

Labor Senators' Dissenting Report

1.1 Labor Senators are deeply concerned by changes the Government is seeking to make to income support payments for jobseekers, including those proposed under the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014 (Bill).

1.2 Labor Senators support a just and reasonable jobseeker compliance system which encourages and supports participation for those in receipt of participation payments.

1.3 The evidence provided to the Committee makes it clear that the current compliance provisions for jobseekers receiving participation payments are flexible and effective.¹

1.4 Submitters to the inquiry raised real concerns about the potential financial impact of the changes in the Bill on vulnerable jobseekers,² and questioned the removal of an incentive for reengagement for jobseekers in breach of their participation obligations.³

1.5 Accordingly, Labor Senators oppose the passage of this Bill in its entirety.

The Existing Provisions are Effective

1.6 The existing legislative framework is a result of changes made under the former Labor Government.

1.7 In 2008, the then Minister for Employment Participation, Brendan O'Connor, after extensive consultation, preserved the punitive 8 week non-payment period for breaches of a jobseeker's mutual obligations introduced by the Howard Government. However, Labor introduced the ability to reengage with participation requirements to have withheld income support reinstated.

1.8 Many stakeholders had been critical of the Howard Government's 'penalise first' approach to compliance as it had significant detrimental impacts on vulnerable jobseekers and was counter-productive as it penalised jobseekers and disengaged them from employment services during the penalty period.

1.9 To highlight the impact of the previous provisions, the National Welfare Rights Network referenced the survey on the impacts of the penalty system on jobseekers conducted by the Department of Education, Employment and Workplace

¹ See: National Welfare Rights Network, *Submission 4*, pp. 10-11; David Thompson, Jobs Australia, *Committee Hansard*, 18 August 2014, p. 8.

² See: St Vincent de Paul, *Submission 1*, pp. 4-5; *Submission 4*, pp.6-7; Australian Council of Social Services, *Submission 5*, p.1.

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

Relations and referred to in the Department's submission to the Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the Social Security Legislation Amendment (Employment Services Reform) Bill 2008. The National Welfare Rights Network noted the survey showed that:

fifteen percent of those with an eight week non-payment penalty were found to have lost their accommodation. Fifty percent of job seekers, approximately 16,000 people, who had an eight week penalty had trouble keeping up with rent and were put at risk of homelessness.⁴

1.10 Labor's changes produced a system which preserved a punitive non-payment period whilst ensuring necessary protections for the most vulnerable jobseekers.

1.11 Evidence provided to the Committee supported the current balance. Jobs Australia stated that they:

...do not think further and more punitive compliance measures are necessary for the following reasons:

- the number of eight-week penalties currently being imposed is extremely low, which means that job seekers are complying; very few people incur second and subsequent penalties;
- the existing measures whereby waivers enable and encourage and incentivise people to re-engage immediately are likely to be much more effective in terms of getting them engaged in the system and getting to work; and
- there is an existing punitive element in the system, in that people are required to work off the penalty in cases where it is waived.

For all those reasons we do not believe it is necessary to up the ante on the penalties.⁵

1.12 In supporting the current measures the National Welfare Rights Network said:

Fundamentally, the system that we have now is very effective in ensuring that people re-engage immediately and in stopping people from falling through the cracks... The system as it is at the moment is actually working extremely well – certainly from our perspective and our on-the-ground casework.⁶

The Number of Non-Compliant Jobseekers is Very Small

1.13 Non-compliance numbers, particularly for refusal of a suitable job offer, are extremely low. Department of Employment data shows that for the period 1 July 2012 to 30 June 2013 there were only 27,004 serious failures, of which 25,286 were

⁴ *Submission 4*, p. 8.

⁵ David Thompson, Chief Executive Officer, Jobs Australia, *Committee Hansard*, 19 August 2014, p 1.

