

Issues raised during the inquiry

2.1 This chapter will detail the key issues raised with the committee during the inquiry. Participating organisations expressed support for the intent and content of the bill and said their concerns centred on details and the implementation process.

Discretion

2.2 Organisations were uncertain about the issue of discretion for providers to apply penalties and requested clarification on the scope of discretion for the Secretary, employment service provider and Centrelink.¹ While supporting the closer alignment with workforce conditions, organisations pointed to what they perceived as a lack of discretion to impose the 'no show no pay' penalty where there is not a 'reasonable excuse'.² ACOSS suggested that the discretion to provide a warning for those newly on income support or for a first breach resulting from a genuine misunderstanding, where the provider believes they will comply, is necessary. They argued that without this discretion, a job seeker could incur a number of penalties before they fully understand the rules or before it is able to be brought to their attention.³

2.3 Organisations also expressed concern that job seekers would not be able to make up or work off the 'no show no pay' failures through re-engagement. ACOSS suggested that if providers could require a person to undertake the days of activity they missed in lieu of financial penalty this might improve participation rates.⁴

2.4 DEEWR expressed surprise at the issues raised regarding discretion and the perceived lack of ability for the people of the ground to exercise their judgement. They clarified this issue by reading from the request for tender documentation which stated that the employment service provider has the discretion not to report non-compliance even if there is no 'reasonable excuse' if it is considered that compliance action will not be the best means of achieving re-engagement. Providers have also the discretion not to lodge a participation report if they believe it will not achieve re-engagement. It was explained that this would be the case for all failures.⁵

2.5 DEEWR officials further explained that the new arrangements are based on the premise that providers are working with job seekers and will be able to judge whether an excuse is reasonable for a particular individual or not.⁶

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

2 Mr Thompson, ACOSS, *Proof Hansard*, 18 November 2008, pp. 9–10.

3 Mr Peter Davidson, ACOSS, *Proof Hansard*, 18 November 2008, p. 10.

4 ACOSS, *Submission 7*, p. 5.

5 Mr Carters, *Proof Hansard*, 18 November 2008, p. 48 and DEEWR, *Request for Tender for Employment Services 2009-12*, Chapter 2, Statement of Requirements, p. 39.

6 Ms Janine Pitt, DEEWR, *Proof Hansard*, 18 November 2008, p. 49.

2.6 DEEWR officials advised the committee that the detail regarding discretion is in the contract in the request for tender document for the new employment services.⁷ DEEWR officials explained that employment service providers do not make decisions under the social security legislation so the detail about discretion is more appropriately located in the contract than in the legislation.⁸

2.7 The committee majority was reassured to hear that in cases where there is a genuine misunderstanding, for example where people are new to income support, the discretion is available to deal with the situation in ways other than imposing an immediate financial penalty. Examples could be included in guidelines to ensure discretion is applied consistently.⁹

2.8 DEEWR officials also clarified the following issues:

- that in relation to 'no show no pay' failures, the provider may negotiate for the job seeker to make up the day's activities on another day and thus reinforce the importance of participation;¹⁰ and
- that training will be provided to providers prior to the start of the new contract which will include a module on the compliance regime.¹¹

2.9 Questions were raised by Catholic Social Services Australia (CSSA) on the extent to which discretion should be monitored.¹² The committee majority was concerned that discretion once monitored too closely is no longer discretion and this would also add another level of paperwork and compliance for providers. The committee majority felt the accountability for the use of discretion should be with those using it and noted existing mechanisms for internal monitoring which they felt would be adequate.

