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national employment services association

Response to the

Inquiry into the Social Security Legislation Amendment (Employment Services Reform) Bill 2008

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Presented by:
National Employment Services Association
Level 8, 20-22 Albert Road
South Melbourne 3205

Contact:
Ms. Sally Sinclair CEO
(03) 9686 3500

Preamble

The National Employment Services Association (NESA) is the peak body for Australian employment services. NESA is the only National peak body which represents all providers including community, private, public and Government sector member organisations and which represents all Commonwealth funded employment service and related programmes.

The National Employment Services Association welcomes the opportunity to provide feedback to the Inquiry into the Social Security Legislation Amendment (Employment Services Reform) Bill 2008. We further welcome the Commonwealth Government's consultative process in the design and implementation of strategies to ensure that the new Employment Services will be supported by a fairer and more effective job seeker compliance system which encourages engagement and participation.

This submission seeks to provide comments on specific elements contained in the proposed Social Security Legislation Amendment (Employment Services Reform) Bill 2008. This feedback represents input from employment services providers as well as other stakeholder experiences in service delivery interactions including service participants, employers and other community service organisations.

Background

Australians value and support the social safety net provided through our Social Security mechanisms and its contribution to a cohesive and civil society. There is also clear support for the principle that individual's should take responsibility for undertaking steps to improve their circumstance and not be dependent on the welfare system to the extent they have the capacity to do so. There is and will continue to be varied perspectives of the most sustainable and effective welfare models and the balance of responsibility and obligation. The compliance and breach penalty system in particular has attracted attention for many years.

For example, An Independent Inquiry into Breaching was set up by a coalition of welfare and other agencies which concluded in its 2002 report that: the current penalty regime is excessively harsh and unfair, and it unduly and counter-productively diminishes many job seekers' prospects of finding employment (Pearce et al., 2002 p79).

HREOC (2001) research found examining data between June 1997 and March 1998, that there was inequity in breach rates with consistently higher rates among indigenous people and was associated by a lack of adequate regard to factors influencing capacity to comply. Other research has also demonstrated that clients of high disadvantage such as those with mental health issues are unlikely to respond to harsher welfare-to-work rules (Johnson & Meckstroth 1998). Further that such disadvantaged cohorts of welfare recipients such as those with a substance abuse, family health or mental health problem or have been a recent victim of domestic violence were more likely to be sanctioned (Danziger & Seefeldt 2002; Goldberg 2002).

In 2003, the welfare reform package known as the Australians Working Together (AWT) Bill introduced changes to the legislation which were reportedly intended to apply a 'softening' of first time breach penalties for some mutual obligation criteria (The Age 28/3 2003). This reform included a new emphasis on rapid connections and reconnections and was introduced just prior to major change to employment services with the introduction of the Active Participation Model, (APM) and reform to Job Network. The APM saw all eligible job seekers required to participate in employment services, operating under a work first policy approach.

The 2005 – 2006 Commonwealth Budget included the Welfare to Work reform package which was intended to support improved workforce participation. This included further reform of the compliance framework which was cited as providing "better incentives for people to meet their obligations".

As stated in the Commonwealth Ombudsman report (Application of penalties under Welfare to Work, Report No.16/2007, December 2007) " the Welfare to Work reforms introduced on 1 July 2006 focussed on NSA or mature age allowance and certain youth allowance payments, which generally require customers to actively look for work as one of their qualification criteria." The report continued that "from 1 July 2007 the Welfare to Work reforms extended job seeking obligations … participation requirements … to a broader range of people including parents and those people with a reduced capacity to undertake paid employment. The reforms also imposed stricter rules for new claims for disability support pension and parenting payment. This has resulted in many more people who would previously have received these payments now being required to claim NSA or youth allowance, and satisfy participation requirements."

This framework has now been operating for three years and even in this short time has had a major impact including some undesired and unintended consequences. A key feature of the changes was the introduction of an 8 week non payment period to replace sanctions involving partial income support reductions. The Government outlined in the 2005 – 2006 Budget papers that:

"Suspensions will better encourage income support recipients to comply with the conditions of their payment. The new approach will apply to working age income support recipients with a participation requirement. As a last resort, payment will be stopped for eight weeks for serious participation failures. Case management will avoid unreasonable hardship on individuals and their families".

The design of employment services systems was also further changed to meet evolving job seeker and labour market needs and aligned to meet welfare to work policy objectives. These changes have seen a major focus on ensuring that all compliance failures were reported to Centrelink for investigation by employment service providers and have resulted in significant increases in Participation Report lodgements and application of penalties. The compliance framework has resulted in escalation of administrative process and has lacked adequate safeguards for those most disadvantaged in our community. This has not supported better outcomes for all job seekers.