⁶ Amelia Meers, Executive Officer, National Welfare Rights Network, *Committee Hansard*, 18 August 2014, p. 11.

for persistent non-compliance and only 1,718 were for failing to accept or commence a suitable job.⁷

1.14 The Department of Employment stated that the number of penalties that have been applied for refusing work has nearly trebled since the change in the penalty regime - from 644 penalties in 2008-09 to 1,718 in 2012-13.⁸

1.15 In providing this data the Department of Employment did not provide any further information on other possible factors which may have contributed to this increase.

1.16 The National Welfare Rights Network argued that this increase should be considered in a broader context, indicating that a range of factors during the period specified would have contributed to the increase. The factors identified included the increase in the number of people who were receiving income support due to the Global Financial Crisis, additional strain due to the tightened job market and the drop in the number of people appealing decisions relating to refusal of suitable work, as it was quicker and easier to reengage and do a compliance activity.⁹

Changes would Discourage Jobseekers from Reengaging

1.17 Submitters contended that the current waiver provisions are important as they encourage jobseekers to reengage in the process after non-compliance by allowing the non-payment period to be ended if the jobseeker reengages with their participation obligations.¹⁰

1.18 Labor Senators are concerned that the proposed changes will discourage reengagement altogether, as even in circumstance where a jobseeker is willing and able to reengage during the non-payment process, the Government wants to prohibit them from doing so.

1.19 The Department of Employment have confirmed that jobseekers will be unable to actively reengage with participation activities during the 8 week non-payment period and their participation obligations will cease during that period.

1.20 This change seems at odds with the Governments stated commitment to helping jobseekers move from welfare to work and increasing workforce participation.

1.21 A number of submissions expressed the view that the measures in the Bill would not provide any incentive for jobseekers in breach of their participation obligations to reengage.¹¹

1.22 The Brotherhood of St Lawrence stated:

⁷ Department of Employment, *Submission 9*, p. 6.

⁸ *Submission 9*, p. 6.

⁹ Maree O'Halloran AM, President, and Amelia Meers, Executive Officer, National Welfare Rights Network, *Committee Hansard*, 18 August 2014, p 13.

¹⁰ See: *Submission 1; Submission 3; Submission 4; Submission 5; Submission 7*.

¹¹ See: *Submission 1; Submission 4; Submission 6; Submission 7*.

We believe that [the changes] will have harsh unintended consequences for job seekers, so we do not believe it will achieve the outcomes. We know that the evidence suggests that rapid re-engagement is absolutely crucial to achieving positive employment pathways. But what this will do is delay that re-engagement, and in such a moralising way that people could feel defeated by these sorts of measures, because it will have dire consequences for their housing stability and basic living standards.¹²

1.23 On this issue the National Welfare Rights Network submission states:

[I]t runs counter to the primary objective of the current system, which is to rapidly re-engage the jobseeker. People who incur an eight week penalty and who cannot “work it off” will have no incentive to re-engage with the system during that eight week period and little or no support during that period to find work.¹³

1.24 Jobs Australia supported allowing jobseekers to reengage after breaches, stating that the current legislative framework allows, and actually encourages, reengagement:

..for the vast majority of [jobseekers] to get a waiver they have to do something, and that means re-engaging. That means we can do things with them to get them complying, get them job searching and get them successfully into work. If we are not having anything to do with them for eight weeks, and if they do not have any money for eight weeks, we are just pushing them away.¹⁴

Concerns Regarding the Impact on Vulnerable People

1.25 Submitters raised significant concerns about the impact of the proposed changes on vulnerable and disadvantaged jobseekers.¹⁵

1.26 Labor Senators formed the view that jobseekers with a Centrelink recorded ‘vulnerability indicator’, meaning that they are disadvantaged in some way, including where they have mental illness or psychiatric problems, are homeless, have recently been discharged from prison, have had a recent traumatic relationship breakdown or suffer from cognitive or neurological impairment, could be further disadvantaged by the changes in the Bill.