2.10 The National Employment Services Association (NESA) noted that there is broad 'in-principle' support for the 'no show no pay' failures. However, they submitted where preparation and arrangements have been made and a person does not show up for an interview, they would consider this as a serious breach and there should be the discretion to treat it equally with a 'serious failure' where there is no reasonable excuse.¹³ NESA advised that both behaviours have an effect on the reputation of other

7 Mr Carters, *Proof Hansard*, 18 November 2008, p. 48.

8 Mr Ian Sharples, DEEWR, *Proof Hansard*, 18 November 2008, p. 48.

9 Mr Carters, *Proof Hansard*, 18 November 2008, p. 49.

10 Ms Pitt, *Proof Hansard*, 18 November 2008, p. 48.

11 Ms Pitt, *Proof Hansard*, 18 November 2008, p. 49.

12 Mr Frank Quinlan, Catholic Social Services Australia (CSSA), *Proof Hansard*, 18 November 2008, p. 39.

12 NESA, *Submission 10*, p. 5.

13 Ms Sally Sinclair, NESA, *Proof Hansard*, 18 November 2008, p. 19.

job seekers and reduce the confidence business and industry has in the effectiveness of employment services.¹⁴

Application of the 'no show no pay' penalty

2.11 Organisations questioned how long it will take to apply a 'no show no pay' penalty. Mr Frank Quinlan of CSSA, questioned the ability of the system to respond in a timely way and cautioned that because of administrative errors, mix ups and misunderstandings, job seekers should be given a little time to organise their affairs before the penalty is applied. ACOSS recommended the penalty be imposed on the 'payday after the next payday following the determination of the breach'.¹⁵

2.12 CSSA also suggested that missed appointments should be included in the connection/reconnection system¹⁶ and ACOSS also commented that the distinction between the 'no show no pay' and 'connection' failures is not sufficiently clear.¹⁷

2.13 DEEWR explained that people are paid fortnightly in arrears and clarified that the intention is for the penalty to apply as quickly as possible to demonstrate a cause and effect relationship. DEEWR stated that work is underway with Centrelink on the timing issue but it accepted that there will be circumstances where it is not able to be deducted in the same fortnight as the penalty was incurred.¹⁸

Comprehensive Compliance Assessment (CCA)

2.14 Organisations supported the new approach to the eight-week penalty and the CCA is seen as a welcome measure. The NESAs informed the committee that there was strong support for the introduction of the CCA as the current system is considered inadequate to ensure vulnerable income support recipients are identified and not affected unfairly. To illustrate this they submitted:

In particular, current instruments and processes to identify and protect vulnerable income support recipients rely on their capacity to disclose issues and advocate their case. However many disadvantaged income support recipients particularly those with mental health conditions (diagnosed and undiagnosed) lack the skills or insight to do this effectively.¹⁹

14 NESAs, *Submission 10*, p. 5.

15 Mr Davidson, *Proof Hansard*, 18 November 2008, p. 13.

16 Mr Quinlan, *Proof Hansard*, 18 November 2008, p. 42.

17 Mr Davidson, *Proof Hansard*, 18 November 2008, p. 13.

18 Mr Carters, *Proof Hansard*, 18 November 2008, p. 59.

19 NESAs, *Submission 10*, p. 4.

2.15 While welcoming the CCA, some organisations expressed the opinion that the trigger for a CCA should be included in the bill or at least in the legislative instrument to enable legislative scrutiny and ensure the protection it promises.²⁰

2.16 Organisations such as NESAs thought that including the trigger in legislation may not be the right point of intervention for many job seekers, stating that taking account of individual circumstances is challenging and the most important tool for a provider to have is flexibility. They asserted that the most important issue is the timing of a CCA and the ability to use it for early intervention.²¹ Many organisations advocated the ability to trigger the CCA early and therefore did not support being overly prescriptive by including it in the legislation.²²

2.17 DEEWR supported the use of the CCA as an early intervention measure, noting that the system will have a trigger for a CCA after six days of ‘no show, no pay’ and a provider or Centrelink can request a comprehensive compliance assessment at any time if they have concerns.²³

2.18 DEEWR also explained that an individual could request a CCA through their provider or Centrelink.²⁴ DEEWR officials advised:

The intention of the early usage of the comprehensive compliance assessment is to attempt to pick up on barriers that might be there that are stopping people from participating. It is not the intention to do that to apply an eight-week non-payment period early.²⁵

2.19 Regarding early identification of issues, DEEWR further stated:

The other thing is that the new employment services will focus very much on those very disadvantaged people who will be in stream 4, and as a result of that it is likely that the providers will identify them very early on as people who need special assistance.²⁶

