

Department of Employment
Submission to the Senate Education and Employment Legislation
Committee
Inquiry into the
Social Security Legislation Amendment
(Further Strengthening the Job Seeker Compliance Framework) Bill
2015

Background

This Bill seeks to amend the *Social Security (Administration) Act 1999*. The measures contained in the Bill will commence on 1 July 2016.

The compliance framework applies to recipients of participation payments. These are newstart allowance, youth allowance for persons who are not apprentices or full-time students, parenting payment for persons who have participation requirements and special benefit for certain visa holders.

The Bill builds on changes introduced by the *Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Act 2014*.

Job seekers will be informed in person of the new rules enacted by this Bill at routine contacts with employment services providers to ensure they understand the consequences of the changed compliance arrangements.

The package of changes in the Bill will help ensure more effective and consistent compliance arrangements are in place for each stage of a job seeker's pathway into work. This will lead to more job seekers undertaking the appointments and activities that will assist them in moving into work and reducing their reliance on income support. The bill will also simplify the compliance framework, making it easier for job seekers to understand their obligations and the consequences of non-compliance.

Compliance changes

Strengthening and aligning penalties for failing to enter an Employment Pathway Plan

Under the *Social Security Act 1999*, it is a basic qualification requirement of participation payments that job seekers are willing to enter an Employment Pathway Plan (EPP).

EPPs are essential to a job seeker's mutual obligation requirements, and the activities set out in a job seeker's plan are designed to improve a job seeker's chances of finding employment.

Despite the importance of Employment Pathway Plans, there is currently no immediate penalty for refusing to enter into an Employment Pathway Plan.

This Bill will allow payment suspensions for job seekers who refuse to enter into an Employment Pathway Plan. The suspension would only be lifted when they enter into a plan. In addition, the job seeker may incur a penalty equivalent to a working day's payment for each day they continued to refuse without good reason after being notified of the failure.

A range of protections will be in place to ensure job seekers are not unduly pressured into agreeing with Employment Pathway Plans that are not appropriate to their circumstances.

- Providers will retain discretion not to submit a recommendation for a suspension or penalty if they do not think the suspension or penalty is necessary to get a job seeker to enter an EPP. Job seekers who do not wish to accept a plan immediately will continue to be allowed 48 hours think time before any payment suspensions or financial penalties are submitted.
- Where a job seeker's payment has been suspended for refusing to enter into an EPP, the job seeker may request that the Department of Human Services (DHS) conduct a review. If DHS finds the EPP was not appropriate for the job seeker, the suspension will be lifted and the job seeker will receive full back-pay.
- DHS will always review the appropriateness of an EPP a job seeker has refused to enter into as part of deciding if any financial penalty should be applied. This occurs regardless of whether the job seeker has requested a review or not.

A second, consecutive refusal to enter into an Employment Pathway Plan without a reasonable excuse currently results in the cancellation of a job seekers payment, as these job seekers have demonstrated they are unwilling to enter into an EPP that contains terms within their capacity to comply. They are therefore ineligible for income support. This will remain unchanged.

A similar approach implemented on 1 January 2015 for job seekers who miss provider appointments has been successful in reducing the time before job seekers reengage with their provider. Between the September 2014 and March 2015 quarters, the average suspension duration fell from 5.2 business days to 3.1 business days.

The measures introduced by this bill will similarly help ensure that job seekers are entering into EPPs as soon as possible. This will ensure job seekers are getting the support they need and doing whatever is necessary to give them the best possible chance of finding a job.

Aligning penalties for failing to attend appointments

The changes introduced by the *Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Act 2014*, are successfully improving attendance rates at appointments with employment services providers through more immediate consequences and stronger penalties.

Job seekers may be required to attend appointments with organisations other than employment service providers. This can include specialist service providers (such as a career adviser or training provider) or Work for the Dole host organisations to arrange their activity

Under this Bill, when a job seeker fails to attend an appointment with one of these providers their payment may be suspended until they attend a reengagement appointment with their provider. If the job seeker did not give prior notice of a reasonable excuse for the non-attendance they may also lose payment for each day until they re-engage, starting from the day they were notified of the failure to attend.

As now, providers will be able to conduct reengagement appointments over the telephone and where an appointment cannot be scheduled to occur within two working days of contact occurring with the provider, the job seeker's suspension and also a possible penalty period will end immediately.

The process for suspension of payment will also apply to job seekers who miss appointments with the Department of Human Services (including appointments for Comprehensive Compliance Assessments) although no financial penalties will be applied to job seekers who miss these appointments.

Currently, job seekers who fail to attend appointments with their provider are treated differently to job seekers who fail to attend appointments with other organisations. These changes will simplify the compliance framework, making the process and penalties for missing any required appointment the same.

