of these schemes will be by looking at mundane things like the case load of the people involved – what

⁷³ Mr Stiller, DEEWR, *Committee Hansard*, 18 April 2011, p. 10.

⁷⁴ Ms Sally Sinclair, Chief Executive Officer, National Employment Services Association, *Committee Hansard*, 13 April 2011, p. 40.

is the case load of the providers and the case load of the Centrelink workers, who are going to be making their decisions and providing the assistance? There can be all sorts of grand language in the legislation and in the minister's speeches but the crunch often will be how much time the front-line people are able to give to helping people with disadvantage.⁷⁵

1.140 As discussed above, the timing of notifications to job seekers in relation to payment suspensions and the ability of Centrelink staff to contact job seekers who are the subject of such suspensions is central to the measures proposed by this Bill.

1.141 In terms of the work that will be incurred by ESPs, DEEWR stated:

The employment services providers actually will not be incurring a significant change in the requirements upon them, because they will be making an assessment individually when someone does not attend an appointment, which they would do now about whether or not to submit a participation report. They would need to have available follow-up appointments if they do submit a participation report, as they do now. We will reinforce to employment services providers the expectation that they would have appointments available within the two days...⁷⁶

1.142 The Committee considers that an ongoing dialogue should be maintained with ESPs, particularly in relation to the requirement that they have appointments available for job seekers within two days of Centrelink contacting a job seeker following a missed appointment.

1.143 The Committee is concerned about comments from the CPSU indicating that Centrelink staff members may not have the capacity to contact job seekers immediately following a payment suspension or manage the other aspects of the administration of the new compliance regime proposed by the Bill.

1.144 DHS has indicated that they intend to closely monitor the impact that the implementation of the measures proposed in the Bill is having on Centrelink staff and will rearrange current working arrangements to accommodate for any increased workload:

Our response is to change our arrangements and work more than anything else to accommodate what is proposed, so it is really

75 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 44.

76 Ms Milliken, DEEWR, *Committee Hansard*, 18 April 2011, p. 12.

around rejigging some of the current work we do to bring this work in.⁷⁷

- 1.145 In response to the comments from DHS, the CPSU indicated that Centrelink staff are under considerable pressure and expressed their belief that a 'rejigging' of the current work done by Centrelink staff would not be sufficient to enable them to successfully implement and administer the measures proposed by the Bill:

It would be fair to say that Human Services staff now, particularly in Centrelink, are pressed. We are seeing staff numbers reduce across the board. People who leave the workplace are not being replaced. This has also been seen in some of the Participation Solutions Teams [PST], who are the workhorse on compliance within Centrelink. So we have real concerns about any impact on work...We are concerned that a rejigging of workload may actually not go to the heart of the issues that concern us. If this compliance regime is to be changed, it will have an increase on workload. The question that we would ask is: if workers and PST members are expected to implement these changes, what do they not do? They cannot do everything they are being asked to do with fewer resources, which is currently the case.⁷⁸

- 1.146 The CPSU also explained the impact that increased workloads would have on the ability of Centrelink staff to contact and communicate with job seekers and the ability of job seekers to communicate with ESPs:

There are the workload pressures, and directly related to that is the time factor in terms of customer contact that we are doing, both in offices and in the PST team. We have these measures that we have to meet for turning over the calls or the interviews. If we are talking quality and being able to explain in plain English to a range of different customers, including with interpreters when needed, it really does take a lot of time...Over the last six months that team has been under such pressure. Just recently the customers have been waiting one hour even to get onto them, and then the customers can have a 45-minute conversation with them. Then they have to ring the job providers, but the job providers have closed for the day.⁷⁹

77 Mr Gary Dunn, Chief Executive Officer, Families, Employment and People, DHS, *Committee Hansard*, 18 April 2010, p. 20.

78 Ms Newman, CPSU, *Committee Hansard*, 18 April 2011, p. 57-58.

79 Ms Patricia Ann Tilley, Section Councillor, CPSU, *Committee Hansard*, 18 April 2011, p. 60.

1.147 It is clear that waiting times of an hour for job seekers attempting to contact Centrelink to discuss their payment suspension are not ideal, particularly when job seekers may be utilising mobile or public phones and may have limited credit. The Committee has concerns about the pressure that the implementation and management of the new measures proposed by the Bill may have on Centrelink staff.

