

Chapter 2

Key issues

2.1 The Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014 (Bill) changes the waiver provisions for penalties where a jobseeker fails to accept an offer of suitable work or deliberately and repeatedly fails to comply with participation obligations.

2.2 Broadly speaking, submissions to the inquiry examined the Bill's potential financial impact on vulnerable jobseekers¹ and its ability to facilitate incentives for workforce reengagement.² Some submitters also emphasised the need for the Bill to be considered in the context of other government proposals³ and the deterrent effect of the penalty.⁴

2.3 While some concerns were raised about the proposed measures, others acknowledged the financial and social benefits of strengthening Australia's jobseeker compliance frameworks and highlighted the safeguards that exist to protect vulnerable jobseekers.

Financial impacts on vulnerable jobseekers

2.4 Some submitters questioned the ability of the proposed measures to respond to the individual circumstances of jobseekers.⁵ Specifically, concerns were raised about the potential financial impact of the Bill on the most disadvantaged jobseekers.⁶ For example, Brotherhood of St Laurence contended that the Bill created a high risk of unintended consequences, by impacting upon jobseekers who may find themselves in breach of their obligations due to circumstances beyond their control, such as mental illness, domestic violence or homelessness.⁷

1 See: St Vincent de Paul National Council, *Submission 1*, pp. 4–5; National Welfare Rights Network, *Submission 4*, pp. 6–7; Australian Council of Social Service, *Submission 5*, p. 1.

2 See: *Submission 1*; Anglicare Australia, *Submission 3*; *Submission 4*; BoysTown, *Submission 6*; Brotherhood of St Laurence, *Submission 7*.

3 See: *Submission 4*, pp. 7–8; *Submission 6*, p. 5.

4 See: *Submission 1*; *Submission 4*.

5 See: *Submission 6*; *Submission 7*.

6 See: *Submission 1*, pp. 4–5; *Submission 4*, pp. 6–7; Australian Council of Social Service, *Submission 5*, p. 1.

7 *Submission 7*.

2.5 The government has stated that under the proposed amendments:

Job seekers will not be forced to take on work that is clearly beyond their work capacity and that their individual circumstances, such as homelessness, will be taken into account.⁸

2.6 The Department of Employment (DE) acknowledged the importance of providing safeguards for vulnerable jobseekers and contended that vulnerable jobseekers would not be unduly affected by the measures in the Bill.⁹ DE noted that:

...the bill will not remove or weaken any of the current safeguards in the system that are designed to ensure that vulnerable jobseekers do not incur penalties inappropriately.¹⁰

2.7 The committee notes that there is currently a 'vulnerability indicator'¹¹ mechanism in place to identify vulnerable jobseekers and that this Bill will not remove, weaken or change this mechanism. The committee also notes that this mechanism has proven to be effective because jobseekers with a vulnerability indicator comprise only a small proportion of those jobseekers who incur penalties for non-compliance.

In 2012-13, job seekers with a Vulnerability Indicator on their record, represented 16 per cent of the total activity tested job seeker population. During the same financial year, they incurred 13 per cent (223) of all the penalties applied for refusing suitable employment and 16.7 per cent of all of the penalties applied for non-compliance (4,238).¹²

2.8 The Department of Human Services (DHS) is responsible for placing a vulnerability indicator on a jobseeker's record. In evidence before the committee, DE explained that there are:

... categories of vulnerability that go onto a job seeker's record, and they relate to things like illness or injury requiring treatment, psychiatric problems, drug and alcohol dependence, significant lack of literacy and numeracy.¹³

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

9 Department of Employment, *Submission 9*, p. 6.

10 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, pp. 38–39.

11 A Vulnerable Indicator will be placed on a jobseeker's record where the Secretary has made a determination that a person is experiencing financial exploitation or hardship, or homelessness or a risk of homelessness. See Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2010; Explanatory Statement, Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2010, p. 2.

12 *Submission 9*, p. 6.

13 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 46.