2.20 DEEWR also highlighted the fact that the CCA is an administrative process and not something that in itself determines an action such as a non-payment period. The intention is for the CCA to look at the circumstances of the individual to determine whether alternative services or assistance is required.²⁷

20 Ms Hart, *Proof Hansard*, 18 November 2008, p. 1 and p. 2 and NWRN, *Submission 11*, p. 15.

21 Ms Sinclair, *Proof Hansard*, 18 November 2008, p. 18.

22 Ms Sinclair, *Proof Hansard*, 18 November 2008, p. 20 and Mr Smith, Homelessness Australia, *Proof Hansard*, 18 November 2008, p. 37.

23 Mr Carters, *Proof Hansard*, 18 November 2008, p. 55.

24 Mr Carters, *Proof Hansard*, 18 November 2008, p. 56.

25 Mr Carters, *Proof Hansard*, 18 November 2008, p. 56.

26 Mr Carters, *Proof Hansard*, 18 November 2008, p. 55.

27 Mr Carters, *Proof Hansard*, 18 November 2008, p. 58.

2.21 DEEWR further explained that all of the compliance arrangements such as a decision resulting from a CCA are open to the same appeals process that are available now.²⁸

Committee view

2.22 The committee majority is concerned that the more prescriptive compliance tools become, the higher the risk of losing the flexibility for application which is needed to address individual circumstances. It notes this greater flexibility to address individual circumstances is one of the main aims of the new compliance regime. The committee therefore supports the use of the CCA as an early intervention measure to address non-vocational barriers.

2.23 The committee majority is pleased to note that the use of the CCA as an early intervention measure will mean providers do not have to wait for a breaching to occur to start to ask questions to identify problems.

Vulnerability indicators

2.24 DEEWR explained that it is the intention of the new system to pick up issues early with the assistance of vulnerability indicators.²⁹ Organisations such as NESAs noted the need for vulnerability indicators to be working effectively to support the most vulnerable so that issues can be flagged early. They noted that currently the range of people who are eligible to have a vulnerability indicator placed on their record is quite narrow.³⁰

2.25 The NWRN noted that DEEWR has revised the vulnerability guidelines which had resulted in improvements in its use.³¹ However, they suggested there was additional work to be done to improve it further.³²

2.26 Mr Simon Smith, Executive Officer, Homelessness Australia said he would welcome a category of vulnerability which recognises people at risk of homelessness.³³

2.27 Senators asked DEEWR how many people with vulnerability indicators received eight-week non-payment penalties. DEEWR officials responded:

For 2006-07, of the 15,216 eight-week non-payment periods, 608 of those were for people with a vulnerability indicator. That represented 3.9 per

28 Ms Pitt and Mr Sharples, *Proof Hansard*, 18 November 2008, p. 58.

29 Mr Carters, *Proof Hansard*, 18 November 2008, p. 55.

30 Ms Annette Gill, NESAs, *Proof Hansard*, 18 November 2008, p. 19.

31 Ms Kate Beaumont, NWRN, *Proof Hansard*, 18 November 2008, p. 30.

32 Mr Gerard Thomas, NWRN, *Proof Hansard*, 18 November 2008, p. 32.

33 Mr Smith, *Proof Hansard*, 18 November 2008, Sydney, p. 36.

cent. For 2007-08, of the 28,887 job seekers with an eight-week non-payment period, 948 were people who had a vulnerability indicator. That represents 3.2 per cent.³⁴

2.28 DEEWR officials explained that the presence of a vulnerability indicator is an alert for decision makers that there may be other issues present. Centrelink is required to take any vulnerabilities into account in their decision making to determine whether they affected their ability to participate.³⁵

Committee view

2.29 The committee notes the importance of vulnerability indicators as a safety net for the most disadvantaged and urges DEEWR ensure their use, and the guidelines for their use, are effective.

Recommendation 1

2.30 The committee majority recommends that the Department of Education, Employment and Workplace Relations review the effectiveness of vulnerability indicators and associated guidelines to ensure they protect the most vulnerable job seekers.