1.148 On this point, the CPSU stated:

...there needs to be frank evaluation of exactly what the workload spike would be and staff need to be involved in that conversation, as they do with any evaluation of the implementation of any legislation.⁸⁰

1.149 It is beyond the scope of the Committee to undertake a broad consideration of the key performance indicators (KPIs) to which Centrelink staff are expected to work; however, comments from the CPSU as to the pressure Centrelink staff are under to meet KPIs, particularly those in areas that will be directly impacted upon by the changes proposed by the Bill, are of concern. The CPSU indicated that pressure resulting from KPIs may impact upon the ability of Centrelink staff to contact job seekers in a timely fashion and effectively explain the changes proposed by the Bill:

Under the PST KPIs, I believe they are supposed to be doing 20-minute interviews...and a lot of them are blowing out to 45 minutes because they are complex, in-depth conversations. There is pressure on that team.... When the PST started they had two roles: taking inward calls from people and making outward calls for people who had participation reports lodged so that they could be dealt with before they arrived at customer service for not being paid. They no longer have time to make outbound calls, so in every call they get the customer is unhappy because they have not been paid.⁸¹

1.150 Furthermore, the Committee was troubled to hear that some Centrelink staff face significant abuse from callers and are under considerable pressure to deal with difficult calls on a daily basis as a result of the fact that they do not have time to adequately deal with calls or to make outbound calls to job seekers:

80 Ms Newman, CPSU, *Committee Hansard*, 18 April 2011, p. 58.

81 Mr Stephen Dexter Cocker, Governing Councillor, CPSU, *Committee Hansard*, 18 April 2011, p. 61.

So they [Centrelink PST staff] have contact with someone in a customer service centre or maybe a call centre and they have that the discussion about why they have not been paid: 'What have you done with my money?' Then they get told why, so they go and talk to somebody else, and they may wait another hour to talk to somebody else.. the nature of their phone calls is not pleasant. Basically they get abused and abused and abused. Very few phone calls do not start off with that, and they may have 20, 30 or 40 calls a day. It is very hard. My office has abandoned the KPIs because they cannot meet them. They have stopped looking at the board at the top of the room that says how many calls are waiting. They cannot meet them. They will just take one call after another and do what they can.⁸²

- 1.151 The Committee considers that the current Centrelink staffing situation should be monitored, in consultation with Centrelink staff members, in order to ensure that Centrelink staff continue to have the capacity to implement and administer the measures proposed by the Bill without undue stress or unreasonable workloads.
- 1.152 In addition, Centrelink should monitor the levels of pressure and abuse faced by Centrelink staff, with a view to providing increased and timely support measures, if necessary.

IT Resourcing

- 1.153 In addition to the concerns raised by stakeholders as to the impact of staffing capacity on the implementation and administration of the measures proposed by the Bill, the Committee also notes that there appears to be considerable concern around the functioning and quality of the IT systems are relied upon by Centrelink, ESP, and DEEWR staff.
- 1.154 The Committee notes that the IT systems that will be utilised to implement and administer the proposed compliance regime will be extremely important, not only for the administration of the regime, but also for communication and reporting purposes. Professor Disney explained that his experience of the relevant IT systems led to some concerning revelations:

Another major problem...is that the implementation and the reporting...was really overly influenced by the constraints and...to some extent the idiosyncrasies of the IT system and the operators of the IT system. Here, as in other areas of public policy, it is a

82 Mr Cocker, CPSU, *Committee Hansard*, 18 April 2011, p. 61.

little disturbing how often one sees that actually in practice a scheme is being very heavily influenced by the IT considerations rather than by the legislation and the policy. In some instances we have found that the IT systems being operated were inconsistent with the legislation and the policy.⁸³

- 1.155 A core issue appears to be the interface of numerous IT systems. The CPSU indicated that there are pre-existing IT issues that may impact upon the implementation and administration of the measures proposed by the Bill:

The IT systems are a bit of a problem, inasmuch as you have a number of private businesses that have their own system that they have chosen to buy to run their business which has to interface with the DEEWR system, which then has to interface with the Centrelink system. Our people work very hard to fix problems as they arise, but the DEEWR IT system has limited capacity for testing changes. So they fix things and it may or may not work. Things fall through the spaces at quite a rate. There are people working on it as best they can, but the fact is they are trying to make a large number of computer systems or programming systems talk to each other, which is difficult....The system is not on a real-time basis back to Centrelink. It may take until after midnight, and the data does not always come through. So there are some compatibility issues in terms of making sure the data comes through.⁸⁴