2.9 The committee notes that a vulnerability indicator may be recorded in the following circumstances:

- psychiatric problems or mental illness in the last six months
- cognitive or neurological impairment
- illness or injury requiring frequent treatment
- drug or alcohol dependency which may impede participation
- eight week non-payment period in the last twelve months
- homelessness
- recent traumatic relationship breakdown, especially if domestic violence is involved
- significant language and literacy issues
- recent prison release
- significant caring responsibilities
- a period of transition during which the job seeker's capacity to comply with their requirements may be affected. For example, had a child leave care and as a result their participation requirements have changed.¹⁴

2.10 DE advised that if a jobseeker's record contains a vulnerability indicator this acts an alert to the job service provider and DHS that this individual has a vulnerability that needs to be taken into account in making any assessments about that jobseeker, including whether they have refused a suitable job, or failed to comply with a participation obligation, or whether they have been persistently and wilfully non-compliant with their participant obligations.¹⁵

2.11 DE also confirmed that DHS takes into consideration the fact that a jobseeker has a vulnerability (for example, a mental health condition) at the time a decision regarding a penalty is made.¹⁶

2.12 DE explained that while the vulnerability indicator does not provide a jobseeker with a 'blanket exemption' from meeting their participation obligations, it:

... is something that we have to take into account when setting requirements and reviewing them. People who have a vulnerability indicator are also often what we call exempt from participation requirements. So that is where they are given an exemption because of their

14 Department of Employment, answer to question on notice, 18 August 2014 (received 20 August 2014).

15 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 46.

16 Ms Moya Drayton, Group Manager, Job Services Australia Group, and Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 39.

personal circumstances for a period of time in having to meet their requirements. And in those cases there is no compliance activity that can take place in respect of them.¹⁷

2.13 With respect to the implementation of the Bill, St Vincent De Paul National Council and BoysTown emphasised the need for the proposed measures to take into account jobseekers experiencing severe financial hardship, particularly those supporting dependents.¹⁸ Similarly, the Financial Rights Legal Centre considered the potential affect the implementation of the proposed measures could have on a jobseeker's repayment arrangements. They highlighted that any break in income support must come as a last resort, because a breach of faith or obligation relevant to a repayment agreement would have serious consequences, such as repossession or lack of inclination to be flexible in the future.¹⁹ The DE advised that:

As the first waiver will remain available to all job seekers, only a relatively small percentage of all job seekers or vulnerable job seekers will be affected by the removal of second or subsequent waivers.²⁰

2.14 In the context of persistent and wilful non-compliance, DE emphasised that job service providers will retain the discretion they currently hold about whether or not they report issues of non-compliance to DHS to investigate.

.... discretion for reporting persistent and willful noncompliance is not being taken away from providers. The Department of Human Services will investigate things that the employment service provider has decided to refer to them, using their discretion about the best way to engage a job seeker. So if they decide that it is not in the best interests of the job seeker to report their noncompliance to the Department of Human Services, they still have the discretion not to do that.²¹

2.15 The committee notes that the proposed legislation will have no impact on jobseekers who cannot find work despite their best efforts and whose failure to meet their participation requirements is beyond their control:

... it will not impact the 98 per cent of job seekers who do not incur these types of failures... Rather, the bill targets those who have received but nevertheless refused an offer of suitable work without a reasonable excuse or who have been found after an in-depth assessment by the Department of Human Services, to have been persistently and wilfully non-compliant.²²

17 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 47.

18 *Submission 1*, p. 5; *Submission 6*.

19 Financial Rights Legal Centre, *Submission 2*.

20 *Submission 9*, p. 7.

21 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

22 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 47.

Incentives and workforce reengagement

2.16 A number of submitters questioned the extent to which the measures in the Bill would provide an incentive for workforce reengagement for jobseekers in breach of their participation obligations.²³

2.17 National Welfare Rights Network (NWRN) and Anglicare Australia raised concerns about the Bill's objective and drew the committee's attention to the, then Department of Education, Employment and Workplace Relations (DEEWR)²⁴ submission to the Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the Social Security Legislation Amendment (Employment Services Reform) Bill 2008, in which DEEWR relied upon a survey conducted regarding the consequences of the penalty system.²⁵

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.²⁶

2.18 As the Bill provides for a jobseeker to have the eight week penalty waived once through participation in an intensive activity, the government has stated that:

... it is consistent with the original intent of the waiver provisions, which was to encourage job seekers to re-engage with their employment service provider and resume their participation activities.²⁷

2.19 DE also provided evidence that 'increase[ing] engagement both in paid labour market and with employment service providers' for jobseekers who are struggling to meet their requirements and are persistently and wilfully non-compliant was one of the main considerations behind this Bill. In introducing measures that result in jobseekers who refuse work not being able to have their penalty waived and return immediately to payment, DE hopes to 'provide sufficient incentive for such job seekers to accept the work they are offered.'²⁸

2.20 In addition, DE emphasised that job service providers have discretion to determine the best way to engage a jobseeker, such that:

23 See: *Submission 1*; *Submission 3*; *Submission 4*; *Submission 6*; *Submission 7*.

24 On 18 September 2013 the Department of Education and the Department of Employment was created out of the former Department of Education, Employment and Workplace Relations.

25 *Submission 4*, p. 2; *Submission 3*, p. 4.

26 *Submission 4*, p. 9.

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

28 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 38.

It could be that they decide that they will not submit what we call a participation failure through to the Department of Human Services. So the provider still retains discretion about whether or not that is the best way to engage somebody.²⁹

Interaction with other government proposals

2.21 Some submitters highlighted the need for careful consideration of how the Bill will interact with other amendments proposed by the government.³⁰ Specifically, concerns were raised with reference to how the proposed changes to Newstart will interplay with this Bill.³¹

2.22 NWRN provided evidence that was consistent with other submissions received by the committee when it highlighted:

... that this bill needs to be seen in its interaction with a number of other proposals or changes to the social security system; not least of all would be the six-month waiting period for unemployment benefits for job seekers under 30 and the regulation that is before the parliament at the moment with regard to penalties.³²

2.23 Further, Anglicare submitted that 'we all are waiting to see how [this Bill] ... is going to interact' with other government proposals.³³ St Vincent De Paul National Council and Brotherhood of St Laurence concurred with this view.³⁴

2.24 In evidence before the committee DE acknowledged the difficulties associated with the implementation of the different measures of jobseeker compliance-related legislation.³⁵ However, DE emphasised their commitment to communicate with stakeholders to explain the timetable for the introduction of Bills as well as the

29 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

30 *Submission 4*, pp. 7–8; *Submission 6*, p. 5.

31 *Submission 4*, pp. 7–8; *Submission 6*, p. 5. Under the Newstart amendments a job seeker under the age of 30 will need to wait six months for income support. See Social Security Legislation Amendment (Increased Employment Participation) Bill 2014.

32 Ms Maree O'Halloran AM, President, National Welfare Rights Network, *Committee Hansard*, 18 August 2014, p. 9.

33 Mr Roland Manderson, Acting Executive Director, Anglicare Australia, *Committee Hansard*, 18 August 2014, p. 22.

34 See: Dr John Falzon, Chief Executive Officer, St Vincent De Paul Society National Council, *Committee Hansard*, 18 August 2014, pp. 15–23; Professor Shelley Mallett, General Manager, Research and Policy Centre and Ms Eve Bodsworth, Research Manager, Research and Policy Centre, Brotherhood of St Laurence, *Committee Hansard*, 18 August 2014, pp. 15–23.

35 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 42.

interaction of the proposals.³⁶ With specific reference to 'the under-30s measure' DE explained that this Bill 'is not impacted by those changes.'³⁷

The deterrent effect of the penalty

2.25 NWRN argued that no convincing evidence exists to support the changes to the system with respect to mandatory penalties and the ability of the one-time waiver to be more effective as a deterrent, than the current system.³⁸

2.26 In contrast, DE submitted that the current 'waivable' eight week non-payment penalty does not act as a sufficient deterrent to persistent non-compliance.³⁹ In support of this claim, DE presented the following data:

In 2008-09, the year before waivers were introduced, there were 8,850 serious failures applied for persistent non-compliance, compared to 25,286 in 2012-13 of which 73 per cent were waived... with little change in the caseload or the level of participation requirements between these two periods, the most probable explanation for the increase in penalty numbers is that they do not provide a sufficient deterrent to persistent non-compliance.⁴⁰