This will make it easier for job seekers to understand their obligations and also help them to avoid penalties. These changes will also reduce the administrative burden (and consequent financial impact) on providers from having to chase up non-attending job seekers and report them to Human Services.

Inappropriate behaviour at appointments

The bill will introduce provisions to ensure that job seekers who behave inappropriately at appointments may be subject to the same penalties as job seekers who fail to attend those appointments. The details of what constitutes inappropriate behaviour will be set out in a legislative instrument, which will be subject to parliamentary scrutiny.

This provision is to ensure that a job seeker's behaviour does not prevent the purpose of an appointment being carried out. Simply attending an appointment is of little benefit if the job seeker's behaviour prevents their provider from doing their job.

Reasonable excuse provisions will still apply, so that vulnerable job seekers are not penalised where the behaviour was not within their control. For example, if a job seeker's behaviour was due to a psychological or psychiatric condition, or because they were unable to understand their provider's instructions, no penalty will apply. As with failures to attend appointments, DHS will contact the job seeker and review the circumstances that led to the failure before any financial penalty decisions are made. .

Existing rules allow penalties to be applied to job seekers who commit misconduct at activities and job interviews, and this measure will apply a similar approach to job seekers who behave inappropriately at appointments with their provider or other organisations. Providers have indicated that this change would be of assistance to help manage job

seekers whose behaviour makes it impossible for the provider to carry out their appointments.

More immediate application of penalties for failing to attend activities or job interviews

The recent changes to provider appointments have shown that more immediate payment consequences do result in more job seekers meeting their requirements and thereby avoiding financial penalties entirely.

Currently, financial penalties that are applied for failing to participate in activities cannot be deducted from the job seeker's next fortnightly income support payment. This means a delay of between 2 weeks to almost 4 weeks from the time DHS decides a penalty should be applied before a penalty is applied. This can easily result in a timeframe of well over 5 weeks between the time the incident occurred and when the penalty is felt. This delay significantly reduces the efficacy of the penalty on modifying job seeker behaviour, with 123,656 no show no pay penalties incurred by job seekers in 2014-15. The majority of these failures are being incurred by job seekers who are receiving multiple no show no pay failures in a single year.

Number of applied no show no pay penalties incurred by individual job seekers – 2014-15

Number of penalties incurred in 2014-15	Total Failures Applied	Number of job seekers incurring Failures Applied
1	30,206	30,206
2	22,702	11,351
3	25,212	8,404
4+	45,536	7,367

Source: DHS Administrative Data

This Bill will not change the amount of these penalties but will allow the penalty amount to be deducted from the job seeker's very next fortnightly payment after DHS makes the decision to apply a penalty. This will significantly reduce the delay between the failure occurring and the penalty being deducted, creating a stronger link between the failure and the consequence, increasing the job seeker's motivation to comply with their participation requirements by attending activities and job interviews in the future.

Suspension of payments for inadequate job search

The current process for dealing with job seekers who fail to look for work is cumbersome, protracted and ineffective. Under the current process, a provider may report a job seeker for inadequate job search effort to DHS and DHS will investigate the failure. If DHS finds that the job search efforts were inadequate, the job seeker is not subject to any financial penalty. Instead, the job seeker is issued a Job Seeker Diary to complete over the next 12 weeks. The Job Seeker Diary requires the job seeker to provide additional detail of their job search efforts, but does not change the amount of job search the job seeker is required to undertake.

After 12 weeks, DHS determines if the Job Seeker Diary was completed properly. If the job seeker diary was not returned or adequately completed, only then may the job seeker be subject to financial penalties. The job seeker may then be issued with a number of Employer Contact Certificates. Each ECC must be signed by an employer to show that the job seeker has applied for an actual vacancy, and the job seeker may be subject to a financial penalty each day until they are returned.

This process means that it takes more than 12 weeks for a job seeker who isn't looking for work to face any penalty. In practice, it means that job seekers who fail to undertake adequate job search are almost never subject to penalties because penalties can only be applied if job seekers consistently fail to undertake adequate job search efforts over an extended and continuous period of time. In 2014-15, only 10 job seekers had a penalty recommended for failing to complete a job seeker diary and none of those penalties were actually applied upon further investigation by DHS. Similarly, in 2013-14, 12 failures were recommended and none applied. This means that not one job seeker incurred a financial consequence for poor job search for two whole years.

The amendments in the Bill will support a process that provides immediate consequences for poor job search and encourages earlier engagement. Job seekers who fail to demonstrate adequate job search efforts will have their payment suspended until they do so. The suspension may also be ended if changes in the job seeker's circumstances prevent them from meeting their requirements.

This will create a stronger and more immediate incentive for job seekers to look for work, without the need for the application of a lasting financial penalty. The longer the job seeker delays completing their job search, the longer their payment will be delayed, whereas meeting the requirement will result in immediate and full back payment. Any payment delay is completely within the job seeker's control.