- 1.156 These interface issues are of concern to the Committee, as an important element of the compliance regime proposed by the Bill is the ability to immediately reinstate payments once a job seeker makes contact with Centrelink and agrees to attend an appointment.
- 1.157 If delays exist in the system such that it takes hours, or days, for data to be transferred, the Committee is concerned about the impact that this may have on the ability of Centrelink staff to reinstate payments or cancel payment suspensions as soon as possible.
- 1.158 In addition, the Committee received evidence explaining that IT issues may lead to participation reports being falsely recorded and, thus, payment suspensions occurring in error. The CPSU explained that, according to their members, approximately 15 per cent of failures

83 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 37.

84 Mr Cocker, CPSU, *Committee Hansard*, 18 April, pp. 60-61.

triggered are due to incorrect data coding or the Centrelink and DEEWR systems not reading or transferring the data correctly.⁸⁵

- 1.159 This information is of serious concern to the Committee, as is the possibility that IT alignment issues may negatively impact upon communication with job seekers. The CPSU provided the following example:

The reminder that goes to a customer about a rescheduled appointment in Centrelink may not necessarily be sent depending on where the customer's information is located on the system. If the customer's file has not been moved across the system, for example, and they have moved interstate, a rescheduled appointment reminder may not be sent even though an updated address may have been provided. There were similar system problems for Job Network providers where appointment reminders may not be going to customers, leading to payment suspension.⁸⁶

- 1.160 The Committee notes that DHS have indicated that they are in the process of updating all of their communication systems and have developed a communication strategy in preparation for the implementation of the measures proposed by the Bill.⁸⁷ This should go some way to solving the abovementioned pre-existing IT issues.
- 1.161 The Committee considers that it is necessary for DHS and DEEWR to review their IT systems with a view to correcting any alignment issues that may impact upon the administration and implementation of the compliance measures proposed by the Bill.
- 1.162 Furthermore, it is important to ensure that all IT systems are aligned in order to ensure consistent and accurate communication between DHS, DEEWR and ESPs.

"Reasonable Excuse" and "Special Circumstances"

- 1.163 Item 15 of the Bill, which seeks to introduce a new section 42UA, appears to be a point of contention and concern for some stakeholders.
- 1.164 The proposed section 42UA seeks to introduce a new reasonable excuse provision, which provides that when the Secretary is determining whether

85 CPSU, *Submission 10*, p. 9.

86 CPSU, *Submission 10*, pp. 9-10.

87 Ms Hay, DHS, *Committee Hansard*, 18 April 2011, p. 20.

a job seeker has a reasonable excuse for a relevant compliance failure, as outlined in proposed section 42UA(1), an excuse cannot be reasonable unless either the job seeker has notified their specified contact person of that excuse prior to the appointment, contact, or activity to which the failure relates, or the Secretary is satisfied that special circumstances existed which it was not reasonable for the job seeker to provide prior notice of the excuse to their specified contact person.

1.165 The concerns raised by witnesses, and in submissions, that relate to this provision can be broken down into two separate issues: the meaning of 'reasonable excuse' in the context of the proposed provision and the meaning and purpose of the term 'special circumstances.'

1.166 The Queensland Welfare Rights Centre expressed their concerns as to the meaning and utilisation of the 'reasonable excuse' provision as follows:

The Bill seeks to 'tighten' the provisions available for a Jobseeker missing an appointment with a 'reasonable excuse.' The Bill does this by qualifying an excuse as reasonable only when the excuse is given prior to an appointment or activity. It is our understanding that in providing for this, the Bill does not 'tighten' the meaning, it changes it beyond the point where the legal use of the word 'reasonable' has semantic attachment...We would argue that one of the key facets of what is considered reasonable is that its flexibility and scope is not limited by when the reason is known.⁸⁸

1.167 A core concern raised by the Queensland Welfare Rights Centre was the temporal nature of the definition of reasonableness in proposed section 42UA, in that an excuse cannot be considered reasonable unless a job seeker notified their specified contact person of that excuse prior to committing a compliance failure, for example missing an appointment with their provider.