2.27 Further, with respect to penalties applied for refusing work, the DE provided evidence that:

In 2008-09, the year before the introduction of waivers, 644 penalties were applied for refusing work. In 2012-13, 1,718 penalties were applied for refusing work and 1,227 of these were waived. This means that on 1,227 occasions job seekers who had been offered a job refused that job and returned immediately to income support payment. For this reason, it is intended that job seekers who refuse work should not be able to have their penalty waived and return immediately to payment. We hope that this will provide sufficient incentive for job seekers to accept work when they are offered it.⁴¹

2.28 In evidence before the committee DE explained that their 'data indicates that the waiver provisions have weakened the deterrent effect of eight week penalties.'⁴² Specifically, they submitted that '[t]he data shows a trebling of these types of waivers'

36 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 42.

37 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 41.

38 *Submission 4*, p. 3.

39 *Submission 9*, p. 6.

40 *Submission 9*, p. 6.

41 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 38.

42 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 38.

and argued that 'there is no other policy or environmental factor that can explain this trebling.'⁴³

Administration of the Bill

2.29 The National Employment Service Association emphasised the importance of ensuring jobseekers are provided notice and education about the potential consequences of failing to comply with the framework.⁴⁴ The DE explained that:

Job seekers will be informed in person of the new rules enacted by this Bill at routine contacts with employment services providers and with the Department of Human Services to ensure they understand the consequences of refusing suitable work and persistent non-compliance.⁴⁵

2.30 Further, DE provided evidence that the Bill makes no changes with respect to decision making and reporting requirements.⁴⁶ DE emphasised that the decision making power regarding the imposition of an eight week penalty remains with DHS and not the job services provider.⁴⁷ Specifically, DE stated that:

[P]roviders are not going to be making decisions about someone not getting paid for eight weeks—that still rests with the Department of Human Services. They will not be expected to provide any additional documentation. They will still be able to use their discretion about whether or not they report the persistent and willful non-compliance instances to the Department of Human Services, who are the decision maker in this case.⁴⁸

2.31 With reference to penalties for persistent and wilful non-compliance, DE explained that in the vast majority of cases such penalties are not automatically triggered, and as such, the job service provider does not need to indicate to Centrelink that they think a particular jobseeker is persistently and wilfully non-compliant.⁴⁹

The way the system works is that if the job seeker on at least three previous occasions has had a penalty applied by the Department of Human Services and on each of those occasions the Department of Human Services considers whether that particular job seeker have a reasonable excuse for not being able to do that particular requirement. If there are three failures of a particular type that have been applied in a six-month period then the

43 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 38.

44 National Employment Services Association, *Submission 8*, p. 4.

45 *Submission 9*, p. 9.

46 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 41.

47 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

48 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

49 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

comprehensive compliance assessment is automatically triggered. It happens and the provider is not involved in that triggering process at all.⁵⁰

Refusal of a job

2.32 The committee notes that before applying a penalty to a jobseeker for refusing work DHS must be satisfied that: the job was suitable for the jobseeker; and the jobseeker did not have a reasonable excuse for their failure.⁵¹

... there is a two-test process that goes on. If the Department of Human Services finds that it is not reasonable to expect the person, because of their circumstances, to undertake that job, or that the job is not suitable... it will not apply the penalty. So, if either of those conditions exist, no penalty is applied.⁵²

Suitable work

2.33 If a jobseeker refuses a job that is unsuitable for the jobseeker the penalty will not be applied. For the purposes of this Bill, DHS may consider a job to be unsuitable for a jobseeker if it:

requires particular skills, experience or qualifications that the person does not have, and appropriate training will not be provided by the employer,

may aggravate a pre-existing illness, disability (1.1.D.160) or injury and medical evidence has been provided,

involves health or safety risks and would contravene an occupational health and safety law,

the job seeker is a principal carer of a child or children under SSAct section 5(1) and appropriate care and supervision of the child/ren is not available during the hours the person would be required to work,

the terms and conditions for the work are less generous than the applicable statutory conditions,

involves commuting from home to work that would be unreasonably difficult,

involves enlistment in the Defence Force or the Reserve Forces,

requires the person to change residence, or

in the Secretary's opinion, is unsuitable for any other reason.⁵³

2.34 In clarifying the above considerations, DE provided evidence that:

50 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

51 Australian Government, Department of Social Security, 3.1.13.40 Serious Failures & Penalties, <http://guides.dss.gov.au/guide-social-security-law/3/2/8/60> (accessed 19 August 2014).

