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# Standing Committee on Education, Employment and Workplace Relations

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## Social Security Legislation Amendment (Employment Services Reform) Bill 2008 [Provisions]

November 2008

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# Table of contents

**Members of the Committee** ........ iii

**Government Senators' Majority Report** ........ 1

Reference ........ 1

Conduct of the inquiry ........ 1

Acknowledgements ........ 1

Background to the bill ........ 1

Purpose of the bill ........ 4

Support for the bill ........ 6

Provisions of the bill ........ 7

'no show no pay' failures ........ 8

Connection and reconnection failures ........ 8

Eight-week non-payment penalties (serious failures) ........ 9

**Issues raised during the inquiry** ........ 11

Discretion ........ 11

Comprehensive Compliance Assessment (CCA) ........ 13

Homelessness ........ 16

Operational effects ........ 17

Consultation ........ 18

Communication ........ 18

Review ........ 19

Consequential and other amendments ........ 20

Conclusion ........ 21

**Additional Comments by Coalition Senators** ........ 23

Background ........ 23

Compliance ........ 25

Mutual Obligation ........ 26

Two comments on the Majority Report ............................................................27

Conclusion ............................................................................................28

**Minority Report by Australian Greens ..................................................29**

**Appendix 1 ............................................................................................39**

**Appendix 2 ............................................................................................41**

# 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 cent[4], 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:

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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 then 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]

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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

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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

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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:

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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.

- 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;

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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, Schedule1, 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

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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

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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.

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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.

# 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]

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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

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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 system[16] 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 NESA 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]

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14 NESA, *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 NESA, *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 NESA 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]

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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 NESA 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

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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, NESA, *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 DEEWR[37] 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]

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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.

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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 NESA 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 NESA 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] NESA 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.

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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] NESA 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

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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:

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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

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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**

# Additional Comments by Coalition Senators

## Background

The Social Security Legislation Amendment (Employment Services Reform) Bill 2008 aims to amend the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to bring into effect measures announced by the Government in the 2008-09 Budget, regarding a new compliance system for job seekers and employment services that will run from 1 July 2009 to 1 July 2012.

The Job Network was an initiative of the former Coalition Government, introduced in 1998 to combat a jobless rate of 7.7%, that recognised the need for a firm but fair compliance system which committed job seekers to actively seek employment and to engage in activities to assist in the attainment of skills that would enhance employment prospects.

Coalition Senators recognise that it was the success of the previous Government's program that contributed to record unemployment of 3.97% and a near 30% decrease in the number of long-term unemployed people between June 2006 and August 2008.

Any system designed effectively to move those on unemployment benefits into work must be a judicious balance of carrots and sticks. Such a system must avoid penalising marginalised members of society for a failure to comply with job seeking requirements where that failure is beyond their control, for example through mental illness. Equally the system must send a clear signal that a genuine willingness to seek employment is a condition of the benefits paid until that employment is attained. Any system which does not convey this clear obligation to job seekers is at serious risk of failure, or at least of losing community confidence in its integrity.

Coalition Senators fear that features of the Social Security Legislation Amendment (Employment Services Reform) Bill 2008 may send a signal that the mutual obligation to actively and diligently seek employment is being relaxed, with the concomitant danger that jobless numbers may rise as some beneficiaries believe they can exploit the new regime and not seek work.

The importance of meaningful compliance measures cannot be overstated. Professor Peter Saunders refers to the positive impact mutual obligation has had in bringing people from welfare to work, but says that

> …the main impact has been through compliance effects (for example, imposition of activity requirements strengthens people's commitment to finding and accepting work).[1]

There is however another, greater concern with the direction of this Bill.

It is clear that the economic climate of 2008 is vastly different to that in which the Job Network program was formulated in 1998. Australia now faces, after a period of almost unprecedented jobs growth, the prospect of falling job opportunities and rising unemployment. The recently published MYEFO projections predict a 5.75% jobless rate by June 2010. Other forecasters are expecting unemployment to rise to 6% as early as June 2009, putting another 200,000 people out of work. Such estimates, made since the new universal employment services model was designed in February 2008, may render the model's original policy assumptions redundant.

