

Submission by the Department of Education, Employment and Workplace Relations to the Senate Education, Employment and Workplace Relations Committee inquiry into the Social Security Legislation Amendment (Employment Services Reform) Bill 2008

Summary

This submission outlines the policy rationale behind the development of the new compliance system. Like the broader Employment Services reforms, the new compliance system is intended to be more responsive to the needs of an increasingly disadvantaged job seeker population, which means using early intervention and re-engagement rather than punitive financial penalties to encourage compliance.

There is considerable evidence that the current compliance system has not been effective in engaging job seekers, particularly those who are disadvantaged. This evidence includes the exponential rise in penalty numbers since the introduction of the new system and data showing that job seekers are less likely to meet their requirements than they were five years ago. A DEEWR survey of job seekers supports the argument that the current system is counter productive, in that a significant majority of job seekers indicated that being in a penalty period made it difficult or very difficult to seek work.

The submission describes the flaws in the current system, principally the lack of deterrence or intervention in the early stages of a job seeker's non-compliance – which allows job seekers to miss up to two weeks of an activity without consequence - and the harshness of penalties in the latter stages, when job seekers can suddenly find themselves in an irreversible eight week non-payment period. The proposed new system addresses this with the introduction of *no show, no pay* penalties, which result in immediate loss of payment for failure to attend an activity but last only as long as a job seeker remains disengaged.

While it is important to remove the more punitive aspects to the current system, going too far in this direction has the potential to undermine public support for the welfare system. Furthermore, it is critical to retain a deterrent for persistent or wilful non-compliance. For this reason, the new system retains eight week non-payment penalties, but with the important distinction that their application will no longer be mandatory in all circumstances and that they will be able to be removed if the job seeker is willing to re-engage (by undertaking Full-time Work for the Dole or an equivalent activity for 25 hours per week) or, in some circumstances, is in financial hardship. This approach is consistent with the recommendations of the Breaching Review Taskforce.

Finally, the submission outlines the additional elements of the new system that are designed to prevent vulnerable job seekers from becoming subject to inappropriate compliance action. These include greater discretion for providers and Centrelink not to take compliance action, the removal of mandatory eight week non-payment periods, the introduction of Comprehensive Compliance Assessments and more tailored requirements. These build on the interim measures the Government has already introduced to lessen the impact of the current system on vulnerable job seekers.

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Introduction

1. This submission outlines the policy rationale behind the development of the new compliance system. The new compliance system is part of the package of reforms to Employment Services that are a necessary response to changes in the job seeker population. The proportion of the job seeker population who are very long-term unemployment benefit recipients or disadvantaged has increased significantly and this necessitates an increased focus on the needs of disadvantaged job seekers, with more assistance directed towards those who are less job ready. For similar reasons, the compliance system that underpins the new Employment Services needs to employ the compliance tools that are more likely to be effective for disadvantaged job seekers. This essentially means using early intervention and re-engagement rather than punitive financial penalties.
2. This submission argues that the current compliance system has not been effective in engaging job seekers, particularly those who are disadvantaged. It outlines the various components of the proposed compliance system and explains their purpose. It also describes how the proposed system will provide added protection for disadvantaged and vulnerable job seekers.

What evidence is there that the current system is not working?

The impact of the compliance system on an increasingly disadvantaged job seeker population

3. In the last decade, the unemployment rate has fallen from 7.7 per cent to around 4.3 per cent. However, 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 – with an increase from 74,000 people in 1999 to more than 110,000 in 2007. Over 50 per cent of job seekers have been on payment for more than 12 months.
4. These job seekers are some of the community's most disadvantaged people. 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 per cent) and unstable accommodation (five per cent). Almost 13 per cent of job seekers are ex-offenders.