As stated in the Making it Work, Promoting participation of job seekers with multiple barriers through the Personal Support Programme (Daniel Perkins, December 2007) "Research indicates that the predominant work-first approach – emphasising rapid employment placement, short-term job skills training, work mandates and penalties for non-compliance – is able to achieve positive outcomes with only a small fraction of the most disadvantaged clients".

It is a common view that while some of the elements of the Welfare to Work reform supported increased participation by strengthening the threat of the application of penalties for non compliance it has done little to improve genuine engagement. Many consider that while it is necessary to have a clear link between income support and obligations that these reforms did not adequately address income support recipients circumstance or capacity to participate. The application of suspension periods disconnected job seekers and reduced participation. Furthermore that the application of the legislation has been problematic and despite the intent and case management provisions, unreasonable hardship on individuals and families has not been avoided. Some key issues identified in the Ombudsman's report Application of Penalties under Welfare to Work included:

- Systemic practices implemented by Centrelink not consistent with social security law
- Lack of priority in assessment and decision-making to avoid delays resulting in compounding difficulties faced by customers
- Social Security Legislation Amendment (Employment Services Reform) Bill delays in communications regarding intended application of a penalty
- Insufficient linkages to financial case management before the commencement of a non payment period
- Inconsistencies in determination of start dates and review processes for non-payment periods

More recently revised administrative directions have been applied to ameliorate some of the undesirable and unintended consequences of the current compliance framework. However, reform of the Social Security Legislation is welcomed and desired to more systemically address issues and provide adequate safeguards for our most vulnerable citizens.

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Comprehensive Compliance Assessment

There is strong support for the introduction of a Comprehensive Compliance Assessment to better assess income support recipients circumstance and thereby reasonable excuse for non compliance with obligations. It is considered that the current legislative framework and related instruments are not adequately robust to ensure that vulnerable income support recipients are appropriately identified or unfairly impacted. 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.

Providers of Australian employment and related services including Job Capacity Assessors have considerable experience and knowledge that they would be eager to contribute to the development of the Comprehensive Compliance Assessment and legislative instrument to assist decision makers.

The explanatory draft indicates that "the decision maker is to determine whether the job seeker has persistently failed to comply with their participation-related obligations. In practice, it is intended that the decision maker will conduct a Comprehensive Compliance Assessment to determine if the job seeker's compliance until that point in time demonstrated persistent non-compliance".

Providers of Australian Employment Services also recommend that proactive action is taken to ensure that vulnerable income support recipients are identified. Current measures to apply vulnerability indicators are very limited in their application and effectiveness and should be reviewed. Ensuring that vulnerabilities can be better identified, will assist 'the decision maker' in identifying factors which should be considered, and better protect those who can not adequately outline their circumstance. Vulnerability Indicators could in this way provide the decision maker with additional prompts to assess if the participation failure was related to circumstance rather than wilful or persistent behaviour. In particular there are many income support recipients with mental health conditions that do not demonstrate the capacity or insight to relate their participation failure to their condition. It is a common experience in current compliance reviews that income support recipients will state their reason for participation failures simply as 'I forgot the appointment' for example, rather than 'I have a depressive disorder which affects my memory'.

Such indicators should also be used to ensure the income support recipients' capacity to participate is considered in establishing Employment Pathway Plans and setting appropriate activity levels. A proactive approach will better assist income support recipients avoiding the negative and stressful impact of inappropriate activity requirements and compliance processes and by doing so also reduce the number of participation failures and related administration being undertaken by stakeholders.

42C No show no pay failures

There is broad in principle support for the no show no pay failures. However, employment services providers generally view that point four is similar to and should be treated equally with serious failure for refusing or failing to accept an offer of suitable employment where there is no reasonable excuse.

(iv) the person intentionally acts in a manner on the day (including by failing to attend a job interview), and it is reasonably foreseeable that acting in that manner could result in an offer of employment not being made to the person; and

It should be noted that failing to attend an interview ensures that no offer of suitable employment will be made as does intentionally sabotaging a job interview. Furthermore such behaviours impact on the reputation of other job seekers and reduce the confidence business and industry has in the effectiveness of the employment services which limits opportunities offered for other job seekers.

42F Requiring a person to apply for job vacancies

(2) The person must give the Secretary a written statement from each employer whose job vacancy the person applied for during that period that confirms that the person applied for that job vacancy.

The need for verifiable evidence that income recipients have undertaken required job seeking efforts is understood however the application of this requirement warrants some caution. It is the experience of employment service providers that requiring written statements from employers can be problematic particularly in communities with limited labour markets and few employers to approach. Employers voice frustration at diverting resources to verify job canvassing efforts. Furthermore, the act of asking employers to verify application for a vacancy can negatively impact on the applicant's chance of winning the job.