1.168 The question of reasonableness, explained the Queensland Welfare Rights Centre, "does not concern whether that person would have been able to provide that reasonable excuse ahead of time, nor should it."⁸⁹

1.169 The Committee notes, as recognised by the Queensland Welfare Rights Centre, that proposed section 42UA does provide an exception to the requirement for prior notice in that the Secretary may determine that 'special circumstances' existed in which it was not reasonable to expect the job seeker to give prior notice and, thus, determine that a job seeker had a

88 Queensland Welfare Rights Centre (QWRC), *Submission 4*, p. 4.

89 QWRC, *Submission 4*, p. 5.

reasonable excuse for, for example, missing an appointment with their ESP, despite there being no prior notice given.

1.170 Both the Queensland Welfare Rights Centre and the NWRN indicated that the 'special circumstance' exception provides too high a bar for job seekers to have to meet in order to prove reasonableness. The job seeker has to meet the threshold of both 'special' and 'reasonable' for the 'special circumstance' exception to apply i.e. the Secretary must be satisfied that there were *special circumstances* in which it was not *reasonable* to expect the person to give prior notification.

1.171 The NWRN explained:

The problem is the requirement that the circumstances be 'special'...in policy there is a tendency to only treat as 'special' something that is out of the ordinary, uncommon, unforeseen or exceptional. There is a likelihood that requiring the circumstances to be special may result in situations unforeseen and unintended by the Department of Education, Employment and Workplace Relations...which will cause unjust hardship to job seekers who nonetheless have a perfectly reasonable excuse for failure to notify in advance of their inability to attend.⁹⁰

1.172 The NWRN provided examples of a number of circumstances that they indicated may meet the general threshold of 'reasonable excuse,' but, due to a lack of prior notice, may fall short, as they would not be considered 'special circumstances.' One of these examples is as follows:

Using Minister Ellis' own example reported in *The Australian* on 8 April 2011, a job seeker who has care of a child may now have to show that their child had a 'serious accident' to justify the missing of an appointment. The fact that a child's school called and asked the job seeker to collect the child may well be disregarded under the new rules because this situation is not special enough. A child's illness may or may not be special.⁹¹

1.173 In addition, the NWRN raised concerns as to how the term 'special circumstances' in this context would be interpreted by courts and tribunals:

...inevitably matters will get to tribunals and courts and they will apply the case law, the law and the statutory construction. As a matter of the statutory construction, because of the fact that the

90 NWRN, *Submission 14*, p. 5.

91 NWRN, *Submission 14*, p. 6.

word 'special' sits there, when you look at it and you start to apply the law, the first step is: why is the word 'special' there? It has to have a meaning, and then a meaning is put around it.⁹²

- 1.174 DEEWR indicated that the term 'special circumstances' appears in many provisions in the social security law and has been the subject of considerable judicial scrutiny that has led to a general consensus that the term is not capable of being defined in a precise or exhaustive manner.⁹³
- 1.175 The Committee notes that the decision of the Australian Appeals Tribunal (the Tribunal) in *Re Beadle and Director-General of Social Security* (1984) 6 ALD 1 has been an oft-quoted benchmark in relation to the interpretation of 'special circumstances.' In that case the Tribunal said (at 3):
- An expression such as "special circumstances" is by its very nature incapable of precise or exhaustive definition. The qualifying adjective looks to circumstances that are unusual, uncommon or exceptional. Whether circumstances answer any of these descriptions must depend upon the context in which they occur. For it is the context which allows one to say that the circumstances in one case are markedly different from the usual run of cases. This is not to say that the circumstances must be unique but they must have a particular quality of unusualness that permits them to be described as special.
- 1.176 In *Boscolo v Secretary, Department of Social Security* (1999) 53 ALD 277, French J held that 'special circumstances' is where there is 'something unusual or different to take the matter the subject of the discretion out of the ordinary ...'
- 1.177 It seems to the Committee that the above judicial consideration of the term 'special circumstances' indicates that it is incapable of precise definition; however, it is intended to refer to circumstances that are unusual, different, or out of the ordinary.
- 1.178 The Committee is concerned that circumstances that would otherwise be reasonable, such as picking up a child from school because they were ill, missed a bus, or expelled, may not be considered special as those circumstances are, arguably, neither unusual nor exceptional.
- 1.179 Both the NWRN and the Queensland Welfare Rights Centre recommended that the word 'special' be removed from this provision. On this point, DEEWR indicated that they considered that the removal of the
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92 Ms Maree O'Halloran, President, NWRN, *Committee Hansard*, 18 April 2011, p. 49-50.

