



Response to the

# Inquiry into the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011

Prepared April 2011



**Presented by:**

**National Employment Services Association**

Level 8, 20-22 Albert Road

South Melbourne 3205

**Contact:**

**Ms. Sally Sinclair CEO**

P: (03) 9686 3500 | F: (03) 9686 3660

E: [nesa@nesa.com.au](mailto:nesa@nesa.com.au) | W: [www.nesa.com.au](http://www.nesa.com.au)

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## **Preamble**

The National Employment Services Association (NESA) is the peak body for Australian employment services. NESA is the only National peak body which represents community, private, public and Government sector providers 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 (Job Seeker Compliance) Bill 2011.

This submission seeks to provide comments on specific elements contained in the proposed Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011. 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 with a range of inquiries and research exploring implementation and outcome of compliance measures. There has also been significant reform undertaken to strengthen the efficacy of the job seeker compliance regime including:

The Australians Working Together (AWT) Bill which introduced changes to the legislation which were reportedly intended to apply a 'softening' of first time breach penalties for some mutual obligation criteria. 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”.

The Social Security Legislation Amendment (Employment Services Reform) Bill 2008 provides the framework for the current compliance system. The principal aim of the introduction of the new system in 2009 was to remove perceived weaknesses in the previous framework by strengthening early and constructive engagement between job seekers and their employment service providers; and reducing the incidence of hardship caused to vulnerable job seekers. Amongst the new measures introduced were:

- Comprehensive Compliance Assessment
- Requiring a person to apply for job vacancies
- Legislative instruments relating to reasonable excuse
- Four types of failure to comply: Connection Failures; Reconnection Failures; No Show, No Pay Failures; and Serious Failures for persistent non-compliance
- Provision to End serious failure periods

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Much of the reform to the social security legislation introduced in 2009 has resulted in significant improvement to the administration of income support. This Bill introduced a range of new measures made the job seeker compliance system more ‘work like’ than the previous framework and provided greater protection to vulnerable citizens. In particular the introduction of Comprehensive Compliance Assessments has been effective to minimize sanctions on those with identified barriers to participation.

Following a period of implementation however, the industry considers that there is further opportunity to strengthen the compliance framework to better support job seeker engagement and workforce participation. Many of the areas of the compliance framework which the industry considers could be strengthened are reflected in the recommendations of the 2010 Independent Review of the Job Seeker Compliance Framework. This review examined *“the nature and operation of the system introduced in July 2009 for ensuring that people who are receiving participation payments comply with the participation requirements for doing so.”*

A considerable investment is made by Governments to ensure the welfare of its citizens and to provide services to assist them to address circumstance. Australian employment services objective is to assist job seekers to prepare for and engage in sustainable employment. The Independent Review indicated that an underpinning principle of our framework is *“that unemployed people who wish to receive income support from the government should be required to make reasonable efforts to obtain employment. These requirements can appropriately include attendance at appointments and activities which are likely to improve the job seeker’s prospects of employment, including by assessing the kinds of barriers which he or she may face and the kinds of assistance which may be needed.”*

The amendments as outlined in the current Bill are considered welcomed improvements to the job seeker compliance framework and will provide greater emphasis on engagement and participation. Following are comments on specific items contained in the Bill.

**Items 4 and 18 - Paragraph 42E(2)(a); note to subsection 63(7)**

Ensuring that job seekers are provided with notice about the potential consequences of failing to comply should be a fundamental element of the framework and as such amending notice provisions is supported.

**Item 6 – Section 42G & Items 9, 10 and 11 – Section 42J**

Providers of Australian employment and related services welcome this amendment which enables greater capacity to prioritise engagement. Providers consider that giving the Secretary the capacity to issue a reconnection requirement without the need to first determine a connection failure or reconnection failure will improve the effectiveness and efficiency of the compliance framework and better reflect job seeker participation as the priority.

Providers consider that the amendment will address weaknesses within the current arrangement which provides that **if** the Secretary determines that a person commits a connection failure, then the Secretary may require the person to comply with a requirement (a reconnection requirement). We also note that similarly, the Secretary is only able to issue further reconnection requirements if they find that a person has committed a reconnection failure without a reasonable excuse or has failed to comply with an earlier further reconnection failure.

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It is the industry's experience it that most often job seekers are considered to have a reasonable excuse and a connection/reconnection failure is not determined and therefore a reconnection requirement cannot be applied. The priority for providers is to reengage the job seeker and resume the provision of employment assistance rather than the application of a penalty.

The period to action Participation Reports can be up to twenty eight days. Where a Participation Report is not upheld the provider must then take independent steps to initiate a new appointment for the job seeker and provide appropriate notice. This can and regularly does result in a break in service of around an additional month from the date of determination of the Participation Report. If the job seeker fails to attend following appointments the process is repeated. In some instances this cycle disrupts job seeker participation for months. In contrast where reconnection appointments are made the disruption in services can be reduced to two days or less following the determination of a failure.

The industry considers that this amendment has potential to have a significant positive impact on improving engagement and participation while also reducing the proportion of job seekers subject to multiple Participation Reports.

We note from the Independent Review presentation of Participation Report data for 2009 - 2010 which indicated that the vast majority of job seekers (approx 75%) were not been subject of any Participation Report. Of the 25% of job seekers subject to a Participation Report the majority (55%) had a single instance. However, when we explore the proportion of job seekers subject to multiple Participation Reports it is interesting to note that 72% of all reports involve 11% of the total job seeker population. The report indicates that of these only 2% of job seekers had five or more Participation Reports however this represented 25% of all reports.