52 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 39.

53 Australian Government, Department of Social Security, 3.1.13.40 Serious Failures & Penalties, <http://guides.dss.gov.au/guide-social-security-law/3/2/8/60> (accessed 19 August 2014).

... [a job] would not be considered reasonable if the job would exacerbate a known medical condition that the person has. It would not be considered reasonable for the person to undertake the job if there were things happening in their private life that made them vulnerable, such as ongoing mental health conditions or other circumstances.⁵⁴

2.35 The assessment of whether a job is suitable for a jobseeker 'is undertaken by a [DHS] social worker or a senior customer service officer who is trained and skilled in making those assessments.'⁵⁵ This investigation is undertaken by DHS prior to the imposition of the failure and penalty, and typically involves 'conversations between the job seeker, the potential employer and the employment service.'⁵⁶

Reasonable excuse

2.36 If a jobseeker has a reasonable excuse for committing any failure with respect to compliance obligations for a participation payment the penalty will not be applied.

2.37 On 27 June 2014 the Secretary of the Department of Social Security (Secretary) made a new legislative instrument, effective 1 July 2014⁵⁷ that tightens the matters that DHS must take into account in deciding whether a jobseeker has a reasonable excuse.⁵⁸

2.38 The legislative instrument 'does not limit the matters that the Secretary can take into account in determining whether a person has a reasonable excuse,'⁵⁹ but is intended 'to make it much clearer to job seekers... so that they understand when they would have a reasonable excuse and when they would not'⁶⁰ and to 'provide some guidance to [the] decision maker.'⁶¹

[I]t is intended to encourage the decision maker to find that a job seeker had a reasonable excuse for failing to comply with a participation requirement typically only in exceptional circumstances that were beyond the job seeker's control.⁶²

54 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 39.

55 Ms Sheryl Lewin, Acting Deputy Secretary, Social Services, Department of Human Services, *Committee Hansard*, 18 August 2014, p. 46.

56 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 46.

57 Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1).

58 Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1); Explanatory Statement, Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1), p. 1.

59 Explanatory Statement, p. 1.

60 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 48.

61 *Submission 9*, p. 4.

62 *Submission 9*, p. 4.

2.39 The legislative instrument provides that the following matters be taken into account in determining if a person had a reasonable excuse for failing to meet a participation requirement:

whether the person was unable for reasons beyond the person's control to comply with the requirement that resulted in the failure;

whether there were exceptional and unforeseeable circumstances beyond the person's control such that no reasonable person would expect the person to comply with the requirement that resulted in the failure; and

if the failure is a failure to which section 42UA applies and the person failed to give the notification referred to in that section, whether:

the person was unable for reasons beyond the person's control to give such notification; or

there were extreme and unforeseeable circumstances beyond the person's control such that no reasonable person would expect the person to give such notification.⁶³

2.40 The legislative instrument also provides that a jobseeker will have a reasonable excuse if the jobseeker's failure to meet a participation obligation was a result of the person:

being incapacitated due to illness, injury or disability;

undertaking paid work;

attending a job interview; or

having unforeseeable and unavoidable caring responsibilities.⁶⁴

2.41 DE emphasised that the legislative instrument in no way limits the factors that DHS can take into account in determining whether a jobseeker had a reasonable excuse for failing to meet a participation obligation:

[I]t provides some guidance around the expectation that it be an exceptional and unforeseeable circumstance... It also refers to a requirement that job seekers have, in respect of some activities, that they notify their provider if they are unable to attend an activity or an appointment. So there are two parts to the reasonable excuse determination. It is really about making it quite clear that it has to be something beyond the person's control, and an exceptional circumstance, as opposed to something that the person would have known about and would have been able to let their provider know about beforehand.⁶⁵

63 Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1). s. 6(3).

64 Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1). s. 6(4).

65 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 48.