These assumptions postulated a target population of job seekers with a high proportion of long-term unemployed, where intensive intervention and an element of case management are required to find suitable placements. The scenario now in prospect would see more recently-employed jobseekers entering the market, with the result that the long-term unemployed will fall to the back of an extending jobless queue.

Coalition Senators share the reported concerns of Jobs Australia chief executive David Thompson that the new model "only worked when unemployment was low and there were lots of jobs available."[2]

Coalition Senators support certain elements of the Government's proposed new system such as the Employer Broker concept and Innovation Fund. However given MYEFO's predictions for the jobless rate, Coalition Senators do not support the new 'no show, no pay' system proposed under the Government's Amendment Bill.

Coalition Senators support the intent of certain provisions of the Amendment Bill. In addition, Coalition Senators support the Amendments to the Bill moved in the House of Representatives by the Shadow Minister for Employment Participation, Dr Andrew Southcott MP, and urge their adoption by the Senate.

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1 Centre for Independent Studies, Submission 13, p. 4.

2 David Thompson reported in "Job Network faces threat of heard times", The Australian, 31 October 2008, p. 2

## Compliance

The Bill proposes substantial changes to the job seeker compliance system that would apply to NewStart Allowance, Youth Allowance, Parenting Payment and special benefit paid to nominated Visa Holders.

A key feature of the proposed new compliance system is the *'no show, no pay'* concept which aims to deter non-compliance and encourage re-engagement.

Coalition Senators believe this proposal may undermine the inroads made into long-term unemployment and welfare dependency achieved under the existing policy. Under the existing policy failure to attend an interviews with an employment services provider, failure to comply with an activity agreement or failure to attend Work for the Dole are the most common reasons for incurring an eight-week non-payment period.

The Government's Amendment would weaken this compliance measure.

A job seeker who fails to attend an appointment or meet a requirement, without reasonable excuse, would commit a *connection failure*. The job seeker would then be required to comply with a *reconnection requirement*. Failure to do so, without reasonable excuse would incur a *reconnection failure period* involving the loss of their basic rate of payment until compliance with a further reconnection requirement was met.

A job seeker who intentionally, recklessly or negligently fails to meet the above obligations, and persistently fails to comply with those obligations or who persistently fails to accept, without reasonable excuse, an offer of suitable employment would incur a *serious failure*. Only then would an eight-week period of non-payment be invoked.

In a further weakening of compliance measures, the eight-week non-payment period may be ceased through participation in a *serious failure requirement*, or if it is judged that a job seeker does not have the capacity to meet a *serious failure requirement*.

A job seeker who becomes unemployed due to a voluntary act or due to misconduct can avoid an eight-week payment suspension if severe hardship is demonstrable. However Coalition Senators are concerned at the power vested in the Departmental Secretary to determine who is eligible for such hardship claims.

## Mutual Obligation

Coalition Senators recognise the mutual obligation concept is imperative to breaking the cycle of welfare dependency. The previous Coalition Government's Welfare to

Work policy established a patent link between receiving income support and actively seeking employment or, at least, contributing to society, the ultimate provider of income support.

The eight-week non-payment period acted as a deterrent for those who failed to meet their end of the bargain, while maintaining fair and humane safeguards for those with legitimate reason for non-compliance.

Mutual obligation activities such as Work for the Dole assist job seekers to obtain training and skills necessary to re-enter the workforce. The program helped all job seekers to re-engage in employment activities: indigenous unemployed, people with a disability, those in remote and rural regions and those with limited education.

Currently the eight-week non-payment period is incurred after three inexcusable breaches within a 12-month period. The Social Security Legislation Amendment (Employment Services Reform) Bill 2008 will move to a six-month time frame, allowing six absences from work experience or Work for the Dole in that period. It will effectively permit one day of absence per month without reasonable excuse.

It is inevitable that some of those receiving benefits will interpret the abandonment of an automatic suspension period as a indication that mutual obligation itself is being relaxed.