In practice, these provisions will not necessarily result in income support payments being delayed. This is because fortnightly income support payments are made in arrears and job seekers will have an incentive to complete adequate job search efforts before their instalment day. Even so, while the suspension may not result in an actual delay, the potential for a delay will provide a strong encouragement for the job seeker to complete their job search requirement as soon as possible.

Repeated failures to look for work can result in the job seeker undergoing a Comprehensive Compliance Assessment to determine if there are as yet unidentified barriers impeding their ability to meet their requirements. One possible outcome of the assessment can be an eight week non-payment period if the job seeker is found to have been persistently and wilfully non-compliant. Job seekers who incur eight week non-payment periods for persistent non-compliance may receive a waiver, and this will not be affected by this Bill.

The Bill will also remove redundant provisions relating to Job Seeker Diaries and Employer Contact Certificates.

Removal of waivers for serious penalties incurred for refusing or failing to accept a suitable job which they are capable of doing

Current provisions that allow penalties for serious failures for refusing or failing to accept suitable work to be waived essentially allow job seekers to refuse suitable work with impunity. In 2014-15, only 27 per cent of non-payment periods applied for refusing work were actually served by the job seeker. The remaining 73 per cent were waived and the job seeker returned immediately to income support payments. This percentage has been increased significantly since waivers were introduced in 2009-10, when 45 per cent of such penalties were waived, which suggests that job seekers are increasingly taking advantage of the waiver provisions.

In 2008-09, the year before waivers were introduced, there were 644 serious failures for refusing or failing to accept suitable work. In 2014-15, there were 1,412 such penalties applied. This difference cannot be attributed to any comparable change in the size of the activity tested job seeker population or increase in the number of jobs being offered.

This Bill will mean that an eight week non-payment period applied for refusing or failing to commence work will no longer be able to be waived. This change will ensure that job seekers face real consequences for turning down suitable offers of work that they are capable of doing and that would reduce or end their reliance on income support. The change will not affect eight week non-payment periods applied for persistent non-compliance, which will still be able to be waived.

Analysis of a random sample of 179 serious failures for refusing work incurred in 2013-14 shows that job seekers are refusing work for a variety of reasons.

Sample of reasons given for failure to accept suitable work		
Reasons for refusing	No. of Job seekers	%
Did not want work – varied specific reasons	71	39%
Did not want to do that type of work	45	25%
No clear reason given	21	11%
Pay not suitable (despite being award rate)	17	10%
Too many or too few hours	16	10%
Travel/transport too difficult (despite being within policy guidelines)	9	5%
Total	179	100%

Source: DHS Administrative Data

The analysis of job seekers who refuse work shows that in too many cases, job seekers are turning down jobs they are capable of doing without sufficient reasons.

Job seekers who are subject to penalties for refusing work will still have full access to employment services on a voluntary basis, ensuring they can still receive assistance in looking for work whilst serving their penalty period.

This Bill will not impact job seekers who cannot get work despite their best efforts. Rather, it will apply to those who have received but nevertheless refused, without a reasonable excuse, an offer of suitable work they are capable of doing. The majority of job seekers will not be impacted by this Bill as they meet their mutual obligation requirements.

Before applying any penalty, the Department of Human Services must establish that the job seeker did not have a reasonable excuse for their failure. In addition, before applying a penalty for refusing work, it must be established that the job was suitable for the job seeker. Work is considered unsuitable, and no penalty can be applied, if the work:

- requires particular skills, experience or qualifications that the person does not have, and appropriate training will not be provided by the employer;
- might aggravate a pre-existing illness, disability or injury and medical evidence has been provided;
- involves health or safety risks and would contravene an occupational health and safety law;
- involves terms and conditions that are less generous than the applicable statutory conditions;
- involves commuting from home to work that would be unreasonably difficult (including, for principal carer parents, any time taken to access child care);
- would require a principal carer of a child or children to work during hours when appropriate care and supervision of the child/ren is not available;
- involves working more hours than a person's assessed capacity,
- involves enlistment in the Defence force or the Reserve forces,
- is the subject of industrial disputation;
- would require the person to change their residence; or
- in the Secretary's opinion, is unsuitable for any other reason (for example, on the basis of moral, cultural or religious grounds).

Repeal of redundant provisions and simplifying the framework by renaming all short-term penalties as no show no pay penalties

The Bill will amend the Act to remove the current provisions related to connection failures, as they will now all be dealt with under the payment suspension provisions. The Bill will also remove reconnection failures and associated penalties, as these provisions are no longer relevant. The penalty for non-attendance at all appointments will now be the same, regardless of whether it is a failure to attend a usual appointment or a reconnection appointment.