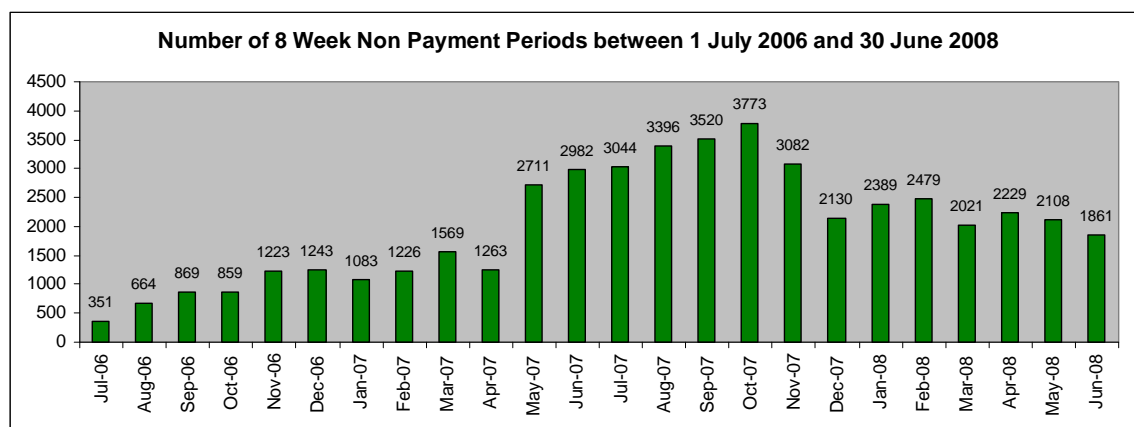
5. Although there have always been safeguards in the compliance system to protect vulnerable job seekers from being penalised inappropriately, it is inevitable that with the high number of penalties applied since the introduction of the current system (see below, paragraph 9) vulnerable job seekers will incur penalties. A DEEWR survey of job seekers (see below, paragraph 7) indicated that while job seekers with a reported mental illness are underrepresented among those who incur penalties, around 13 per cent of the survey group who had incurred eight week penalties had a reported mental illness. Centrelink also reports that failure by job seekers to disclose personal issues is a long-standing problem. This is compounded by the fact that vulnerable job seekers who are penalised for failures that they were not wholly responsible for, given their circumstances, are less likely than other job seekers to seek a review of the decision. It is likely, therefore, that many of the job seekers who incur penalties have undisclosed vulnerabilities.
6. Submissions to the Employment Services Review indicated 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. Further, many submissions argued that the 'penalise first' approach taken in recent years may result in costs to the community in other ways, through imposts on the health, housing and justice systems and by placing additional pressure on non-government welfare organisations to provide support.
7. Early in 2008, DEEWR undertook a survey of job seekers to assess the impact of eight week penalties. The survey had 1,012 respondents, 658 of whom had served a penalty and 354 who had not, to provide a comparison group. The survey findings indicate 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. The same survey showed that around 50 per cent of job seekers rely on family for support during non-payment periods (compared to around 15 per cent of the job seeker population generally), which indicates that the impact of the penalty often extends beyond the job seeker. It should be noted that an eight week non-payment penalty for a single adult job seeker receiving full rent assistance amounts to \$2,228.
8. The survey also 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. In comparison, over a similar period, around 20 per cent of the general job seeker population failed to pay rent or board.

Evidence that the current system is not improving job seeker compliance

9. The clearest indication that the current compliance system is not achieving its aim of ensuring compliance is the exponential increase in the number of eight week non-payment penalties that occurred in the first year and a half after its introduction, as illustrated in Figure 1. In 2006-07 there were around 16,000 eight week non-payment penalties applied. In 2007-08 this had doubled to around 32,000 eight week non-payment penalties. A change in messaging by the new Government and the department, supported by a series of administrative changes

(see below, paragraphs 37-38) has seen the monthly application rate of penalties decrease since November 2007. However, despite this, the monthly application rate even now is significantly higher than it was when the current system was introduced.

