

# Chapter 1

## Introduction

### Referral

1.1 On 17 June 2014 the Senate referred the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014 (Bill) to the Community Affairs Legislation Committee (committee) for inquiry and report by 26 August 2014.<sup>1</sup>

### Purpose of the Bill

1.2 The Bill seeks to ensure that more jobseekers meet their mutual obligation requirements and transition from welfare to gainful employment.<sup>2</sup>

The Bill will help restore the integrity of our welfare system and ensure available resources are used effectively and efficiently... The ability to waive the penalty means that job seekers who commit a serious failure can avoid the financial consequences of their actions, and continue to receive income support, despite their poor behaviour.<sup>3</sup>

1.3 The Bill would give effect to the government's commitment to strengthen jobseeker compliance frameworks by ensuring that penalties are applied more rigorously where jobseekers fail to comply with participation obligations while in receipt of an activity tested income support payment.<sup>4</sup>

### Conduct of inquiry

1.4 Details of the inquiry were made available on the committee's website.<sup>5</sup> The committee also contacted 38 organisations inviting submissions to the inquiry by 18 July 2014. Submissions were received from nine individuals and organisations, as detailed in Appendix 1.

1.5 A public hearing was held in Canberra on 18 August 2014. The witness list for the hearing is available in Appendix 2.

### Background

1.6 To give effect to measures announced in the 2008–09 Budget, the former government introduced a package of reforms to employment services and a new

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1 *Journals of the Senate*, No. 31 – 17 June 2014, p. 888.

2 Explanatory Memorandum (EM), p. 5.

3 The Hon. Luke Hartsukyer MP, Deputy Leader of the House and Assistant Minister for Employment, *House of Representatives Hansard*, 4 June 2014, p. 3.

4 The Hon. Luke Hartsukyer MP, Deputy Leader of the House and Assistant Minister for Employment, *House of Representatives Hansard*, 4 June 2014, p. 4.

5 [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs) (accessed 26 August 2014).

jobseeker compliance system<sup>6</sup> that attempted to introduce measures to provide capacity for individual circumstances of jobseekers to be taken into consideration and to find better ways to ensure jobseeker compliance with participant obligations.<sup>7</sup>

1.7 At this time, the eight week penalty for wilful and persistent non-compliance was maintained. However, a number of provisions were introduced to provide flexibility in the application of the penalty. As such, currently:

- where a jobseeker commits a 'serious failure' participant payments will not be payable for eight weeks.<sup>8</sup> Serious failures are persistent non-compliance with participation obligations<sup>9</sup> and failure to accept, without reasonable excuse, an offer of suitable employment.<sup>10</sup> Participant payments are Newstart allowance and, in some instances, youth allowance, parent payments and special benefits;<sup>11</sup> and
- the Department of Social Security Secretary (Secretary) may waive the above mentioned eight week non-payment penalty where a jobseeker begins to comply with a 'serious failure requirement' or, does not have the capacity to undertake a 'serious failure requirement' and would be in 'severe financial hardship' if the non-payment period was not ended.<sup>12</sup> Serious failure requirements include Work for the Dole and job search training.<sup>13</sup> A person is in severe financial hardship if the value of their liquid assets is less than \$5 000 for a member of a couple and/or a person who has a dependent child, or less than \$2 500 for a single person with no children.<sup>14</sup>

### Key provisions of the Bill

1.8 The Bill seeks to amend the Social Security (Administration) Act 1999 (Act) to introduce a stronger compliance framework for jobseekers in receipt of a 'participant payment'.<sup>15</sup>

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6 Senate Education, Employment and Workplace Relations Committee, Social Security Legislation Amendment (Employment Services Reform ) Bill 2008 [Provisions] Report, p.4.

7 Senate Education, Employment and Workplace Relations Committee, Social Security Legislation Amendment (Employment Services Reform ) Bill 2008 [Provisions] Report, pp. 5-6.

8 EM, p. 10.

9 *Social Security (Administration) Act 1999*, s. 42M.

10 *Social Security (Administration) Act 1999*, s. 42N.

11 *Social Security (Administration) Act 1999*, s. 3, Schedule 1.

12 Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014, Schedule 1, ss. 1-5; *Social Security (Administration) Act 1999*, s. 42Q(1).