1.27 Data from the Department of Employment shows that of all 27,004 serious failures recorded against jobseekers from 1 July 2012 to 30 June 2013, more than half (14,235) had a vulnerability indicator, a mental health indicator or were indigenous

¹² Professor Shelley Mallett, General Manager, Research and Policy Centre, Brotherhood of St Laurence, *Committee Hansard*, 18 August 2014, p. 19.

¹³ *Submission 4*, p. 4.

¹⁴ David Thompson, Chief Executive Officer, Jobs Australia, *Committee Hansard*, 18 August 2014, p. 3.

¹⁵ *Submission 1; Submission 4; Submission 5*.

and a large proportion were under the age of 30.¹⁶ The proposed changes are likely to further disadvantage these groups of people.

1.28 National Welfare Rights Network also highlighted that Indigenous jobseekers are also overrepresented amongst those who will be penalised:

For a range of reasons already under the penalty system, Indigenous job seekers have higher numbers of penalties. It is not because they are not seeking work or do not want to comply but because there might be issues of remoteness or lack of understanding of the actual system – a whole range of issues – that result in that. Knowing that that is the case under the current regime, one would have to expect that this will impact disproportionately and negatively on Indigenous job seekers.¹⁷

1.29 Jobs Australia also stated:

[Indigenous jobseekers] are overrepresented and again, in some but not all cases, are more prone to some of the other vulnerabilities – mental illness and so on – that we have been talking about...the age profile of the Indigenous population is the exact opposite of the rest of the population, in that there are a very large number of young people. In the event that the government's proposal about a six-month waiting period for under-30s actually takes effect, it would have a very interesting and potentially very deleterious impact on communities where the great majority of population are young Indigenous people.¹⁸

1.30 Submitters also raised concerns that the proposed changes would actually exacerbate existing vulnerabilities and create further barriers to employment.

1.31 The Australian Council of Social Services stated:

The majority of recipients of unemployment payments have few savings, little access to credit, and many receive little or no support from family. A period of eight weeks without income support is very likely to cause hardship in these circumstances, including homelessness in some cases.¹⁹

1.32 Whilst the Department of Employment outlined safeguards within the current compliance system which protect vulnerable jobseekers, other submitters stated that the changes in the Bill would remove the final safeguard and could potentially expose vulnerable jobseekers to further disadvantage and hardship.

1.33 ACOSS submitted that:

The Bill would, if passed, retain the basic structure of the present compliance regime including the more timely and modest penalties for

¹⁶ *Submission 9*, p. 6.

¹⁷ Maree O'Halloran AM, President, National Welfare Rights Network, Committee Hansard, 18 August 2014, p. 10.

¹⁸ David Thompson, Chief Executive Officer, Jobs Australia, Committee Hansard, 18 August 2014, p. 4.

¹⁹ *Submission 5*, p. 1.

failure to attend meetings and courses and the Comprehensive Compliance Assessments for those at risk of an eight week penalty. However, the ‘last line of defence’ against imposition of this penalty would be removed, at least for those who have already had an eight week penalty waived while on income support and people who leave a job without an acceptable reason. The result would be an increase in eight week penalties and financial hardship.²⁰

Interaction with Other Proposed Changes to Participation Payments

1.34 Submitters also raised concerns about the interaction between the proposed changes under the Bill and other Government proposals including changes to unemployment benefits for jobseekers under 30 which will see them off income support for an ongoing 6 monthly cycle, and the compounding impact they would have on vulnerable jobseekers.²¹

1.35 In relation to the interaction with the proposed six-month withdrawal of payment for jobseekers under 30, the Brotherhood of St Lawrence said:

We feel greatly pained by that proposal, particularly if you add the eight-week waiver to it. I guess we start with the premise that these young people are our country's future, that they are going to make a significant investment in the economy as well as in the society as a whole and that we risk losing their contribution to the community, with both economic and social consequences as well as, of course, dire individual consequences for them. So we think that is of great concern.²²

1.36 The changes in the Bill also need to be considered in light of the Social Security (Reasonable Excuse — Participation Payment Obligations) (Employment) Determination 2014, a new disallowable instrument which the Government have tabled in the Senate. This determination seeks to further restrict “reasonable excuse” rules for jobseekers who fail to comply with their obligations.

