

21 September 2018

Committee Secretary  
Senate Education and Employment Committee  
By email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Committee Secretary,

**NSSRN submission to the inquiry on 'The appropriateness and effectiveness of the objectives, design, implementation and evaluation of jobactive'**

1. The National Social Security Rights Network (NSSRN) is a peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to people experiencing issues with social security and family assistance payments. The NSSRN draws on this front line experience in developing its submissions and policy positions.
2. The NSSRN recently made a submission to the Department of Jobs and Small Business' consultation on the Future of Employment Services. This consultation sought input into improvements to the jobactive system for beyond 2020. We have attached our contribution to that consultation to this submission, as it addresses many of the considerations raised by the Terms of Reference set out for this inquiry. In summary, that submission argued that the current jobactive system could be improved by:
  - Affording participants greater control and flexibility in choosing their provider and designing their employment pathway plan;
  - Abandoning compulsory mutual obligation activities, such as Work for the Dole;
  - Retaining non-digital options for interacting with employment services and for recording job search activity records for all people engaged in employment services;
  - Introducing flexible and holistic assessment models to ensure appropriate services are provided to participants with complex barriers to employment and requiring intensive support;
  - Investing in support services to assist long-term unemployed, or those with additional barriers to employment. Additionally, any future employment services program must recognise the various obstacles to full-time employment that are outside of the control of the individual;
  - Introducing regulation and regular evaluations of the employment services industry; and
  - Ensuring that all public consultations or inquiries into employment services actively seek out and prioritise the views and experiences of those people who have engaged with employment service providers.
3. A key difference in the Terms of Reference for this inquiry and the DJSB's Future of Employment Services consultation is the opportunity to consider the impacts and consequences of the Targeted Compliance Framework on jobactive participants that was introduced on 1 July 2018. This inquiry also invites comment on the appeals process and the lack of an employment services ombudsman. In our view, these are important considerations to be made by the inquiry.
4. The NSSRN did not support the new Targeted Compliance Framework when it was introduced by the *Social Services Legislation Amendment (Welfare Reform) Act 2018*. As stated in our submission to the draft legislation, whilst there were "seeds of some worthwhile reforms" to the

compliance system, unfortunately these were

*“married with an approach to compliance and penalties which is unfair and disproportionately harsh, while achieving little concrete improvement in the primary objective, which is take up of employment.”<sup>1</sup>*

5. The new system is based on demerit points and works in three stages. The Green Zone and the Warning Zone are the first two stages and are characterised by payment suspensions for mutual obligation activity failures. The payment suspension is lifted once the person reengages with their employment service provider, however the person accrues a demerit point for each failure unless they have a reasonable excuse. There are safe guards built into the system in the form of capability interviews and assessments. These are conducted by the provider in the first instance and then by the Department of Human Services, when a person accrues 3 and 5 merits points within 6 months respectively. During these interviews, the person’s job activity requirements will be assessed against their capacity to complete their activities. In some cases, a person’s employment pathway plan may be adjusted and their demerit points reset to zero. However in many cases the plan will not change.
6. A person will enter the Penalty Zone (the third stage of the compliance system) if they have accrued 5 demerit points within a 6 month period and their employment pathway plan is not adjusted following their interview with the Department of Human Services. During this stage, any further non-compliance will result in a non-waivable financial penalty. These increment from 50% of their income support payment, to 100%, and then upon the 8<sup>th</sup> demerit point, the person will be subject to a 4 week payment preclusion period and their payment will be cancelled. The 4 week payment cancellation is also applied if a person refuses paid work, voluntarily leaves a job, or is dismissed for misconduct from a job.<sup>2</sup>
7. The primary issue with this compliance system is that the financial penalties cannot be waived. We are concerned that people experiencing crises, such as the onset of psychiatric mental illness or exposure to family violence, may struggle to remain engaged with their required job activities and lose access to income despite their vulnerabilities. Although the system may be designed to support and catch those people, the experiences of some people may cause them to fully disengage with the system during the time they most require financial stability.
8. Furthermore, the Targeted Compliance System does not offer adequate measures to appropriately appeal or challenge demerit point decisions. As the issuing of a demerit point is considered to be a decision by the employment services provider and not a decision made under social security law, the avenues to challenge the demerit point sit outside of the internal reviews and appeals process under the *Social Security Act 1991*. We understand that:
  - If a person disagrees with the recording of the demerit, they first should seek a review from their employment services provider.
  - If they are unsatisfied with the outcome of that discussion, they can contact the Department of Jobs and Small Business’ (DJSB) National Customer Service Line. This line deals with complaints from people engaged with employment service providers.
  - After a demerit point issue is raised with a DJSB staff member of the National Customer Service Line, DJSB will look at the record and reasons. They may contact the provider to ask that they review the demerit point record.
  - If the person is still not satisfied with the outcome (ie the demerit point remains), they can attempt to escalate the matter within DJSB. The DJSB may step in and override decisions if there are clear issues with the demerit point.

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1 National Social Security Rights Network, *Submission to the Social Services Legislation Amendment (Welfare Reform) Bill 2078*. p14, para 101

2 We note that if the person is a ParentsNext participant, this rule will not apply, as ParentsNext is a pre-employment programme and participants are not generally required to look for or accept paid work.

We note that there is no independent review authority beyond the DJSB.

9. Although a person may be issued a demerit point without this having any immediate effect on their income support payment, all demerit points ultimately raises the risk of interference with a person's social security entitlement. A demerit point may result in a suspension of a person's payment until they reengage with their provider. Following accrual of 6 demerit points, a person is then subject to increasing financial penalties that cannot be waived, including a 4 week payment cancellation for the 8<sup>th</sup> demerit point. For these reasons, the decision to issue a demerit point must be subject to independent review. In our view, the basis of the demerit point system should be legally scrutinised.
10. The NSSRN has argued for greater regulation of the employment services industry on the basis that many people in the system do not adequately benefit from the services offered, and in some instances are adversely affected by their contact with providers. In our view, privatisation of the industry has been a driving precursor for rising issues and complaints within the system. As stated in our submission to the Future of Employment Services consultation:

*“there are inherent problems and contradictions in an employment services system where some providers operate for-profit. We urge the government to move away from profit-driven providers towards a system of secular not-for-profit agencies. Privatisation of the employment services system has led to a number of complaints. We consider that these issues are intrinsically linked to cost-cutting measures by providers..... We do not support a system that results in financial incentives for providers when they record demerit points or non-compliance.”<sup>3</sup>*

We would support the introduction of an employment services ombudsman who has the power to investigate and give legally binding directives.

11. Please review our attached Future Employment Services submission for further information.

### **Conclusion**

12. The NSSRN welcomes this inquiry into jobactive and the employment service industry. We support improvements to the system that will increase agency to participants, introduce greater flexibility to employment pathway plans, provide flexible and holistic assessments models, recognise the complex and varied barriers to employment, and introduce regulation and evaluation of employment services providers.
13. We urge the Committee to prioritise the views and experiences of those people who have engaged with the employment services system.

### **Contact for this submission**

This submission was prepared by Joni Gear, Legal Project Officer.

To discuss this submission, please contact:

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3 National Social Security Rights Network, *Submission to the Future Employment Services Consultation*, 2 August 2018, page 5-6.