Minority Report by Australian Greens

Introduction

The Welfare to Work regime introduced by the previous government was unfair, punitive and ineffective in providing an adequate safety net and genuinely engaging job seekers in securing appropriate work. The Australian Greens have been consistent critics of the former Government's welfare to work legislation. In particular, we have been critical of the compliance regime, including the 8 week non-payment periods and the lack of discretion provided to Job Network Providers and Centrelink in the assessing individual circumstances. We have also been deeply concerned about the impact of this punitive regime on the most disadvantaged in our community, particularly Aboriginal people.

We acknowledge that the Social Security (Employment Services Reform) Bill 2008 is a move in the right direction in addressing some the key problems with the current system. The Government's recognition for the need to reform the compliance system to "encourage participation" rather than the current punitive approach is welcome.

The Australian Greens agree with the Minister when he says in his second Reading Speech that:

> "The key reason that these changes are necessary is that the current compliance regime has resulted in thousands of counterproductive, non-discretionary and irreversible eight week non-payment penalties. For the duration of these eight week non-payment penalties there is no requirement for a job seeker to look for work or to have contact with either employment service provider or Centrelink. The consequence of this failed approach to compliance, and an obvious defect in the system, is the eight week separation of job seekers from participation requirements, including looking for work, gaining skills or undertaking work experience."[1]

The Minster goes on to say in reference to people on unemployment benefits:

> "These job seekers are some of our community's most disadvantaged people. Some are suffering from mental illness. Others have significant language and literacy issues and poor educational attainment. Some have a neurological impairment, and others are homeless or at risk of homelessness.
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> Australians in these circumstances are more likely to overcome an extended period of unemployment if the compliance system encourages commitment rather than the current punitive approach." [2]

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

[2] *Ibid*, p.8365

There are certainly positive changes in the Bill and the broader reform of employment services that match the intent to encourage participation and acknowledge the barriers individuals face to employment. However, like many of the organisations that made submissions to this Inquiry, we have concerns that aspects of the legislation retain some the punitive aspects of the current system and will continue to be counter-productive to the broader aims.

The Majority report covers all the key issues raised in the course of the Inquiry. We wish to make some additional comments on a few of these issues and also make additional recommendations.

Key Issues

Complexity

A key issue to emerge from the Inquiry relates to the complexity of the new system. The complexity comes from having five different types of "failures" each with their own particular criteria, different levels of discretion, different consequences and different access to hardship provisions.

We acknowledge that the intention of the structure of the new system is to provide penalties to more appropriately reflect the relevant breach and shift from the current "one size fits all" approach. We support this intention but suggest greater consistency between the categories of failures in relation to matters such as when discretion is allowed, when hardship provisions will apply and when penalties can be "worked off" would result in a simpler system which would be easier to understand and implement.

National Welfare Rights Network commented in its submission that Centrelink and Employment Services Providers would find it difficult to both understand and explain the new system to job seekers. NWRN went on to say that they are:

> "concerned that job seekers will struggle to understand just how the new system will work, their obligations under it and second how they can avoid penalties and if an error occurs how it can be remedied. This is of great concern, given NWRN members' current experience that jobseekers' lack of understanding of how the existing compliance regime operates in practice has led to the imposition of penalties…….The unnecessary level of complexity has the real potential to result in a higher rate of error in Centerlink's implementation of the system resulting in significant hardship to job seekers."[3]

Furthermore, National Welfare Rights Network goes on to say:

> "The system is also likely to cause protracted and costly appeals (both internal and external) especially around the imposition of individual "No Show No Pay" failures and place further pressure on an already under resourced appeals system within Centrelink."[4]

[3] National Welfare Rights Network, *Submission* 11, p. 7.

[4] *Ibid.*

ACOSS also commented on the complexity of the new rules and indicated it was "important that job seekers and employment service providers are well prepared for the introduction of the new system from July2009. A comprehensive information campaign expressed in simple language will be critical."[5] This suggestion was mirrored in Mission Australia's submission which recommended a "clear and consist communication campaign be developed that targets both job seekers, employment service providers and Centrelink in the lead up and immediately following, implementation on 1 July 2008."[6] The Greens agree with these comments. The Greens support the Majority Report's recommendation in regards to a communication campaign.

Recommendation 1: That the Bill be amended to provide greater consistency between the different categories of "failures" in relation to when reasonable excuse and hardship provisions apply, and when Centrelink can exercise discretion in the application of a penalty.