1.37 The National Welfare Rights Network submitted that:

This “tightening” will severely restrict the discretion not to apply certain penalties based on reasonable excuse. It will likely see a significant increase in the number of penalties being imposed in situations where a person was not being wilfully non-compliant and may have had a reasonable excuse, but for some reason didn’t provide prior notice (eg flat phone battery, insufficient credit, was confused about the appointment date, innocently forgot about the appointment). The impact of the penalty on such a person will be compounded by the measures in this Bill which would restrict the ability for such a person to re-engage and “work off” a penalty.²³

²⁰ *Submission 5*, p. 1.

²¹ *Submission 4*, p. 8.

²² Professor Shelley Mallett, General Manager, Research and Policy Centre, Brotherhood of St Lawrence, *Committee Hansard*, 18 August 2014, p. 22.

²³ See: *Submission 4*.

1.38 Labor Senators are also concerned that the impact and interactions between all the Government's changes to participation requirements, as well as proposed new funding contracts for employment service providers, have not been clearly explained to key stakeholder groups.

1.39 This is illustrated by the fact that under questioning none of the witnesses were able to state with confidence who the decision maker was or would be in the Government's new employment services contracts and many were unsure of how serious failure penalties would apply to those impacted by the Government's proposed changes to stop benefits for six months of every year for jobseekers aged under 30.

1.40 This is likely due to the Government's failure to undertake adequate consultation prior to the announcement of the Budget and the number of changes to participation payments being brought forward and considered separately.

Other Concerns

1.41 The Committee also heard evidence that the changes would compromise the effectiveness of the Jobs Services Australia providers.

1.42 Submitters raised concerns about security and occupational health and safety for job service provider's staff. BoysTown said:

Health and Safety considerations for JSA staff are likely to require increased focus as it is expected that clients presenting with anxiety/high levels of agitation will be more frequent.²⁴

1.43 Submitters also raised concerns about the impact the changes would have on the relationship between the jobseeker and the provider, particularly how the changes would impact on the provider's ability to encourage jobseekers to reengage and stay engaged.

1.44 BoysTown stated that:

One of the things we find most beneficial in working with young people is the relationship between our worker—say, our employment consultant—and the young person. With the changes being proposed, that case-management relationship, we believe, will be compromised. The capacity of that relationship to form, which is the best way to move to address barriers, to understand what the issues are, to have the young person talk frankly about what the issues are, I believe, will be compromised by a dual role of case manager and a person there to assist and the compliance part of the benefit system.²⁵

1.45 This could have negative impacts on the ability of jobseekers to engage and move from welfare into the workforce.

²⁴ *Submission 6*, p. 4.

²⁵ Mr John Perry, General Manager, Employment, Education and Training, BoysTown, *Committee Hansard*, 18 August 2014, p. 32.

Conclusion

1.46 The Government has not done any consultation or analysis on the likely increased impact of the changes on vulnerable jobseekers. Nor has it provided any evidence at all to say that the current system is not working (indeed experienced, on the ground providers say that it is) or that the changes will improve the system.

1.47 The National Welfare Rights Network state that:

we have a compliance system that has been tested over a number of years and has had a number of reviews of it, that there does not seem to be a compelling reason to introduce these changes and that the likely upshot of the changes is that more vulnerable people will get caught.²⁶

1.48 This view is supported by the Labor Senators, who recommend that the Bill be opposed as the changes proposed are too harsh and are likely to negatively impact on already vulnerable and disadvantaged jobseekers.

Recommendation 1

Labor Senators recommend that the Senate oppose the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014.

Senator Carol Brown

Senator Nova Peris OAM

Senator Claire Moore

²⁶ Maree O'Halloran AM, President, National Welfare Rights Network, Committee Hansard, 18 August 2014, p. 12.