From our understanding of this amendment it also means that reengagement will be able to occur more quickly as it is no longer contingent on first determining a connection/reconnection failure. The industry considers that this amendment has potential to provide consistency to and reinforce the message regarding the importance and obligation of job seekers to participate in activities which can assist them to find employment.

#### **Item 8 – Subsection 42H(5)**

The priority for providers is to reengage the job seeker and resume the provision of employment assistance rather than the application of a penalty. To ensure that the compliance framework supports participation it is important that, where sanctions are considered appropriate, that there is a clear link between the failure and the consequence.

In consideration of the reasonableness of this amendment employment service providers note that in the vast majority of cases following the job seekers agreement the reconnection appointment is scheduled by Centrelink to occur within two working days .

Providers of employment services generally support this amendment which will allow for any loss of payment as a result of a reconnection failure to be deducted from a person's income support payment immediately. Where no reasonable excuse is determined providers generally consider that the more immediate loss of payment will provide better reinforcement and a stronger and more direct deterrent for the reconnection failure.

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## **Items 12 and 13 – Section 42K**

Providers of employment services support the amendments made in relation to Section 42K which lists what the Secretary must notify a person about when imposing a reconnection requirement or further reconnection requirement on the person, and when that notice must be given.

Ensuring that job seekers are provided with notice about the potential consequences of failing to comply should be a fundamental element of the framework.

Providers also consider that facilitating reengagement as quickly as possible is in the best interest of all parties. As such this amendment which enables a reconnection or further reconnection requirement to be conducted on the same day is also supported. We note that past research has shown that superior attendance rates are achieved by minimising the length of time between making the appointment and the actual appointment. The industry's current experience demonstrates that the failure to attend rate for reconnection appointments can be reduced by enabling same day appointments where possible.

We note that such arrangements are particularly beneficial in regional, rural and remote areas, where job seeker have travelled to see Centrelink and can accommodate the reconnection requirement within the same visit. We also note that where job seekers are experiencing complex circumstances that the opportunity for a more immediate appointment can assist their participation.

## **Item 14 – After subdivision E of Division 3A of Part 3**

The priority for providers is to reengage the job seeker and resume the provision of employment assistance rather than the application of a penalty. The addition of this section establishing a new element to the job seeker compliance regime of payment suspension for failure to attend an appointment or activity is welcomed.

Employment services providers consider that it is critical that the framework reinforces the importance of participation in services designed to assist the job seeker to find employment. There is a considerable investment made by Government in such services and the loss of productivity experienced as a result of failure to attend without reasonable cause should be addressed. We note from the data in the Independent Review Report that:

1. Failure to attend scheduled appoints continues to be the reason for lodging participation reports in the majority of cases (approx 85%)
2. During the first year of the new compliance system, the rate of attendance at appointments with providers averaged about 58% by comparison with about 56% in the previous year.

The industry considers that the suspension of payment as a trigger for reengagement is positive and will contribute to improved participation in appointments and other agreed activities. Improvements to participation will benefit all stakeholders including reducing the volume of Participation Reports job seekers, and potentially harsher consequences involved in multiple failures.

We note that where job seeker agree to comply with a reconnection requirement the period of non-payability will typically end, and the person will be entitled to back-pay for the period that their payment was suspended and there are also provisions for job seekers with identified vulnerabilities.

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### **Items 3, 5, 7, and 15 – Job seekers to given prior notice of reasonable excuse**

The employment services industry is supportive the introduction of this amendment which provides improved clarification of reasonable excuse by the addition that an excuse cannot be a reasonable excuse unless the job seeker has notified a specified person before the appointment.

As indicated earlier lost productivity due for failure to attend appointments and activities has a significant impact on the productivity of employment services and their capacity to assist job seekers connect with sustainable employment.

The employment services industry notes that as indicated in the Independent Review Report approximately 65% of all Participation Reports are rejected by Centrelink due to the job seeker having a reasonable excuse. There is no question that the circumstances of individuals must be taken into account when scheduling appointments and providing appropriate notice. Providers regularly reschedule appointments where job seekers advise them of reasonable circumstance that prevent them from attending.

The proportion of job seekers who repeatedly fail to notify providers of their circumstance is unacceptably high. Likewise the rejection rate for Participation Reports as a result of reasonable excuse is also very high. In the current context these circumstances contribute to a cycle of Participation Reports which do not adequately support engagement and participation.

It is the aim of employment services is to prepare job seekers for and engage them into work. This item more appropriately reflects widely held standards and expectations of communication when a person is unable to attend work or other scheduled appointment. Providers consider that the inclusion of this item in the Bill along with those enabling of broader application of reconnection and further reconnection requirements will have a significant impact on motivating job seekers to give prior notice and place higher priority on meeting participation requirements. We consider it is also positive that the Bill includes provision for the Secretary to determine special circumstances in which it was not reasonable for the person to give prior notification to avoid unreasonable consequences.

We consider that this amendment will significantly enhance participation and improve the productivity of the sector and thereby services to job seekers.

### **Concluding Comments**

Providers of employment and related services are an important stakeholder in the job seeker compliance framework. There is general support for the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011 with a view that the proposed amendments achieve a stronger and more desirable balance of individual obligation and social protection.

To enable the efficient and effective implementation of these measures we would advocate for there to be a job seeker communication strategy as well as training in the revised requirements for all stakeholders including employment services. We further recommend that stakeholders are consulted in the development of systems and processes to enable these measures to be effectively and efficiently implemented.