A job seeker diary can be a beneficial tool to support improved compliance and reduce errors in income declarations. Income support recipients who work casual hours often report that it is easier to record working hours and income 'as they go' in a diary which reduces confusion and inaccurate income earning declarations, given Centrelink and employment pay period rarely coincide neatly. Many job seekers require assistance due to literacy and language issues to complete requirements such as diary records and completion of forms such as SU19. Where written information is required appropriate assistance for job seekers should be available to support their capacity to comply.

42U Legislative instruments relating to reasonable excuse

(1) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether a person has a reasonable excuse for committing:
  (a) a no show no pay failure (see paragraph 42C (4)(a)); or
  (b) a connection failure (see paragraph 42E (4)(a)); or
  (c) a reconnection failure (see subsection 42H (3)); or
  (d) a serious failure (see subsection 42N (2)).

(2) To avoid doubt, a determination under subsection (1) does not limit the matters that the Secretary may take into account in deciding whether the person has a reasonable excuse.

Defining matters to be taken into account in making the decision if a person has a reasonable excuse is recognised as being a challenging task. Equally challenging is achieving equitable interpretation and application of such instruments. It is the experience of employment service providers that such an instrument must consider situational factors such as notification as well as personal circumstance. In saying this it is clear that reasonable excuse cannot be so broad as to render it ineffective where its application is warranted.

The range of influences on individual capacity to participate and meet requirements is extensive and often volatile. This makes the identification complex, particularly where job seekers have limited insight such as those with mental health conditions including untreated, undiagnosed and un-stabilised conditions. Many assessments are often largely based on self disclosure therefore limiting

relevant and timely access to information for provision of assistance and/or decision-making about individual compliance. As such matters for consideration as to reasonable excuse should not be rigid and improved provisions for establishing vulnerability indicators could support better safeguards for income support recipients most at risk.

Employment service and related providers would appreciate the opportunity to input to the development of the legislative instrument.

42M Serious failure for persistent non-compliance

(1) The Secretary may determine that a person commits a serious failure if:

(a) the Secretary is satisfied that the person has, up to the day the Secretary makes the determination, persistently failed to comply with his or her obligations in relation to a participation payment (including by committing no show no pay failures, connection failures or reconnection failures); and

(b) the person receives a participation payment for the instalment period in which the Secretary makes the determination.

There is support for the application of serious failures for persistent non-compliance with the application of appropriate legislative instrument to assist decision makers. The application of the persistent non-compliance test and ensuring acts are intentional, reckless or negligent and that job seekers cannot be deemed to commit serious failures for behaviour beyond their control is supported. This will require case by case consideration.

It is recommended that the clear definitions of persistent and recent compliance history are detailed in the legislative instrument to support consistent interpretation and equitable application.

42Q Ending serious failure periods

There is general support for the ability of income support recipients where they have the capacity to engage in serious failure requirements and have income support restored. There is also support for the improved safeguards to ensure that capacity to participate and severe financial hardship is considered. In addition to the Comprehensive Compliance Assessment these provisions better support a focus on re-engagement in services to assist the income support recipient prepare for and obtain paid employment than the current Framework. Previous experience with clean slating provisions for instance indicates that such engagement focused provisions contribute to better workforce participation outcomes and less negative social impacts than penalty focused strategies while still delivering a deterrent affect.

The explanatory notes indicate that it is intended that serious failure requirements will be requirements to undertake a particular intensive activity over a period of time; and it is intended that job seekers undertake eight weeks of an intensive activity, in lieu of serving an eight week serious failure period. There is support to ensure that some flexibility be adopted to ensure individual capacity and availability of tailored intensive activities can be accommodated.

Summary

Providers of employment and related services are an important stakeholder in the Social Security compliance framework. There is general support for the Social Security Legislation Amendment (Employment Services Reform) Bill 2008 with a view that the proposed amendments achieve a desirable balance of individual obligation and social protection. The construction of the legislative instruments will be critical to achieving the intent of the reform, as will be ensuring clear understanding and application by all stakeholders including employment service providers. Providers of employment and related services have much to offer in the development of these instruments and would be pleased to have input. There has been inadequate training and alignment of process and procedures between the stakeholders to support an efficient and effective framework with the reform that has been undertaken in past years. We would strongly recommend that in the implementation of this reform training is conducted and conflicts between employment service guidelines and the intent of the reform should be avoided.

References:

Application of penalties under Welfare to Work, Commonwealth Ombudsman, Report.16/2007, December 2007

Making it Work, Promoting participation of jobseekers with multiple barriers through the Personal Support Programme, Daniel Perkins, December 2007