13 EM, p.5.

14 *Social Securities Act 1991*, ss. 14A(7).

15 EM, p. 5.

1.9 Schedule 1 of the Bill would abolish the ability of the Secretary to waive a non-payment penalty for jobseekers who incur an eight week non-payment penalty for refusing suitable work.<sup>16</sup>

1.10 Schedule 1 of the Bill also provides that where a jobseeker incurs an eight week penalty for persistent non-compliance with participation obligations, the Secretary may only waive the eight week non-payment penalty once.<sup>17</sup>

### **Consideration of the Bill by other committees**

1.11 The Bill has been considered by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) and the Parliamentary Joint Committee on Human Rights (Human Rights committee).

#### ***Scrutiny committee***

1.12 The Scrutiny committee detailed its consideration of the Bill in Alert Digest 7/14, tabled in the Senate on 26 June 2014. The Scrutiny committee had no comment on the provisions of the Bill.<sup>18</sup>

#### ***Human Rights committee***

1.13 The Human Rights committee examined the Bill in its Ninth Report, tabled in the Senate on 15 July 2014.<sup>19</sup>

1.14 The government's Statement of Compatibility with Human Rights considered that the Bill did not appear to give rise to human rights concerns, but did note that the Bill engages the right to work, the right to social security and the right to an adequate standard of living.<sup>20</sup>

1.15 The Human Rights committee considers that the measures of the Bill that remove and limit the ability to waive the non-payment penalty for refusal of suitable work, or for persistent non-compliance may limit the right to social security, the right to an adequate standard of living, and the rights to equality and non-discrimination.<sup>21</sup>

1.16 The Human Rights committee expressed concerns that, notwithstanding the assurances in the explanatory memorandum, it remains 'unclear how limiting the availability of the waiver on the ground of a jobseeker's severe financial hardship, or because a jobseeker agrees to undertake more intensive activities, such as Work for

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16 EM, p. 5.

17 EM, p. 2.

18 Senate Standing Committee for the Scrutiny of Bills. Alert Digest No. 8 of 2014, 9 July 2014, p. 49.

19 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44<sup>th</sup> Parliament*, pp 66-70.

20 EM, pp. 10-15.

21 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44<sup>th</sup> Parliament*, pp 66-70.

the Dole, would achieve the stated objective of the measures.<sup>22</sup> The Human Rights committee considered the characterisation of the Bill in the explanatory memorandum as a promotion of the right to work by providing 'a stronger incentive to accept an offer of suitable work',<sup>23</sup> as an inaccurate assessment of the Bill's limitation on human rights.<sup>24</sup>

1.17 The Human Rights committee suggested that the Bill also has potential to disproportionately or unintentionally impact negatively upon particular groups resulting in the engagement and limitation of the rights to equality and non-discrimination.<sup>25</sup>

1.18 The Human Rights committee has sought clarification from the Assistant Minister for Employment as to whether the removal or limitation of the ability to have the non-penalty waived is compatible with the right to social security and the rights to equality and non-discrimination.<sup>26</sup>

1.19 The Assistant Minister for Employment is yet to provide a response to the Human Rights committee's request for clarification, however, the Department of Education (department) indicated in their submission to this inquiry that a response is forthcoming.<sup>27</sup>

### **Financial Impact Statement**

1.20 The explanatory memorandum submits that the Bill would have a financial impact, resulting in net savings for the Social Services portfolio of \$9.3 million over three years and \$20.5 million over five years.<sup>28</sup>

### **Acknowledgement**

1.21 The committee thanks those individuals and organisations who made submissions and who gave evidence at the public hearing.

### **Notes on References**

1.22 Reference to the committee Hansard is to the proof Hansard. Page numbers may vary between the proof Hansard and the official Hansard transcript.

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22 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44<sup>th</sup> Parliament*, p. 68.

23 EM, p. 11.

24 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44<sup>th</sup> Parliament*, p. 69.

25 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44<sup>th</sup> Parliament*, p. 70. For example, women are generally more likely to be welfare recipients and to have a range of caring responsibilities that intersect with the right to social security.

26 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44<sup>th</sup> Parliament*, p. 70.

27 *Submission 9*, p. 5.

28 EM, p. 2.