2.42 To provide context to the provisions contained in the legislative instrument DE provided the following examples of where a penalty would not be applied because a jobseeker would have a reasonable excuse for failing to meet their participation obligation.

It would not be considered reasonable if the job would exacerbate a known medical condition that the person has. It would not be considered reasonable for the person to undertake the job if there were things happening in their private life that made them vulnerable, such as ongoing mental health conditions or other circumstances.⁶⁶

Persistent and wilful non-compliance with participant obligations

2.43 The committee notes that before applying a penalty for persistent and wilful non-compliance with participant obligations, DHS must undertake a comprehensive compliance assessment (CCA).⁶⁷ A CCA will take place after a jobseeker has been deemed non-compliant with their participant obligations and had a penalty imposed by DHS in three separate instances over six months.⁶⁸

2.44 NWRN submitted that 'comprehensive compliance assessments are the most critical safeguard within the system for assessing whether or not a person should have an eight-week penalty for persistent noncompliance' and argued that Centrelink should not be undertaking the CCA in respect of imposing a penalty under this Bill.⁶⁹

2.45 In response to these concerns, DE clarified that a senior specialist at DHS would undertake a CCA before imposing a penalty for persistent and wilful non-compliance.⁷⁰ DE described the CCA as:

... an additional assessment that looks to see whether or not the job seeker had any barriers that had not been disclosed, that were impacting on their capacity to comply. It also looks at whether or not the person had a pattern of things that was going on in their lives.⁷¹

2.46 DE explained that as part of the CCA a senior specialist at DHS will consider whether the persistent non-compliance 'was within [the job seeker's] control and there

66 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 39.

67 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

68 Ms Moya Drayton, Group Manager, Job Services Australia Group, and Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

69 Ms Amy Meers, Executive Officer, National Welfare Rights Network, *Committee Hansard*, 18 August 2014, p. 14.

70 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

71 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

were no other barriers that were identified.⁷² DE emphasised that the CCA was a '[h]olistic conversation and assessment with the job seeker as to whether that individual was persistently and wilfully non-compliant.'⁷³

[I]t is not looking at reasonable excuses across those earlier failures or whether there is a reasonable excuse now; it is looking holistically across those six months. It asks: is this individual showing that they are consciously and deliberately seeking to avoid meeting their participation requirements?⁷⁴

2.47 DE also provided the following data, evidencing that approximately two thirds of CCAs do not result in the imposition of a penalty.

Based on 2012-13 data, it is around 34 per cent, just under 35 per cent, of those CCAs that do result in the finding of persistent and wilful non-compliance. The vast majority—just a little over 65 per cent—do not result in the imposition of an eight-week non-payment penalty.⁷⁵

Tier review process

2.48 The committee notes that if a jobseeker disputes a decision that is made by a job service provider, that jobseeker can request a review of the decision. The review would be conducted by a DHS authorised review officer.⁷⁶

2.49 If a jobseeker disputes a decision that is made by DHS, that jobseeker can request a review of the decision. At this stage of review, the jobseeker has access to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal.⁷⁷

2.50 DE confirmed that, should a jobseeker request a review at any level, that jobseeker will continue to receive their participation payment until the end of the appeal process.⁷⁸

Committee view

2.51 The committee notes the concerns raised by witnesses and submitters. However, the committee also notes that the Bill will only impact the small proportion

72 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

73 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

74 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

75 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

76 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 47.

77 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 47.

78 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 43.

of jobseekers who have received but nevertheless refused an offer of suitable employment without a reasonable excuse or who have persistently and wilfully failed to comply with their participation obligations.

2.52 The committee considers that it is important to limit the number of eight week penalty waivers a jobseeker can access, so that the penalty will be an effective deterrent to non-compliance. The committee is also satisfied appropriate safeguards exist such that no penalty will be applied for a failure that was directly attributable to a jobseeker's vulnerability.

2.53 The committee is persuaded that, on balance, the legislative response is proportional and reasonable, such that the proposed amendments respond to community expectations and would result in more jobseekers meeting their mutual obligation requirements and moving from welfare to work.

Recommendation 1

2.54 The committee recommends that the Bill be passed.

Senator Zed Seselja

Chair