Homelessness

2.31 Mr Smith told the committee that data collected by the Social Policy Research Centre for a 2005 study indicated that 1 in 9 people were at risk of becoming homeless as a consequence of the eight-week non-payment penalty.³⁶ Concerned senators noted the eviction figures from DEEWR³⁷ and asked what percentage of these people re-engaged with the system and found employment. DEEWR said these people were not individually tracked to see whether they reclaimed benefit or moved into employment but noted the availability of financial case management for eligible individuals.³⁸

2.32 Senators further questioned how many of those who were breached had dependents. DEEWR responded:

For the financial year 2007-08, 4,050 job seekers were assessed as eligible for financial case management. Of that 4,050, 3,614 were parents and 436 were people assessed as being exceptionally vulnerable themselves.³⁹

34 Ms Pitt, *Proof Hansard*, 18 November 2008, p. 50.

35 Ms Pitt, *Proof Hansard*, 18 November 2008, p. 50

36 Mr Smith, *Proof Hansard*, 18 November 2008, p. 35.

37 DEEWR, *Submission 6*, p. 2. Note: Not all people who were evicted became homeless.

38 Mr Carters, *Proof Hansard*, 18 November 2008, p. 51.

39 Ms Pitt, *Proof Hansard*, 18 November 2008, p. 52.

2.33 DEEWR officials added that these people still received family tax benefit and, if entitled, rent assistance as well.⁴⁰

2.34 Homelessness Australia raised concerns that the Act does not include a definition of homelessness and explained without this there is nothing linking the definitions used in the instruments and policy guidelines that flow from it.⁴¹ Mr Smith highlighted that the definitions of homelessness being used in the guide to the Social Security Act and the vulnerability indicator framework are not clear. He recommended the inclusion of the definition used by the Australian Bureau of Statistics (ABS) in the *Counting the homeless* report which is widely accepted. This definition should then be consistent in all associated instruments and policy guidelines.⁴²

Committee view

2.35 The committee majority notes that addressing homelessness is a key priority for the government as part of its social inclusion agenda.⁴³ The committee majority recommends that a definition, for example the one used by the ABS, be included in the documents that flow from the legislation such as the legislative instruments and policy guidelines.

Recommendation 2

2.36 The committee majority recommends that the government consider including a definition of homelessness, for example the one used by the Australian Bureau of Statistics, in documents that flow from the legislation including the legislative instruments and policy guidelines.

Operational effects

2.37 Organisations such as Mission Australia highlighted some possible operational effects and requested further consultation to work out the administrative requirements of the proposed changes so there are no unintended consequences such as increased administrative burden on providers.⁴⁴ The committee majority notes that consultation is underway to address operational issues.

40 Mr Carters, *Proof Hansard*, 18 November 2008, p. 52.

41 Mr Smith, *Proof Hansard*, 18 November 2008, p. 34.

42 Mr Smith, *Proof Hansard*, 18 November 2008, p. 34.

43 Shadow Minister for Social Inclusion, Ms Julia Gillard MP and Shadow Minister for Workforce Participation, Senator Penny Wong, *An Australian Social Inclusion agenda, Election policy*, p.9; The Minister for Employment Participation, the Hon Brendan O'Connor, *Media Statement*, 7 August 2008.

44 Ms Hart, *Proof Hansard*, 18 November 2008, p. 2.

2.38 Senator Siewert questioned DEEWR on whether an assessment had been undertaken of the effects of the new process on Centrelink resources. DEEWR responded that Centrelink have put in a bid for resources to be able to deliver the new system which is now being worked through.⁴⁵

Consultation

2.39 Organisations such as NESAs highlighted their considerable experience in dealing with job seekers and offered to assist with the development of the documents flowing from the legislation such as legislative instruments and policy guidelines.⁴⁶ At the hearing DEEWR stated that there will be continuing consultations with organisations such as ACOSS, the NWRN and NESAs in the context of the guidelines for successful employment service providers.⁴⁷

