

Government Senators' Majority Report

Reference

1.1 The Senate referred the provisions of the Social Security Legislation Amendment (Employment Services Reform) Bill 2008 (the bill) to the Education, Employment and Workplace Relations committee on 25 September 2008 for inquiry and report by 24 November 2008.

Conduct of the inquiry

1.2 Notice of the inquiry was posted on the committee's website and advertised in *The Australian* newspaper calling for submissions by 31 October 2008. The committee also directly contacted a number of relevant organisations and individuals to notify them of the inquiry and invite submissions. Thirteen submissions were received as listed in Appendix 1.

1.3 The committee conducted a public hearing in Sydney on 18 November 2008. Witnesses who appeared before the committee are listed at Appendix 2.

1.4 Copies of the Hansard transcript from the hearing are tabled for the information of the Senate. They can be accessed on the internet at <http://aph.gov.au/hansard>.

Acknowledgements

1.5 The committee thanks those who assisted with the inquiry.

Background to the bill

1.6 In early 2008 the government commenced a review of employment services. As part of the review, the Minister for Employment Participation, the Hon Brendan O'Connor MP, sought the views of employment services providers, employers, employer associations, welfare organisations, unions, program participants and other stakeholders on the future direction of employment services. Job seeker satisfaction surveys, program evaluations and reports of the Auditor-General also informed the review.¹

1 Information available from the DEEWR website:
<http://www.workplace.gov.au/workplace/Publications/PolicyReviews/NewEmploymentServices/Employmentservicesreviewbackground.htm> accessed 30 September 2008.

1.7 The current system of employment services was criticised during the consultations for being a 'one-size-fits-all, time-based approach', where job seekers are part of a production line which takes no account of their individual needs.²

1.8 To address the deficiencies, on 29 September 2008 the government released a \$3.9 billion request for tender to deliver reformed employment services from 1 July 2009.

Changed labour environment

1.9 In addition to addressing the deficiencies identified in the current system of employment services, the government has also stated that these reforms will address a number of changes in the labour market environment. The new system is intended to address current skills shortages and respond more flexibly to changing unemployment rates. Recent changes in the world and domestic economy will mean a rise in unemployment. However, the new system will be more flexible in meeting these changing economic circumstances.

1.10 At the hearing Mission Australia told the committee that although there may be rising unemployment in streams one and two, with newly unemployed job seekers requiring vocational training, job seekers in streams three and four present non-vocational difficulties and this is where the non-payment and non-compliance issues are centred.³ The new system is intended to address the needs of the high numbers of long-term and disadvantaged job seekers through a focus on engagement and assistance.

Increased numbers of disadvantaged job seekers

1.11 A key reason for the review of employment services was the recognition that there needs to be an increased focus on getting highly disadvantaged people into work. The government has recognised that over the last ten years many thousands of job seekers have become increasingly detached from the labourforce. While the unemployment rate has fallen to 4.2 per cent⁴, it is clear that a significantly higher proportion of job seekers are highly disadvantaged and have experienced long-term unemployment.⁵

1.12 The committee majority agrees that Job Network has failed disadvantaged job seekers, as illustrated by the following figures noted in the second reading speech:

2 Minister for Employment Participation, Hon Brendan O'Connor, Speech to the National Employment Services Association National Conference, 15 August 2008.

3 Ms Leisa Hart, Mission Australia, *Proof Hansard*, 18 November 2008, Sydney, p. 6.

4 Australian Bureau of Statistics, 6202.0, *Labour Force Australia*, 11 September 2008, p.1.

5 Minister for Employment Participation, Hon Brendan O'Connor, Speech to the National Employment Services Association National Conference, 15 August 2008.

The proportion of people on unemployment benefits for more than five years has increased from one in ten in 1999, to almost one in four today – an increase from 74,000 people in 1999 to more than 110,000 ten years later.⁶

1.13 These job seekers are some of the most disadvantaged in the community. Some are suffering from mental illness. Others have significant language and literacy problems and poor educational attainment. Some have a neurological impairment and others are homeless or at risk of homelessness.⁷ The Department of Education, Employment and Workplace Relations (DEEWR) reported:

Various Centrelink and DEEWR data sources indicate that 32 per cent of job seekers on Newstart and Youth Allowance have a reported mental illness. Other barriers to participation include drug and alcohol problems (18 percent) and unstable accommodation (five per cent). Almost 13 per cent of job seekers are ex-offenders.⁸

1.14 The Australian Council of Social Service (ACOSS) also highlighted to the committee that the profile of job seekers has changed resulting in greater numbers who are disadvantaged:

There is a higher proportion of people with limited education and a higher proportion of people with various health problems, including mental health problems—that is, exactly the kinds of people who will stumble over administrative requirements.⁹

1.15 Dr Robert Simons, Head of Research and Evaluation for the Smith Family, told the committee that the current challenge of finding employment for greater numbers of disadvantaged job seekers was inevitable. He explained that the previous government's strategy to increase participation and make the transition from welfare to work had some merit but it was incomplete. Now the government is faced with this increased number of people who require more assistance, including lone parent families.¹⁰

1.16 The National Employment Services Association (NESA) supported the current reform of social security legislation stating it is necessary to provide adequate safeguards for the most disadvantaged in the community.¹¹

6 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, p. 8365.