93 DEEWR, Email Correspondence, 28 April 2011.

word 'special' would result in a less-stringent test of whether a person should be excused for failure to give prior notification.⁹⁴

1.180 Professor Disney contended that adding the requirement of 'special circumstances,' in addition to the threshold of reasonableness, was an unnecessary complication to an already complex social security system:

..it does not seem to me at all justifiable to add yet another of these complexities of using the convoluted wording 'special circumstances in which it may be considered reasonable'. That can just be 'reasonable'. Was it reasonable not to have provided advance notice?⁹⁵

1.181 ACOSS echoed the sentiments expressed by Professor Disney, noting that, "[s]pecial circumstances" implies a narrow range of exceptions. Another outcome of this requirement is a further layer of complexity in new compliance rules.⁹⁶

1.182 The NWRN commented on this point:

"With the word 'special' in the bill, some people in those circumstances may in fact find that, even though they had a valid reason, they could not show 'special' circumstances not to notify. So we are saying that it sets a standard that is far too high and we would like that word to be removed. We think it will still fit into accordance with the second reading speech, and it is certainly in accordance with the submission by DEEWR, the Department of Education, Employment and Workplace Relations, at page 6, where the Department says quite clearly:

There will be no requirement to give prior notice where it is unreasonable to expect the job seeker to do so [emphasis added].

So you see that the department has not referred to the word 'special', and that sentence from the department's submission fits very clearly into the bill without the word 'special'.⁹⁷

1.183 DEEWR contended that the implication of the absence of the word 'special' from the table in subsection 42UA(2) is that the tests in that table are broader than would otherwise be the case and the bar that a job seeker

94 DEEWR, Email Correspondence, 21 April 2011.

95 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 39.

96 ACOSS, *Submission 2*, p. 3.

97 Ms O'Halloran, NWRN, *Committee Hansard*, 18 April 2011, p. 50.

has to hurdle to avoid the requirement to give prior notification would be much lower.⁹⁸

- 1.184 DEEWR has indicated that further guidance would be provided in the proposed guidelines as to the meaning of ‘special circumstances;’ however, to leave the meaning of both ‘reasonable’ and ‘special circumstances’ to policy in an environment in which job seekers face a variety of circumstances that may be ‘special’ to them but not ‘special enough’ to another person may place too high a threshold for job seekers to meet.
- 1.185 The Committee is of the opinion that the use of the word ‘special’ in the test currently imposed by section 42UA(2) adds an unnecessary level of complexity and is unnecessary in this provision. There are numerous circumstances that may, to a reasonable person, appear to be completely ordinary and every day, but, due to the nature of the individual to whom they relate and their specific situation, should meet the threshold of reasonableness for the purpose of proposed s. 42UA, despite a lack of prior notice.
- 1.186 The removal of the word ‘special’ from this section, thereby altering the provision to read ‘the Secretary is satisfied that there were circumstances in which it was not reasonable to expect the person to give the notification,’ would clarify the meaning and intended implementation of the section.
- 1.187 The circumstances that prevented the job seeker from providing prior notice will still have to be such that it was *reasonable* for the person to fail to provide prior notification. The removal of the word ‘special’ assists to clarify the section and makes the threshold of reasonableness clearer, thereby removing an unnecessary layer of complexity from, as the Committee heard from numerous witnesses, an already extremely complex and often confusing system.
- 1.188 If DEEWR holds serious concerns as to the detrimental impact of the removal of the word “special” from this section, it is open to DEEWR to codify in their guidelines the meaning of “circumstances in which it was not reasonable to expect the person to give the notification.” Thus, the risk of the threshold being too low is, arguably, averted.
- 1.189 It is, in the eyes of the Committee, easier for DEEWR to provide guidance and training around the circumstances in which it is not reasonable to expect a person to give the notification, rather than expect job seekers to
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prove that the circumstances that prevented them from giving their specified contact person notice were *special* enough that it was not *reasonable* to expect the job seeker to give the notification.

Recommendation 9

The Committee recommends that the word ‘special’ be removed from the table in proposed section 42UA, inserted by Item 15 of the Bill, such that the relevant provisions read: ‘the Secretary is satisfied that there were circumstances in which it was not reasonable to expect the person to give the notification.’