The Bill will allow for a single short-term penalty type, which will be referred to as a no show no pay penalty. One day's penalty will apply for each day on which a job seeker fails to participate in an activity or attend a job interview without a reasonable excuse. Where a job seeker misses an appointment or refuses to enter into an EPP without a reasonable excuse, the same penalty amount will apply for each day from when the job seeker is notified of the failure until they attend a rescheduled appointment. This does not change current penalty rates or durations.

These changes will help simplify the compliance framework, making it easier for job seekers to understand their mutual obligation requirements, avoid penalties, and have the

best possible chance of finding work. These changes will not otherwise change the penalties that apply, the process for applying them, or the safeguards that are in place to ensure job seekers are treated fairly.

Who will this Bill affect?

The majority of job seekers comply with their mutual obligation requirements and do not come into contact with the compliance framework. Of those job seekers on payment at 30 June 2015, 61.6 per cent had not been reported for non-compliance to Human Services by their providers during the previous 12 months.

Departmental data indicates that these changes are most likely to impact on younger, male job seekers.

In 2014-15, over 70 per cent of the compliance failures affected by this bill were incurred by male job seekers, despite them only making up 50.2 per cent of the activity tested job seeker population. Over two thirds of failures were incurred by job seekers aged under 30, despite these job seekers only making up 30 per cent of the activity tested job seeker population.

How will the changes affect individual job seekers?

Job seekers who fail to meet their mutual obligation requirements without good reason may be subject to payment suspensions or financial penalties.

Job seekers who refuse to enter into an EPP without a reasonable excuse may lose ten per cent of their fortnightly income support payment for each working day until they enter an EPP.

Job seekers who fail to attend an appointment may lose ten per cent of their fortnightly income support payment for each working day from when they fail to attend until they attend a rescheduled appointment. A single job seeker aged 22 or over with no dependents would lose \$52.34 for each working day.

It is unlikely that a job seeker who responds promptly to a request to contact their provider and re-engages will lose more than a couple of days' income support payment. In 2014-15, the average penalty duration for job seekers who incur reconnection failures was 2.8 days.

Job seekers may also receive allowances and payment supplements in addition to their basic income support that are not affected by financial penalties for non-compliance. This includes mobility allowance, telephone allowance, utilities allowance and family tax benefit payments.

Safeguards

Providers have and will retain full discretion not to report a job seeker's non-compliance to Human Services. Even where job seekers fail to give a valid reason, providers have the discretion to not take this any further if they believe it will not help in ensuring the job seeker's future engagement.

Under social security law, it has always been the case that no participation failure that will result in a financial penalty can be applied if the job seeker has a reasonable excuse for their non-compliance. This means that Human Services discusses the matter with the job seeker before imposing any failure or penalty in order to establish whether or not the job seeker had a reasonable excuse.

As is currently the case, job seekers who are unable to undertake their requirements but who give prior notice of a reasonable excuse will not be penalised under this Bill. Job seekers who are unable to give prior notice for reasons beyond their control will also not be penalised.

The definition of reasonable excuse included in the *Social Security (Reasonable Excuse - Participation Payment Obligations) (DEEWR) Determination 2009 (No. 1)* covers a wide range of potential circumstances including, but not limited to, where a job seeker was working, was incapacitated due to illness or injury, had unexpected transport difficulties, had a death in the family or had unforeseen caring responsibilities, such as needing to look after a sick child. Although reasonable excuse provisions apply to all job seekers, they are intended primarily to ensure that vulnerable job seekers are not penalised for actions that are beyond their control or are a direct consequence of their vulnerability. Broader aspects of the job seeker's circumstances are also taken into account, such as any mental health or substance abuse issues, homelessness and literacy problems, where these may have impacted on the job seeker's capacity to comply.

Job seekers who are unable to participate in employment services for extended periods can also apply for exemptions from their mutual obligation requirements, and will not be penalised for the duration of their exemption.

Job seekers who feel they have been treated unfairly by their provider or DHS may apply for a review of the decision. An initial review is undertaken by a specialised review team within DHS. If job seekers still believe they have been treated unfairly they may appeal this decision to the Administrative Appeals Tribunal.

Additional safeguards for vulnerable job seekers will also continue to apply. Vulnerable job seekers are identified on the IT systems used by employment providers and Human Services by a Vulnerability Indicator, which ensures that providers and DHS staff are aware that the job seeker's personal circumstances may impact on their capacity to meet their requirements. A Vulnerability Indicator does not exempt a job seeker from their requirements or from being subject to compliance action if they fail to meet them, but it must be considered by providers when deciding whether an activity is appropriate and achievable for the job seeker. A Vulnerability Indicator also needs to be taken into account by a provider when they are deciding whether to exercise their discretion not to initiate

payment suspension and compliance action when the job seeker has failed to meet a requirement, even if they have done so without a valid reason.

Identified Vulnerabilities are also carefully taken into consideration by Human Services when determining whether the person has a reasonable excuse under social security law and therefore whether they should incur a participation failure or not.