7 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, p. 8365.

8 DEEWR, *Submission 6*, p. 1.

9 Mr Peter Davidson, ACOSS, *Proof Hansard*, 18 November 2008, p. 15.

10 Dr Robert Simons, The Smith Family, *Proof Hansard*, 18 November 2008, p. 46.

11 National Employment Services Association (NESA), *Submission 10*, p. 4.

1.17 The bill initiates changes to the compliance system which will form part of the broader changes to employment services to take effect from 1 July 2009.

Purpose of the bill

1.18 The bill will amend the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to give effect to measures announced in the 2008–09 Budget to support the new employment services. As part of a package of reforms to employment services, the bill will introduce a new job seeker compliance system.¹²

1.19 The new compliance framework will affect all job seekers in receipt of:

- newstart allowance;
- youth allowance for persons who are not full-time students or new apprentices;
- parenting payment for persons who have participation requirements and are not new apprentices; and
- special benefit for nominated visa holders.¹³

1.20 Minister for Employment Participation, Hon Brendan O'Connor MP, stated that the intention of the bill is to provide a more effective compliance system which will encourage participation and make job seekers more accountable for their efforts to find and keep a job.¹⁴

1.21 A key element of the bill focuses on the current mandatory, irreversible eight-week non-payment penalties largely because it results in disengagement from employment services. In submissions to the Employment Services Review, welfare agencies advised of the direct relationship between this penalty and consequences for vulnerable job seekers including homelessness and relationship breakdown. These problems place additional pressure on charitable organisations in providing support.¹⁵

1.22 A survey of job seekers by DEEWR in 2008 on the effect of eight-week penalties found that 'while reliance on welfare organisations is quite low among the job seeker population generally – at around two and a half per cent – it is double that for those who incur eight-week non-payment periods'.¹⁶ The survey also found that 50 per cent of job seekers relied on family for support during non-payment periods

12 *Explanatory Memorandum*, p. 1.

13 *Explanatory Memorandum*, p. 1.

14 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, p. 8364.

15 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, pp. 8364-8366.

16 DEEWR, *Submission 6*, p. 2.

which indicates that the effect of the penalty often extends beyond the job seeker.¹⁷ Further, the survey found that:

Over 50 per cent of job seekers serving eight week penalties had failed to pay rent or board on time during the penalty period and around 15 per cent of this group were evicted.¹⁸

1.23 The National Welfare Rights Network (NWRN) supported these findings saying the penalty is counterproductive, has caused extreme hardship and has contributed to both homelessness and social exclusion.¹⁹

1.24 In addition, DEEWR noted that a finding from their survey that was of particular concern was the negative effect of the penalty on the motivation and ability of job seekers to look for work. It found:

...the imposition of an eight week penalty made around 50 per cent of job seekers more motivated to find work. However, around 75 per cent of job seekers reported that having no income support made it harder to look for work, with over 50 per cent reporting that it made it a lot harder.²⁰

1.25 It was also highlighted that this penalty is not successful in compelling job seekers to find sustainable employment as:

75 per cent of job seekers who receive an eight week non-payment penalty are soon back on benefits, most of them within a fortnight of finishing their non-payment period.²¹

1.26 DEEWR explained that the clearest indication that the current compliance system is not achieving its aim is the doubling in the number of people who have received an eight-week penalty in the last two years it has been in operation.²² The intention is that a more effective compliance system will result in reducing the number of penalties as participation is increased. ACOSS agreed that the introduction of the discretion not to automatically impose an eight-week non-payment penalty and the ability to take individual circumstances into account and exercise judgement about the best action for an individual, should reduce the incidence of the penalties and assist re-engagement.²³

1.27 Currently there is no capacity to take into account the individual circumstances of job seekers before an eight-week penalty is applied. The new system

17 DEEWR, *Submission 6*, p. 2.

18 DEEWR, *Submission 6*, p. 2.

19 NWRN, *Submission 11*, p. 4.

20 DEEWR, *Submission 6*, p. 3.

21 DEEWR, *Submission 6*, p. 2.

22 DEEWR, *Submission 6*, p. 2.

23 Mr David Thompson, ACOSS, *Proof Hansard*, 18 November 2008, p. 9.

will introduce the Comprehensive Compliance Assessment (CCA) so that individual circumstances can be investigated and taken into account to find better ways of compliance where a job seeker faces barriers such as mental illness.