Figure 1



10. For the duration of these eight week non-payment penalties there is no requirement for a job seeker to look for work, continue to participate in programs or to have contact with either their employment service provider or Centrelink. It has been suggested that this does not matter if the imposition of eight week non-payment periods is providing a deterrent to non-compliance or, better still, resulting in those who incur them finding work. However, it appears that the current system achieves neither of these things.
11. Data suggests that the system is not effective in deterring non-compliance. Currently, only 40 per cent of Job Network interviews are attended by job seekers. The percentage of job seekers referred to Job Search Training who attend as required has fallen from 35 per cent in 2003 to 27 per cent.
12. Nor are irreversible eight week non-payment periods particularly successful in compelling job seekers to find sustainable employment. Seventy five 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.
13. One finding of particular concern from the DEEWR survey was the impact of eight week penalties on the motivation and ability of job seekers to look for work. The survey found that 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.

What is wrong with the current system?

14. The current system provides little deterrence or early intervention when a job seeker first begins to fail to meet their requirements. For example, there is no real immediate consequence for initial failures to complete activities. Under current

arrangements, job seekers who have failed to take part in an activity or program can miss up to a fortnight before any action is taken. The first actual financial penalty many job seekers receive is an eight week non-payment period, which cannot be removed regardless of how determined the job seeker may be to meet their requirements.

Aaron is a 23 year old job seeker. He left school after year 10 and has been in and out of unskilled work since then. He has no significant barriers to participation. He claimed Newstart in August 2006 and although he managed to pick up occasional casual work he was not successful in finding a permanent job.

In November 2006, Aaron was referred to Job Search Training. He attended the first day, which was also the first day of his payment period. That evening he met up with an old friend at the pub. The friend had moved to another city and was only visiting for a few weeks. When Aaron said he was going home because he had Job Search Training the next day his friend told him he didn't have to worry about it as long as he went back when Centrelink told him to at his next lodgement day. This seemed too good to be true, but it was the case. Because he preferred to spend time with his friend, Aaron missed the next nine days of Job Search Training. His provider and Centrelink left phone messages for him but he didn't respond to them. Aaron recommenced Job Search training the next fortnight and lost no payment as a result.

After finishing his Job Search Training, in December 2006, Aaron was matched to a job. He did not particularly like the sound of the job and was confident he would find a better one soon, so he did not attend the interview. Aaron's provider submitted a Participation Report and when he next submitted his fortnightly form he was directed by Centrelink to attend an interview with his provider. He did this, but at the interview his provider simply reminded him of the need to attend all job interviews. He incurred no financial penalty.

Throughout 2007, Aaron was becoming increasingly despondent about his lack of success in finding work. Even so, he was determined to do so and, since his failures of the previous year, had been diligent in his job search and in meeting any requirements given by his provider or Centrelink. However, in October 2007, Aaron failed to attend a regular interview with his provider because he simply forgot about it. This was not considered a reasonable excuse by his provider or by Centrelink, so Aaron's payment was stopped for eight weeks from the start of the pay period in which he missed the interview.

15. Aaron's is a hypothetical case intended to illustrate the shortcomings of the current compliance system. Through his early period of non-compliance, Aaron suffered no consequences. Then, almost 12 months later, his past caught with him and he incurred an eight week non-payment period for a minor failure.

16. Despite the fact that Aaron had been trying to meet his requirements and was willing to continue to do so, there was nothing he could do about the eight week non-payment period. During that eight weeks, he had no requirement to look for work. Although he may have been willing to look for work himself, his financial capacity to do so was severely restricted.

Financial Case Management

17. For job seekers with dependent children and those who are classified as having a partial capacity to work and who need necessary medication, Financial Case Management can alleviate the financial impact of an eight week non-payment period.

18. Financial Case Management is theoretically available only for the payment of essential expenses, up to the level of the job seeker's normal entitlement, but in practice job seekers can generally find sufficient essential expenses to ensure that they continue to receive their full entitlement. As Financial Case Management is not included in Social Security legislation, funding for it is provided by a separate annual appropriation. The determination of essential expenses is generally undertaken by contracted non-government welfare organisations, although in some areas Centrelink does this. For these reasons, Financial Case Management has become an expensive and administratively cumbersome way to effectively continue to pay selected job seekers their Social Security payment.