Coalition Senators have particular concerns over the Bill's seemingly lenient approach regarding job seekers who miss a job interview. We share the view of National Employment Services Association (NESA) that, where preparation and arrangements have been made and a person does not show up for an interview, this should be considered a serious breach and there should be the discretion to treat it equally with a 'serious failure' where there is no reasonable excuse. [3]

There is also some basis for a policy position that missing a job interview (deliberately) should result in an automatic referral to a Comprehensive Compliance Assessment.

**Recommendation**

> **Coalition Senators recommend that the Bill be amended so that a deliberate failure to appear at a job interview**
> **(a) should be treated as a 'serious failure', and**
> **(b) should result in an automatic referral to a Comprehensive Compliance Assessment.**

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

## Two comments on the Majority Report

Coalition Senators wish to respond to 2 issues in the Government Senators' Report.

In paragraph 1.11 of the report, Government Senators state

> The government has recognised that over the last ten years many thousands of job seekers have become increasingly detached from the labour force. While the unemployment rate has fallen to 4.2 per cent, it is clear that a significantly higher proportion of job seekers are highly disadvantaged and have experienced long-term unemployment.

These comments can be interpreted as suggesting that the position of the long-term unemployed worsened under the policies of the previous government. Coalition Senators reject this assertion, which is inconsistent with the available evidence. For example, the reason that "a significantly higher proportion of job seekers ... have experienced long-term unemployment" is because unemployment levels over the life of the previous government halved, so that the long-term unemployed became a more concentrated proportion of those who remained jobless.

Coalition Senators also emphatically reject the unreferenced assertion in paragraph 2.53 of the Majority Report that "[t]he Opposition … describes people on welfare as 'dole bludgers'." We regard this comment as gratuitous and unsubstantiated, detracting from the mature reflection which all senators have devoted to this inquiry. It reflects poorly on Government Senators if they feel their position is strengthened by such falsehoods.

## Conclusion

Coalition Senators recognise the mutual obligation concept is imperative to breaking the cycle of welfare dependency. We feel that elements of this legislation undermine that principle. We adopt the sentiment of Professor Saunders who described these changes, together with those to Work for the Dole, in these terms:

> The result of all these proposed changes will be that government spending on moving people from welfare into jobs will increase but outcomes will worsen. The government should think again.[4]

4 Centre for Independent Studies, Submission 13, p. 4.

**Senator Gary Humphries**
**Deputy Chair**

# 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.
>
> 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

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[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**

[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.

# Appendix 1

| Sub No | Submitter |
|---|---|
| 1 | Confidential |
| 2 | Homelessness Australia |
| 3 | The Smith Family |
| 4 | Mr David Richardson |
| 5 | Commonwealth Ombudsman |
| 6 | Department of Education, Employment and Workplace Relations, Cwlth |
| 7 | Australian Council of Social Service |
| 8 | Catholic Social Services Australia |
| 9 | Mission Australia |
| 10 | National Employment Services Association |
| 11 | National Welfare Rights Network |
| 12 | Australian Council of Trade Unions |
| 13 | The Centre for Independent Studies |

# Appendix 2

## Hearings and Witnesses

***Cliftons Facilities, Sydney, 18 November 2008***

**Mission Australia**
Ms Leisa Hart, *Executive Leader, Employment Services*

**Australian Council of Social Service**
David Thompson, *Deputy President*
Peter Davidson, *Senior Policy Officer*

**National Employment Services Association**
Ms Sally Sinclair, *Chief Executive Officer*
Ms Annette Gill, *Policy Manager*

**The National Welfare Rights Network**
Ms Kate Beaumont, *President*
Ms Genevieve Bolton, *National Liaison Officer*
Mr Gerard Thomas, *Policy and Media Officer*

**Homelessness Australia**
Mr Simon Smith, *Executive Officer*

**Catholic Social Services Australia**
Mr Frank Quinlan, *Executive Director*

**The Smith Family**
Dr Rob Simons, *Head of Research and Evaluation*

**Department of Education, Employment and Workplace Relations**
Mr Graham Carters, *Deputy Secretary Employment and Strategic Policy*
Ms Janine Pitt, *Acting Group Manager, Job Seeker Support Group*
Ian Sharples, *Director, Participation and Compliance Policy Team*