8 week non-payment penalty

The Australian Greens are extremely disappointed the Government believes it is necessary to keep the 8 week non-payment period as a penalty for certain types of breaches. The Government itself acknowledges that the 8 week non-payment penalties have been ineffective and counterproductive.[7] The Department's submission to the Inquiry acknowledges that "many of the job seekers who incur penalties have undisclosed vulnerabilities" and that "stopping payment for eight weeks places already vulnerable job seekers at great risk of disconnection and in many cases has resulted in personal crisis and homelessness."[8]

We appreciate that the Bill introduces changes to the 8 week non-payment penalty regime with the intention of improving job seeker compliance. The key changes include:

- the introduction of a comprehensive compliance assessment before the penalty is applied for wilful and persistent breaches;
- allowing Centrelink some discretion in applying the penalty for wilful and persistent breaches; and
- the introduction of Compliance Activities where a person can have their payment reinstated by agreeing to undertake a Compliance Activity.

These are all improvements to the current system but we maintain that there is no need for such a punitive penalty as 8 weeks without any payment. A number of submissions recommended that the 8 week non-payment penalty be completely abolished.

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[5] ACOSS, *Submission 7*, p.9.

[6] Mission Australia, *Submission 9*, p. 10.

[7] Minster's Second Reading Speech, *House of Representative Hansard*, 24 September 2008, p.8364.

[8] DEEWR, *Submission* 6, p.2

The submission from Catholic Social Services Australia presents data from a study conducted by the Social Policy Research Centre on breaching which found that as a result of a breach:

- 40.8% of respondents were unable to pay the rent;
- 10.9% lost their accommodation;
- 31.8% went without food;
- 26.8% went without medical treatment and
- 65.5% had problems paying household bills.

There are also social impacts with 26.3% reported their marriage or relationship came under stress and 15.1% stopped taking their children on outings. Homelessness Australia reported about 1 in 9 people were at risk of losing their accommodation as a result of being breached.[9]

Catholic Social Services Australia argues:

> "It is not acceptable to use financial hardship, or the threat of financial hardship, as a tool to promote compliance. Nor is it acceptable to place already vulnerable individuals and their families under severe added stress. Individuals who are unable to support themselves through paid work should be entitled to an adequate level of support and to lives where dignity is maintained."

The National Welfare Rights Network also argues "the damage caused by such a provision so far exceeds any possible deterrent effect that it is totally counterproductive." The Australian Greens maintain that the 8 week non-payment penalty is still unacceptable.

Recommendation 2: That the 8 week non-payment penalty be abolished.

Changes to 8 week non-payment penalty regime

Even with the changes in the Bill above there are a number of issues with how the new scheme will work. Our key concerns relate to:

- The lack of details about the comprehensive compliance assessment process;
- The discretion in applying the penalty only applies to wilful and persistent non-compliance and not the failure related to refusing or failing to accept an offer of suitable employment, or the preclusion period for unemployment resulting from misconduct or a voluntarily act; and
- Similarly, the provision relating to ending the 8 week period by agreeing to a compliance activity is not available to persons who voluntarily leave a job or are unemployed due to misconduct.

We support the introduction of comprehensive compliance assessments to be triggered or requested before applying an 8 week non-payment period. Like most of the submissions to the Inquiry, we are concerned however by the lack of a reference to this initiative in the legislation. It is a key part of the new process in attempting to

[9] Mr Simon Smith, Homelessness Australia, *Proof Hansard*, 18 November 2008, p. 35.

engage job seekers and identify their barriers to employment yet it is not provided for in the Bill.

We understand the Department to be saying the Comprehensive Compliance assessment is essentially an administrative process and as such need not be referenced in the legislation. We appreciate that the details of the process may be more appropriately determined through a legislative instrument or guidelines but believe it would enhance the integrity of the system if the process had a legislated base.

Most of the submissions to the Inquiry called for consistency in the provisions relating to "serious breaches" and the preclusion period voluntary unemployment. ACOSS notes in their submission that around one third of 8 week non-payment penalties are from 'serious breaches' related to previous employment.[10] The changes in the Bill do not affect these types of breaches. For example there is no ability to undertake a serious failure requirement and there is no discretion in applying the 8 week non-payment penalty for voluntary unemployment. This is inconsistent with the stated policy of the government to focus on re-engagement. Mission Australia argues:

> "..that the legislation be amended to allow all job seekers that have an eight week non-payment period applied to them have the opportunity to engage in a "serious failure requirement" in order to access income support payments irrespective of the reason for unemployment.
>
> A willingness by job seekers to engage in periods of intensive activity, even when due to the application of a "serious failure requirement", is to be encouraged and recognised. It serves to maintain continuity of engagement with an employment services provider and participation in activities that are intended to support the achievement of sustainable employment outcomes."[11]