19. More importantly, because job seekers who are being assisted through Financial Case Management are not in receipt of income support, it is not possible to give them participation requirements in return for payment.

How will the new system address these problems?

20. A more detailed description of the various elements of the proposed new compliance system is at **Attachment A**. The following is an explanation of how particular features of it are intended to address the problems with the current system that are identified above.

21. One of the main problems with the current system is that initial non-compliance results in no financial penalty. This can work in favour of wilfully non-compliant job seekers, since in some circumstances a job seeker can miss up to a fortnight's participation in an activity without incurring a penalty. It can also work to the detriment of job seekers, even those who are generally compliant, since it may make them complacent about meeting their requirements, with the result that they end up in an eight week penalty period before they realise it.

22. The *no show, no pay* approach will address this. *No show, no pay* penalties mean that job seekers incur a financial penalty for every reported day of non-participation in an activity without a reasonable excuse. The longer the period of non-participation, the longer the penalty period.

23. *No show, no pay* penalties will also apply for missing job interviews. Currently, job seekers who miss job interviews are simply reconnected with their provider and incur no penalty if they attend their reconnection interview. They must attend even if the provider has no other reason to see them. This arrangement provides neither an adequate nor appropriate sanction for such a failure, which arguably calls into question a job seeker's commitment to finding work.
24. The other main problem with the current system, and the element which has attracted the most criticism, is its use of eight week non-payment penalties. Under the current system, eight week non-payment penalties are applied for any serious failures and for third or subsequent participation failures. Once applied, they cannot be removed (unless the decision to apply the failure is overturned on review), in spite of any subsequent compliance by the job seeker. Apart from the obvious hardship caused by irreversible eight week non-payment periods, they are also clearly counter-productive in that the job seeker has no requirements. Even if the job seeker is willing to look for work, their financial situation severely restricts their capacity to do so.
25. The proposed new system will retain eight week non-payment penalties but with two key differences. Firstly, such penalties will not be mandatory following a set number of participation failures. Currently, if a job seeker fails, without a reasonable excuse, to attend an appointment or participate in a program for a third or subsequent time in 12 months, the legislation requires that an eight week non-payment penalty be applied.
26. Under the proposed system, the legislation is less prescriptive and provides that the Secretary *may* find that a job seeker has committed a serious failure (and is therefore subject to an eight week non-payment penalty) if they have been persistently non-compliant. A specified number of failures may trigger a Comprehensive Compliance Assessment, and one of the possible outcomes of that assessment is the application of a serious failure. However, the Comprehensive Compliance Assessment is not intended as a determination of a specific prior failure. Rather, the assessment is intended to focus more generally on the reasons the job seeker is having difficulty complying, to ensure that they have no undisclosed barriers and that they are being serviced appropriately.
27. The other key difference is that, under the proposed system, an eight week penalty will be removed once the job seeker agrees to participate in a Compliance Activity. This removes the counter-productive element of eight week penalties under the current system. Allowing job seekers to have payment reinstated by participating in a Compliance Activity will provide a strong incentive to re-engagement. It also removes the punitive element of the current system. Instead of having to serve the eight week penalty no matter what, job seekers who acknowledge that they have made a mistake and demonstrate that they are committed to participating (by undertaking Full-time Work for the Dole or an equivalent activity for 25 hours per week) are rewarded for doing so.

Why retain eight week non-payment periods at all?

