

LABOR SENATORS' DISSENTING REPORT

Key issues

1.1 Labor Senators do not support a number of recommendations contained in the Chair's report into the Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014 (the bill), and remark that neither the bill nor the committee hearings provided clarity as to whether the bill would actually assist the most vulnerable in society to gain employment.

1.2 We note the extremely short time frame given to the committee to conduct its inquiry into the bill, and as such, provide only an outline of key issues and recommendations of the Labor Senators of the committee.

Removal of appeal rights

1.3 Labor Senators strongly oppose Item 10 of the bill, which inserts new paragraph 129(4)(b), expanding the list of decisions that are not reviewable by the Department of Social Security Secretary (Secretary) under subsection 129(1) of the *Social Security (Administration) Act 1999*, to include decisions made under subsections 42SA(1) or 42SA(2A); that is, a determination by the Secretary that a participation payment is not payable to a person who has failed to attend a required appointment or participate in a required activity.

1.4 Similarly, Item 11 of the bill amends paragraph 144(fa) to include decisions made under subsections 42SA(1) or 42SA(2A), thereby ensuring that people who incur a non-payment penalty for failing to attend a required appointment or participate in a required activity cannot have this decision reviewed by the Social Security Appeal Tribunal.

1.5 Labor Senators were compelled by the overwhelming majority of submitters who strongly objected to the removal of appeal rights in relation to compliance suspension decisions. We agree that appeal rights are 'a fundamental principle of the social security system to ensure transparency and fairness.'¹

1.6 Labor Senators wish to note evidence provided by the National Welfare Rights Network (NWRN) with regard to review process:

...restricting appeal rights on the basis that few people would exercise the right to appeal, or that the impact on people would be small, ignores the general unfairness. It also ignores the potential disengagement and undermining of a person's relationship with DHS and employment services

1 Matthew Butt, *The Government again proposes changes to the compliance framework*, Welfare Rights Centre weblog, <http://welfarewrites.org/2014/10/08/the-government-again-proposes-changes-to-the-compliance-framework/> (accessed 21 November 2014).

that can occur when a person cannot correct a decision, even if the financial loss was only temporary.²

1.7 Jobs Australia, who the Labor Senators note were otherwise reasonably supportive of the bill, also submitted similar concerns about the removal of the availability of administrative review of the decision to suspend payments:

The denial of review rights reduces accountability in the system and may encourage less prudent decision-making... and we believe that any decisions that affect a person's payments should be reviewable as a matter of principle.³

1.8 Labor Senators of the committee were compelled by the evidence opposing changes to the review process, and express concerns that Items 10 and 11 of the bill encroach on Australians' fundamental rights to review of government decisions.

Recommendation 1

1.9 In order for the status quo to be maintained so that job seekers retain their right to review of decisions to suspend payments, **Labor Senators recommend that the bill be amended to remove Items 10 and 11.**

Removal of current concessions for over 55's

1.10 Currently, under subsection 502A(1) of the *Social Security Act 1991*, persons aged 55 years and over who are in receipt of an activity tested income support payment (Newstart Allowance, Parenting Payment and Special Benefit) may be deemed to have satisfied the requirements of the activity test where they have in the fortnightly payment period engaged in at least 30 hours' approved voluntary work, a combination of voluntary and paid work, or, paid work.⁴

1.11 Labor Senators understand that it is the intention of the government that the current concessions received by job seekers aged 55 to 59 years and receiving Job Services Australia assistance will be removed by a legislative instrument.⁵

1.12 Submissions and evidence in opposition to this was overwhelming, and compelling arguments were outlined by almost all submitters.⁶

1.13 The Australian Association of Social Workers (AASW) submitted that it was difficult to see justification for the proposed changes to the current arrangements for job seekers over 55 years of age, due to the limited job opportunities for those

2 National Welfare Rights Network, *Submission 1*, p. 5.

3 Jobs Australia, *Submission 3*, p. 7.

4 *Social Security (Administration) Act 1991*, ss. 502A(1).

5 The Hon. Mr Luke Hartsuyker, Deputy Leader of the House and Assistance Minister for Employment, *House of Representatives Hansard*, 25 September 2014, p. 8.

6 National Welfare Rights Network, *Submission 1*; Australian Association of Social Workers, *Submission 2*; Australian Council of Social Services, *Submission 7*; Australian Council of Trade Unions, *Submission 8*.

particular jobseekers, and the suggestion that people would willingly retire on Newstart is strongly contested.⁷

1.14 St Vincent De Paul supported this evidence in their submission, and further noted that pervasive age discrimination is well-documented in Australia, with nearly one in three unemployed people aged 45 years and over describing their main obstacle to finding work as being considered too old by employers.⁸ Labor Senators are not aware of any evidence that the negative attitudes towards older workers have improved to the point where it is appropriate to remove this provision for jobseekers over 55 years of age.

1.15 Labor Senators also refer to the Bills Digest relevant to this bill, which notes:

In the absence of concerted and sustained efforts to tackle the many structural barriers to mature age employment participation, some commentators have argued that it would not be appropriate to do away with the different activity test arrangements that apply to job seekers aged 55 years and over. For example, the National Welfare Rights Network has pointed out that, having conducted an inquiry into Commonwealth legal barriers to older persons participating in the workforce or other productive work, the Australian Law Reform Commission (ALRC) decided against proposing any changes to the concessional activity test. In doing so, the ALRC argued that the concessional activity test requirement did not appear to be acting as a barrier to mature age participation, and that it ‘recognises the value of volunteering, not only as a potential pathway to paid employment, but also as a form of productive work in its own right’.⁹

Recommendation 2

1.16 Due to the significant and overwhelming evidence presented by submitters in opposition to the removal of concessions for jobseekers over 55 years of age and in order for the status quo is maintained so that jobseekers over 55 years of age retain adequate concessions in respect of their circumstances, **Labor Senators recommend that the bill be amended to remove Items 13–19 of the bill.**

Start date for penalties

1.17 Labor Senators echo the Chair’s report that many submitters were of the view that penalties should be imposed only once a person has been notified of their failure to attend a scheduled appointment, rather than from the time of the missed appointment.

1.18 Labor Senators support the evidence presented by the NWRN, who assert that a penalty from the day of the missed appointment risks punitive action against people who possibly missed an appointment without realising. We also support the

7 Australian Association of Social Workers, *Submission 2*, pp 3–4.

8 St. Vincent de Paul, *Submission 9*, pp 6–7.

9 Bill’s Digest No. 46, 2014–15, 29 October 2014, available at: http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/3475383/upload_binary/3475383.pdf;fileType=application/pdf (accessed 21 November 2014).

recognition in the Chair's report that Indigenous Australians living in remote communities may be particularly affected by problems with notification and reconnection processes.¹⁰

1.19 As such, Labor Senators would support the implementation of safeguards, as described by the NWRN in their submission to the committee.¹¹

Recommendation 3

1.20 Labor Senators recommend the implementation of safeguards with respect to the start date of penalties for job seekers failing to attend appointments with job service providers.

Recommendation 4

1.21 If the bill is not amended to reflect the recommendations contained in this dissenting report, that the bill be rejected in its entirety.

Senator Sue Lines

Deputy Chair

10 National Welfare Rights Network, *Submission 1*, pp 10–11.

11 National Welfare Rights Network, *Submission 1*, p. 4.