1.28 The eight-week penalty will still be retained for wilful and persistent non-compliance known as 'serious failures',²⁴ but the system will recognise a series of lesser offences which can be responded to more immediately.

Support for the bill

1.29 Participating organisations expressed support for the intent of the changes proposed in the bill to increase participation in employment and engagement with employment service providers. At the hearing, organisations such as Mission Australia and ACOSS emphasised the importance of keeping people connected and communicating with their job providers and Centrelink, as in their experience, this greatly increases the capacity to move them into employment. Mission Australia stated:

We have found at Mission Australia is that, the more we can connect with the job seeker and the more rigour we can put around the connection, the more positive impact it has on them in getting them engaged, whether it be for Work for the Dole, work experience moving forward or looking at other complementary programs around personal support.²⁵

1.30 Organisations were also encouraged that the new model will offer the flexibility to support job seekers according to their levels of disadvantage to address vocational and non-vocational barriers to finding jobs. Mission Australia pointed out the central importance of employment to address non-vocational barriers:

What we find from an employment perspective is that once you get a job seeker into permanent employment and earning a salary a lot of the other social barriers go away—things like the ability to pay rent and homelessness. We feel that employment is really at the centre of getting disadvantaged Australians included rather than excluded, because, once they have an ongoing salary and start to build self-esteem, they start to build relationships in the workforce and some of the other social barriers they have around housing, around interaction and around vocational issues start to diminish.²⁶

1.31 Organisations pointed to a number of very positive elements in the bill. Mission Australia strongly identified the following elements which it believed are likely to have beneficial effects:

24 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, pp. 8367.

25 Ms Leisa Hart, Mission Australia, *Proof Hansard*, 18 November 2008, p. 3.

26 Ms Leisa Hart, Mission Australia, *Proof Hansard*, 18 November 2008, p. 5.

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- the introduction of a staged compliance regime consisting of 'connection' failures, 'reconnection' failures and 'no show no pay' failures before consideration is given to the imposition of an eight-week non-payment period;
 - the introduction of non-payment periods ('reconnection' failures and 'no show no pay' failures) that are intended to reflect a work-like culture;
 - the intention to introduce a Comprehensive Compliance Assessment by a specialist Centrelink officer prior to an eight-week non-payment period being imposed;
 - the provision that the Secretary may exercise discretion in the application of an eight-week non-payment period; and
 - the introduction of provisions whereby the job seeker can work off an eight-week non-payment period by engaging in a period of intense activity and the ability for the Secretary to apply hardship provisions if a job seeker is unable to work off an eight-week penalty.²⁷

1.32 Submissions strongly supported the application of financial hardship provisions in cases of 'serious failure' where job seekers are unable to comply with requirements and where an extended non-payment period would result in severe financial hardship.²⁸

Provisions of the bill

1.33 Item 1 inserts a new Division 3A in the *Social Security (Administration) Act 1999* (the Act) which provides for a new legislative framework for compliance for job seekers as outlined in paragraph 1.19. Previously, the Act contained different compliance provisions for these four payments, which will be consolidated.²⁹

1.34 Proposed section 42B provides for the object of Division 3A which is to encourage participation and engagement with employment services, secure compliance with their obligations and requirements in relation to participation payments and ensure re-engagement with employment services as quickly as possible. In addition, the Division is not intended to punish a person who has a 'reasonable excuse' for failing to comply with their obligations.³⁰

1.35 Proposed section 42A provides an outline of the operation of the new Division 3A and states that the Secretary may to determine that a job seeker has committed a:

- 'no show no pay' failure;

27 Mission Australia, *Submission 9*, pp. 4–5.

28 Mission Australia, *Submission 9*, p. 4.

29 *Explanatory Memorandum*, p. 5.

30 Social Security Legislation Amendment (Employment Services Reform) Bill 2008, Schedule 1, Part 1.

- 'connection' failure;
- 'reconnection failure'; or
- 'serious failure'.³¹

1.36 These compliance tools which are detailed below provide a staged system which is likely to be more effective for highly disadvantaged job seekers.