The National Employment Services Association made the point in relation to the need for discretion even where a person has been sacked because of misconduct:

> "lots of job seekers we see have been sacked because of misconduct, but it becomes fairly evident that the misconduct was a result of mental health issues or other personal circumstances that interfered, not that they were intentionally sabotaging work to go back to welfare. The ability to distinguish between some of these factors and better protect the people who are in those positions would be welcomed."[12]

Recommendation 3: If the 8 week non-payment penalty regime is continued, that the Bill be amended to provide consistency in relation to the Secretary having

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[10] ACOSS, *Submission 7*, p.4.

[11] Mission Australia, *Submission 9*, p. 6.

[12] Ms Annette Gill, National Employment Services Association, *Proof Hansard*, 18 November 2008, p. 19.

discretion in applying the 8 week non-payment penalty and the ability of all person receiving the penalty to re-engage through serious failure requirements.

Recommendation 4: That the Comprehensive Compliance Assessment process is referenced in the Bill.

"no show no pay" and connection and reconnection breaches

One of the key elements of the reforms introduced by the Bill is the "no show no pay" regime for certain activity related breaches. The evidence to the Inquiry highlighted a number of concerns with this scheme.

Key concerns are that there is no upper limit on "no show no pay" penalties, penalties cannot be recovered through re-engagement and hardship provisions do not apply. There is also the concern that even a 1 or 2 day deduction may make it more difficult for people to comply. These factors lead the National Welfare Rights Network to argue that "no show no pay" is worse and harsher than the current regime and at the very least could result in severe financial hardship for job seekers.[13]

There is also concern about the timing of the penalty. The Government has indicated the intention is that the penalty will be deducted from the current payment period or the payment period immediately following the breach. Concern was expressed that this provided practical difficulties such as too little time for people to prepare for a loss of income and gave insufficient time for Centrelink to ensure it was making the correct decision.

There was considerable confusion about the extent of discretion afforded to employment service providers in reporting "no show no pay" breaches to Centrelink. Most witnesses were unsure of the level of discretion employment service providers would be able to exercise. It is of concern that even at this stage of the development of the new system key employment service providers were unaware or confused about the level of discretion they will have in the new system. In evidence to the Inquiry, the Department clarified that employment service providers will have discretion in whether to not to report a breach to Centrelink. The Department indicated the discretion is provided for in the Request for Tender for Employment Services and will be part of the contractual provisions. We find it strange that such a key element of the Government's new policy is being implemented through the tender documents without any legislative basis.

While the Request for Tender document outlines that employment service providers have a discretion as to whether they report an activity breach which will result in a no show no pay" penalty, Centrelink has no discretion in applying the penalty, except to the extent they can assess whether the person has a reasonable excuse. The discretion given to providers is very welcome but we would have liked to see Centrelink being able to exercise discretion in the actual application of the penalty.

[13] NWRN, *Submission 11*, p.10.

Similarly, for connection and reconnection failures there is a lack of discretion on the part of Centrelink to apply the penalty, hardship provisions do not apply and there is no ability to "work off" the penalty.

We are particularly concerned about the impact this system may have on Indigenous income support recipients. Under the current system we have seen a very significant increase in breaching with a disproportionate increase in Aboriginal communities. There is also anecdotal evidence of significant rolling breaches in Aboriginal communities resulting in complete disengagement from the system. There are real risks that the 'no show no pay' system could result in disengagement for particularly vulnerable job seekers.

Recommendation 5: That the Bill be amended to provide that the "no show no pay" scheme and connection and reconnection scheme contain hardship provisions to allow penalties to be recovered through reconnection, similarly to serious failures.

Recommendation 6: That the Government provide a legislative basis for employment service providers to exercise discretion in reporting breaches to Centrelink.

Recommendation 7: That the Bill be amended to provide Centrelink with discretion in applying a "no show no pay" or reconnection penalty.

Vulnerable jobseekers

A key concern of the Australian Greens is the impact on the new system on vulnerable jobseekers. Many jobseekers face multiple barriers to engaging in work such as mental health issues, poor language skills, and homelessness, and these barriers need to be taken into consideration at all stages of the system. One way to address this is to ensure appropriate discretion is provided in the application of any penalties.