Communication

2.40 Organisations emphasised the critical importance of communicating the new system to job seekers. They advocated the need for consultation with providers and job seekers in the lead up to the implementation of the new system to ensure people are well informed and know their roles and responsibilities in order to minimise confusion and ensure consistency. ACOSS suggested active and creative steps to communicate the new arrangements and consequences to job seekers.⁴⁸ NESAs noted the need to better educate the Indigenous community about changes to their obligations and requirements.⁴⁹

2.41 DEEWR emphasised that there will be continuing consultation and training with the successful providers to ensure they understand the requirements and are able to communicate them.⁵⁰

Committee view

2.42 The committee majority is concerned that the legislation is not written as simply or clearly as it could be. It urges the government to ensure legislative instruments, guidelines and terminology are written as simply and clearly as possible to ensure consistency and assist communication.

45 Mr Carters, *Proof Hansard*, 18 November 2008, p. 60.

46 Ms Sinclair, *Proof Hansard*, 18 November 2008, p. 17.

47 Mr Carters, *Proof Hansard*, 18 November 2008, p. 55.

48 Mr Thompson, *Proof Hansard*, 18 November 2008, p. 12.

49 Ms Gill, *Proof Hansard*, 18 November 2008, p. 21.

50 Mr Carters, *Proof Hansard*, 18 November 2008, p. 50.

Recommendation 3

2.43 **The committee majority recommends that the Department of Education, Employment and Workplace Relations ensure that the legislative instruments, guidelines and terminology are simply and clearly written to assist consistency and communication.**

Recommendation 4

2.44 **The committee majority recommends a communication campaign be undertaken to ensure Centrelink, employment service providers and particularly job seekers are aware of the changes to the system and understand their roles and responsibilities. It urges the Department of Education, Employment and Workplace Relations to consider effective ways to communicate the changes to disadvantaged and Indigenous job seekers.**

Review

2.45 CSSA acknowledged that an enormous amount of data is currently collected but suggested it is largely for the purposes of tracking bureaucratic compliance.⁵¹ Mission Australia recommended a review of the effectiveness of the new arrangements.⁵² The NWRN suggested monitoring the effects of the new arrangements on vulnerable groups, including young people, Indigenous people and job seekers with a mental health condition.⁵³ Close monitoring and continuing review was also recommended by CSSA.⁵⁴ DEEWR informed the committee that review processes were being developed.⁵⁵

Indigenous Australians

2.46 Senator Siewert questioned witnesses on the possible effect of the bill on Indigenous job seekers given their high levels of disadvantage and the incidence of breaching. ACOSS responded that discretion will be very important in relation to Indigenous Australians as 'some of these people lead incredibly complicated lives'.⁵⁶ NESAs and CSSA highlighted that the flexibility in the system will be critical when dealing with Indigenous job seekers.⁵⁷ Organisations such as Mission Australia asked

51 Mr Quinlan, *Proof Hansard*, 18 November 2008, p. 41.

52 Mission Australia, *Submission 9*, pp. 20–22.

53 NWRN, *Submission 11*, p. 46.

54 Mr Quinlan, *Proof Hansard*, 18 November 2008, p. 43.

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

56 Mr Thompson, *Proof Hansard*, 18 November 2008, p. 14.

57 Ms Sinclair, *Proof Hansard*, 18 November 2008, p. 21 and Mr Quinlan, *Proof Hansard*, 18 November 2008, p. 43.

for additional opportunities to discuss how these processes would apply to Indigenous communities in remote areas.⁵⁸

Recommendation 5

2.47 The committee majority recommends that comprehensive data be collected to monitor and report on the effectiveness of the new compliance system for job seekers, including Indigenous Australians.

Consequential and other amendments

2.48 The bill also makes minor amendments to Social Security Law needed to support the new Employment Services. It will replace all references to 'activity agreements' with to 'Employment Pathway Plans'.