28. The Australian Council of Social Services and the National Welfare Rights Network were consulted during the development of the proposed new compliance system and are broadly supportive of much of it. However, they and other welfare sector organisations have expressed concerns about eight week non-payment periods, which they believe are excessive. The Government did give these concerns due consideration during the development of the proposed compliance system. However, while the Government is determined that the new system should be less punitive and more responsive than the current system, it is important to consider also the views of the broader community. Indications are that the retention of strong penalties, applied fairly, as deterrent to serious or persistent and wilful non-compliance is necessary to avoid undermining public support for the welfare system.
29. The findings of two surveys commissioned by the former Department of Family and Community Services support this view. These are a customer survey undertaken by the Wallis Consulting Group in 2001, as part of a broader evaluation of the activity test, and a Social Policy Research Centre (SPRC) study of the impact of breaching on income support recipients, released in 2005. Both found that around 80 per cent of job seekers themselves supported the application of financial penalties where recipients are 'not doing the right thing'. The SPRC research found that over 50 per cent of job seekers were in favour of full payment cancellation for a third breach unless there was a very good reason.
30. It should also be noted that the Breaching Review Taskforce, which was set up in 2004 by the previous Government to look into the breaching system, in response to community and welfare sector concerns about the impact of breaching, supported the retention of eight week non-payment penalties. Importantly, the taskforce included representatives from all areas that had experience with breaching policy and its impact on job seekers, including the welfare sector, the employment services industry, academia, the policy Departments and Centrelink. However, although the Taskforce recommended that eight week non-payment periods be retained, they also recommended that they be able to be waived on compliance. This was the key recommendation of the Taskforce that the previous Government chose not to adopt and that has been adopted as part of the proposed system.

Protection for vulnerable job seekers

31. A long-standing concern of the welfare sector, also shared by the Government, is the impact of compliance policy on vulnerable job seekers, such as those with mental health issues, substance abuse problems, poor language and literacy skills or unstable accommodation. The new compliance system was designed with these concerns in mind.
32. The new system gives providers greater discretion not to submit Participation Reports and Centrelink greater discretion not to apply penalties. This is reinforced by the inclusion, for the first time, of an object clause in the legislation establishing that the purpose of the legislation is to encourage participation, to

ensure non-compliant job seekers are re-engaged and not punish job seekers who have a reasonable excuse for their non-compliance.

33. The removal of the mandatory eight week penalty for a third or subsequent failure to attend an appointment or an activity, together with the Comprehensive Compliance Assessment process, will provide added protection for vulnerable job seekers.
34. It should also be noted that failure to attend a Job Capacity Assessment will not be dealt with under the compliance system, like failure to attend other appointments. Instead, they will be subject to separate arrangements whereby payment can be held pending engagement but no actual penalty can be applied.
35. Vulnerable job seekers will also have more tailored requirements under the new employment services, which will often not be compulsory so failure to participate will not result in compliance action.
36. Where an eight week penalty is applied for a serious failure and a job seeker does not have the capacity to undertake a Compliance Activity they will be able to have their payment reinstated if they are in severe financial hardship. Where a person who is recognised as vulnerable is subject to an eight week preclusion period for voluntary unemployment or unemployment due to misconduct they will also be able to have their payment reinstated if they are in severe financial hardship. Under these provisions, a person can be considered to be in severe financial hardship if their liquid assets are less than \$2,500 for a single person, or \$5,000 for a couple. This means that, in the unlikely event that a vulnerable job seeker does become subject to an eight week penalty or preclusion period, they will not serve the penalty unless their liquid assets are at a level that would preclude them from payment anyway if they were a new claimant.
37. These elements of the proposed compliance system build on a number of measures the Government has already introduced to ensure that job seekers are not penalised inappropriately as a result of the current compliance arrangements. These measures include a letter from the Minister, supported by a subsequent letter from the Department, to all employment service providers outlining the Government's expectation that the current compliance system would be applied fairly and directing them to exercise discretion in deciding whether or not to submit Participation Reports. Centrelink guidelines on reasonable excuse were also reviewed to remind decision makers that penalties are only to be applied where it is clear that the job seeker has the capacity to comply with participation but is deliberately not complying.
38. Other measures include the introduction of Vulnerability Indicators for those job seekers who have had an eight week non-payment period applied in the last twelve months, have experienced mental illness or incapacity in the last six months or who are transitioning from a Remote Area Exemption. The use of the existing Vulnerability Indicator for homelessness has also been expanded. A Vulnerability Indicator does not provide immunity from compliance action but alerts providers and Centrelink to the need to exercise caution when setting requirements for, or taking compliance action against, the job seeker.