'no show no pay' failures

1.37 At the centre of the new compliance arrangements is a 'no show no pay' penalty (proposed section 42C) which relates to activities. As noted in the second reading speech, the intention is to instil a 'work like' culture, as job seekers will lose a day's benefit for every day they fail to turn up without a 'reasonable excuse'. Thus, a job seeker will receive an immediate penalty for their actions. Paragraph 42C(1) (a) sets out the four grounds which determine a 'no show no pay' failure. Of note is that the 'no show no pay' failure will be imposed if the job seeker does not attend an interview, or if they attend but behave in a way which would foreseeably result in a job offer not being made.³²

1.38 A 'no show no pay failure' will result in job seekers losing one-tenth of their fortnightly payment for each day they don't attend. This does not affect rent assistance, the pharmaceutical allowance or the youth disability supplement but it does apply to any approved program of work supplement. Access to Health Care Cards and Family Tax Benefits will not be affected. Resuming participation will result in a resumption of income support and employment services.³³

1.39 Proposed section 42U empowers the Secretary to set out in a legislative instrument what is considered to be a 'reasonable excuse'. There is no intended change in policy to the 'reasonable excuse' exception with the intent being that job seekers should not be penalised for actions that are beyond their control.³⁴

Connection and reconnection failures

1.40 The proposed section 42E provides for the Secretary to determine that a job seeker has committed a 'connection failure'. These apply to appointments, where a job

31 Social Security Legislation Amendment (Employment Services Reform) Bill 2008, Schedule 1, Part 1.

32 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, p. 8366.

33 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, pp. 8366.

34 *Explanatory Memorandum*, p. 8.

seeker does not attend an appointment without a reasonable excuse. There is no immediate penalty for a 'connection' failure.³⁵

1.41 Instead, the job seeker will have to attend a 'reconnection requirement' which will involve a further appointment or further job search requirements. If the reconnection requirement is not attended without reasonable excuse a 'reconnection failure period' will be imposed until they comply with a further 'reconnection requirement'.³⁶ The job seeker will lose one-fourteenth of their fortnightly payment for each day they do not comply.³⁷

Eight-week non-payment penalties (serious failures)

1.42 The eight-week non-payment period has been retained for job seekers who refuse a suitable job, or if they have been wilfully and persistently non-compliant. This is termed a 'serious failure'. Centrelink will decide whether there has been a serious failure after conducting a Comprehensive Compliance Assessment.

The Comprehensive Compliance Assessment (CCA)

1.43 Section 42M sets out the grounds on which a serious failure may be determined.³⁸ This section presents one of the main differences between the proposed system and the current system where an eight-week non-payment penalty is automatic for job seekers who incur three failures.

1.44 A job seeker who misses three appointments or six days of 'no show no pay' failures in a six month period will be referred to Centrelink for a CCA. Employment service providers can also initiate a CCA. Centrelink will consider why the job seekers failed to meet their participation requirements and identify any barriers to employment and alternative service options in the following way:

A specialised Centrelink officer will consider the job seeker's compliance history and will talk to the job seeker to find any evidence of personal issues, including those that may not have previously been disclosed. Such issues might include homelessness, physical or mental health problems or domestic violence that may have impacted on the job seeker's ability to meet their requirements.³⁹

1.45 A non-payment period may be stopped if the job seeker participates in an intensive 'compliance activity' or if the job seeker does not have the capacity to

35 *Explanatory Memorandum*, p. 9.

36 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, p. 8366.

37 DEEWR, *Submission 6*, Attachment A, p. 1.

38 *Explanatory Memorandum*, p. 14.

39 DEEWR, *Submission 6*, Attachment A, p. 2.

comply with the 'serious failure' requirement and serving the penalty would cause severe financial hardship.⁴⁰

Eight-week preclusion period

1.46 The current eight-week non-payment period for job seekers who become voluntarily unemployed without good reason or unemployed due to misconduct will be retained. However, this will no longer be described as a penalty but as a 'preclusion period'.

1.47 DEEWR explained the terminology as follows:

The eight-week preclusion period applies to people who are not already on income support. In other words, it is like a waiting period now; they are basically precluded from payment for that eight weeks by virtue of the fact that they are voluntarily unemployed...⁴¹

1.48 DEEWR also explained that voluntary unemployment and misconduct are subject to the reasonable excuse provision.⁴²

1.49 Disadvantaged job seekers who would be in severe financial hardship as a result of this period will have their payment reinstated as is the case under financial case management. However, the job seeker will have participation obligations while they are receiving income support payment. They will also have an obligation to access employment services to help them find work.⁴³

1.50 Chapter two will outline the key issues raised with the committee.

40 *Explanatory Memorandum*, p. 1.

41 Mr Graham Carters, DEEWR, *Proof Hansard*, 18 November 2008, p. 57.

42 Mr Carters, *Proof Hansard*, 18 November 2008, p. 57.

43 Minister for Employment Participation, Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, 24 September 2008, pp. 8367–8.