Employment Pathway Plan

2.49 An 'Employment Pathway Plan' (EPP) will perform a similar function to an activity agreement. It will set out the participation requirements of a job seeker, negotiated with the job seeker and tailored to their individual needs. Unlike the activity agreement the EPP, may include optional activities not subject to the compliance action such as drug, alcohol or psychological counselling.⁵⁹

2.50 Dr Simons suggested inclusion of 'pre-employability skills' as acceptable skill provisions:

One of the things that we have learned from providing opportunities for children and young people who come from these financially disadvantaged families is that in many circumstances the simple lack of access to opportunities which would more broadly be termed personal development, as opposed to simply the development of cognitive and intellectual skills, is absolutely key to their engaging with the broader learning agenda. What is true of those kids and young people in the new circumstances is all the more so true for the parents that we are talking about.⁶⁰

2.51 Senators noted the suggestion from the NWRN that vulnerability indicators be included in the EPP. DEEWR explained that vulnerability indicators are flagged on the Centrelink system which is available to providers when negotiating an EPP.⁶¹ In response to questions about the process for vulnerabilities that have not been flagged DEEWR explained the following steps could be taken:

58 Ms Hart, *Proof Hansard*, 18 November 2008, p. 6.

59 Minister for Employment Participation, the Hon Brendan O'Connor, Second Reading Speech, *House of Representative Hansard*, p. 8368.

60 Dr Simons, The Smith Family, *Proof Hansard*, 18 November 2008, p. 47.

61 Mr Carters, *Proof Hansard*, 18 November 2008, p. 56.

In that case, a couple of things could happen. One is that, if that issue arose and a person did not, for example, have a vulnerability indicator for mental health on their records, the provider could request that Centrelink put that indicator on. In that case, Centrelink would investigate the circumstances and add the indicator at that point, so you do not have to wait for a CCA; that could happen at any time.⁶²

2.52 DEEWR further explained that job seekers will receive individually tailored service and as their circumstances change, EPPs can be changed without going through a CCA.⁶³

Conclusion

2.53 The committee majority notes that this is a complex area of public policy. The Opposition has stated that the government has gone 'soft' on welfare and describes people on welfare as 'dole bludgers'.⁶⁴ The committee majority recognises that most job seekers do the right thing but that sanctions are needed for the small number of people who deliberately exploit the system.

2.54 The committee majority notes the view from some groups advocating unconditional welfare rights. However, it does not agree with this view as unconditional welfare rights would imply opposing activity requirements and penalties for non-compliance. The committee majority supports the policy of mutual obligation, to the extent that an individual is able to comply, believing it is central to addressing welfare dependency through improving skills and self esteem.

2.55 Others see the new system as weakening the policy of mutual obligation. The committee does not accept this view. It recognises that withholding benefits can cause hardship for the most vulnerable and the new system will include increased flexibility to address individual needs.

2.56 Penalties remain but the system will be sufficiently flexible to be able to take into account individual circumstances. In particular, the committee majority supports the additional assistance for those disadvantaged people who need it.

2.57 The committee majority supports the retention of the eight-week non-payment penalty to address wilful and persistent non-compliance. The current regime of an automatic and irreversible penalty is harsh and counterproductive and resulted in undesirable social policy outcomes including homelessness. The penalty will be discretionary. A job seeker will now be asked why they are not complying so that underlying factors, changed circumstances and their financial situation can be taken

62 Ms Pitt, *Proof Hansard*, 18 November 2008, p. 57.

63 Ms Pitt, *Proof Hansard*, 18 November 2008, p. 56.

64 Hon Dr Andrew Southcott MP, *House of Representatives Hansard*, 21 October 2008, p. 9728, 9730; Hon Wilson Tuckey MP, *House of Representatives Hansard*, 21 October 2008, p. 9736; Hon Mr Don Randall MP, *House of Representatives Hansard*, 23 October 2008, p. 10213.

into consideration. The committee majority is sympathetic to efforts made in legislation to take into consideration matters which are beyond a person's control.

2.58 Where an eight-week penalty is applied the job seeker will be encouraged to re-engage with employment services, in contrast to the current system where they are disengaged. The committee majority supports provisions which ensure penalties do not tip the scales for the most vulnerable into personal crisis including homelessness and severe financial hardship. This is not being 'soft'. It is being fair and will ensure that cases of severe disadvantage are not just shifted to the already overstretched charity sector.

Recommendation 6

2.59 **The committee majority recommends that the bill be passed.**

Senator Gavin Marshall

Chair