Description of the proposed job seeker compliance system

No Show No Pay Failures

1. A key element of the new system is a *no show no pay failure*, which aims to instil a 'work like' culture to employment services. If a job seeker, without a reasonable excuse, does not attend an activity that they are required to attend, like Work for the Dole, Centrelink will impose a *no show no pay failure*. Centrelink will also impose a *no show no pay failure* if the job seeker fails to attend a job interview, or if they attend the interview but deliberately behave in a way that would foreseeably result in a job offer not being made.
2. A *no show no pay failure* will result in the job seeker losing one-tenth of their fortnightly payment for each day they do not attend. This does not affect rent assistance, pharmaceutical allowance or the youth disability supplement, but it does apply to any supplement the job seeker is receiving for participating in Green Corps or Work for the Dole. As is currently the case, access to Health Care Cards and Family Tax Benefits will not be affected.
3. Resuming participation will result in a resumption of income support and employment services. A *no show no pay failure* means that non-compliance will have an immediate financial impact, but the extent of the penalty will be in the hands of the job seeker.

Connection and Reconnection failures

4. If a job seeker, without reasonable excuse, does not attend an appointment that they are required to attend, for example with their employment service provider, Centrelink will impose a *connection failure*. Centrelink will also impose a *connection failure* if the job seeker refuses to enter into an Employment Pathway Plan, or does not meet their job search requirements. There is no penalty for a *connection failure*. Instead, the job seeker will have to meet a *reconnection requirement* which will involve attending a further appointment or meeting further job search requirements.
5. If the job seeker, without reasonable excuse, does not meet the *reconnection requirement*, Centrelink will impose a *reconnection failure* period. The job seeker's payment will then be stopped until they do reconnect and missed payments will not be back paid. This effectively means that they lose one-fourteenth of their fortnightly payment for each day that they do not comply with the *reconnection requirement*.
6. Again, this does not affect any rent assistance, pharmaceutical allowance or youth disability supplement the job seeker receives, but it does apply to any supplement the job seeker is receiving for participating in Green Corps or Work for the Dole. As is currently the case, access to Health Care Cards and Family Tax Benefits will also not be affected.

Serious Failures

7. Eight week non-payment periods have been retained for job seekers who commit *serious failures*. A job seeker commits a *serious failure* if they refuse a suitable job offer or if they have been wilfully and persistently non-compliant. Centrelink will decide whether a job seeker has been wilfully and persistently not compliant after conducting a Comprehensive Compliance Assessment.

Comprehensive Compliance Assessment

8. A job seeker who incurs three failures for not attending appointments or six days of *no show no pay failures* in a six month period will be referred for a Comprehensive Compliance Assessment conducted by Centrelink. Employment service providers or Centrelink may also initiate a *comprehensive compliance assessment* at any other time if they believe a job seeker's circumstances indicate serious hardship and warrants such a response. During this assessment Centrelink will look at why the job seeker has failed to fulfil their requirements and identify any barriers to employment and possible alternative service options.
9. 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.

Providing incentives to re-engage

10. Another key difference between the current and the new system is that in the current system a job seeker who gets an eight week penalty must serve it, no matter what. Under the new system, any job seeker subject to an eight week non-payment penalty for persistent non-compliance or refusal of a job offer can have their payment reinstated if they agree to undertake a Compliance Activity. This will generally be 25 hours a week of full-time Work for the Dole for eight weeks, but may include other similar activities as appropriate.
11. Those who are not able to undertake any Compliance Activity but who would be in severe hardship as a result of the application of the penalty may also have their payment reinstated.

Eight week preclusion period

12. 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. This will no longer be characterised as a penalty but rather it will be described as a preclusion period. Vulnerable job seekers who would be in severe financial hardship as a result of this preclusion period will have their payment reinstated as is the case under financial case management. However, unlike financial case management, the job seeker will have participation requirements while they are receiving income support payments. They will also have a requirement to access Employment Services to help them find work.