Response from the Government to the Report of the Independent Review into the Impacts of the new Job Seeker Compliance Framework

- 1.190 Throughout the course of the inquiry, the Committee heard from numerous stakeholders who were concerned that the compliance regime proposed by the Bill was the only measure from the Independent Review that had been considered and actioned by the Government.⁹⁹
- 1.191 Although there appeared to be general support for the recommendations and findings of the Independent Review as a whole,¹⁰⁰ the decision to target one measure suggested by the Independent Review without a response to the remainder of the findings and recommendations garnered negative reactions from many stakeholders.
- 1.192 ACOSS indicated that the Government has not yet responded to the good ideas in the independent review, ‘but has already reached for the stick.’¹⁰¹ Similarly, the NWRN regarded the Government’s decision to, ‘cherry-pick just this one negative proposal which...could be quite damaging to some people,’ as disappointing.¹⁰²
- 1.193 Professor Disney explained his position on the presentation of the Bill as follows:

99 Mr Davidson, ACOSS, *Committee Hansard*, 18 April 2011, p. 27.

100 See, for example, NWRN, *Submission 14*, pp. 17-18; Mr Davidson, ACOSS, *Committee Hansard*, 18 April 2011, p. 27; Mr Horn, Brotherhood of St Laurence, *Committee Hansard*, 13 April 2011, p. 25.

101 Mr Davidson, ACOSS, *Committee Hansard*, 18 April 2011, p. 27.

102 Mr Gerard Thomas, Policy and Media Officer, NWRN, *Committee Hansard*, 18 April 2011, p. 53.

[T]his bill should be presented by the government as part of an overall package of response to our review and any other measures they think are appropriate. I do not think it is really desirable or in some ways fair to any involved to pick out one relatively small area like this. There should be an announcement.¹⁰³

- 1.194 The Committee considers that it would be valuable for the Government to provide a response to the remainder of the Independent Review as soon as possible, in order to contextualise the measures proposed by this Bill and indicate what action the Government intends to take in response to the other 24 recommendations in the report of the Independent Review.

Concluding Comments

- 1.195 An overarching theme that became clear during the course of this inquiry was that many stakeholders are of the opinion that the social security system is in need of review and reform. It is beyond the scope of this inquiry to consider this kind of reform and, as such, this report has focussed on the proposed Bill and the submissions and evidence received by the Committee that pertain to it.
- 1.196 That said, the Committee also heard a considerable amount of reassuring and encouraging evidence from witnesses in relation to areas of the social security and welfare system that are succeeding. Particular emphasis was placed on the Local Connections to Work pilot, which has experienced considerable success of late and was put forward as an example of a program that is achieving real change for many job seekers. The Committee is eager to follow the progress of this program, and similar initiatives, into the future.
- 1.197 It was repeatedly emphasised to the Committee that any model that is going to be successful in reengaging job seekers must not merely be repeating measures imposed and proposed in the past. It must be focussed on reengagement and empowerment, as those elements are key to fostering reengagement with the employment services system.
- 1.198 The Committee considers that this Bill is a step in the right direction. It provides the opportunity for ESPs and Centrelink staff to reengage and reconnect with job seekers on a regular basis and reinforces the importance of engagement with ESPs to job seekers. It is crucial for job

103 Prof. Disney, *Committee Hansard*, 18 April 2011, p. 41.

seekers to attend appointments with their ESPs, as those appointments are the first step to finding job seekers sustainable and ongoing employment.

- 1.199 It is clear that communication problems have existed in the past in the area of social security, which is why the Committee has placed considerable focus on the importance of communicating the measures proposed to the Bill to job seekers and Centrelink and ESP staff.
- 1.200 The measures proposed by this Bill are not intended to be punitive and it is crucial that they be communicated to job seekers clearly and consistently in order to ensure that they achieve their intended purpose of sustained reengagement.
- 1.201 Given the right type of targeted and clear communication, thorough and comprehensive guidance and training, and adequate and consistent support and resources for front-line staff, the Committee considers that this Bill will have the effect of encouraging job seekers to engage with their ESPs and increase their chances of finding meaningful and long-lasting employment in an environment characterised by a focus on reengagement and empowerment.

Recommendation 10

The Committee recommends that the House of Representatives pass the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011.

Amanda Rishworth MP

Chair