The National Welfare Rights Network is particularly concerned about the lack of safeguards for vulnerable people in the Bill.[14] They question the effectiveness of vulnerability indicators and raised concerns that people identified as vulnerable could still be subject to penalties including "no show no pay" and the 8 week non-payment penalty. Another concern is people with undiagnosed or unacknowledged mental health issues potentially being excluded form the limited protections provided by vulnerability indicators.

A related concern is the way homelessness is taken into account in the compliance system. There are two aspects to this: firstly, how the particular vulnerabilities of homeless jobseekers are taken into account and, secondly, the potential for the compliance system itself to place people at risk of homelessness. Homelessness Australia brought to the attention of the Inquiry that there is no definition of homelessness in the Social Security Act to provide a consistent definition in respect

[14] NWRN, *Submission 11,* p.20

legislative instruments and guidelines. They also indicated that the definition currently used in the reasonable excuse legislative instrument is very narrow and only applies to when an individual is sleeping in a non-permanent location on the streets or in a refuge. This is a completely inadequate definition of homelessness and we support Homelessness Australia's recommendation that the Government define homelessness to reflect the cultural definition of homelessness used in the Census.

Evidence to the Inquiry also raised important issues concerning the hardship provisions and the usefulness of vulnerability indicators. The National Welfare Right Network argues that the criteria for the hardship provisions need to be expanded.[15] At present a person needs to be in severe financial hardship and fall into a class of person specified by the Secretary. The determination of these categories will be made by a legislative instrument but the explanatory Memorandum indicates it will be limited to current financial case management categories. The National Welfare Rights Network suggests these are too narrow and exclude many people who would otherwise be considered vulnerable. We think there is merit in that view and urge the Government to expand the criteria to cover a broader group of vulnerable job seekers.

The Greens support recommendations 1 and 2 of the Majority Report for DEEWR to review the effectiveness of vulnerability indicators and for the Government to include the Census definition of homelessness in all relevant legislative instruments and guidelines.

Recommendation 8: That the government broaden the hardship provisions to include other genuinely vulnerable jobseekers.

Legislative instruments and tender document

A further issue raised in the course of the Inquiry relates to the amount of detail left to legislative instruments or mentioned in the Request for Tender but not in the Bill. We acknowledge that regulations and legislative instruments play an important role in supporting legislative frameworks.

However, we would urge the Government to revise the matters they are leaving to legislative instruments and carefully consider whether there is scope for some of these to be provided for in the legislation. We have already referred to the comprehensive compliance assessment process which we believe should be referenced in the legislation. Other matters include the number of breaches before a comprehensive compliance assessment is automatically triggered and the timing of deductions for "no show no pay" penalties.

At the very least the Government should release exposure drafts of the key legislative instruments to ensure a proper process of consultation with stakeholders and parliamentary scrutiny. Ideally, the Senate should have exposure drafts to consider in the course of the debate on the Bill. Otherwise we are debating the framework without relevant and significant detail.

[15] NWRN, *Submission 11,* p.12

Recommendation 9: That the Government provide exposure drafts of key legislative instruments such as those detailing "reasonable excuse" and "hardship" and the comprehensive compliance assessment process.

Review and further reform

The Department in its evidence to the Inquiry indicated there would be a "very rigorous evaluation" of the new system. We support a robust review to be conducted after 12 months of the new system. In particular we would like to see the government pay specific attention to the impacts of the new system on Indigenous jobseekers. It is vital that the new system meets the needs of Indigenous communities and that breaching rates are minimised. As such we support recommendation 5 of the Majority Report on the collection of comprehensive data in monitoring the new compliance system.

The reform of the compliance regime is an important measure but there are other aspects of Welfare to Work we believe the Government should also move to reform.

One of the most contentious aspects of the welfare to work reform was the changes directed at single parents. The Smith Family eloquently reminded the Inquiry of the particular needs of single parent families but also the importance of such families being supported:

> "The Smith Family has an emphasis on breaking what we see as the nexus of intergenerational disadvantage. Parents significantly shape their children's development, and thus influence the life outcomes of their children. Another concern is therefore that low-income, low-skilled parents are more likely to take on jobs with long or unusual hours then those with stronger qualification to negotiate with and that this may result in children missing out on parental help for homework, family holidays and, more broadly, parental support during key transitional stages in their lives."[16]

The majority of single parents on income support are single mothers. We urge the Government to revisit the policy of putting single parents onto Newstart with all the attached participation requirements, including the downgrading of educational opportunities provided to single parents.

Senator Rachel Siewert

[16] Dr Robert Simons, The Smith Family, *Proof Hansard*, 18 November 2008, p.45.