



NESA Submission to the

**SENATE EDUCATION AND EMPLOYMENT
LEGISLATION COMMITTEE**

Inquiry into the

**SOCIAL SECURITY LEGISLATION AMENDMENT
(STREAMLINED PARTICIPATION REQUIREMENTS AND OTHER
MEASURES) BILL 2021**



About NESA

The National Employment Services Association (NESA) established in 1997 is the peak body of the Australian employment services sector. NESA is dedicated to a vision of opportunity for everyone through employment and inclusion.

Employment inclusion and participation are cornerstones of the economic and social health of society. For the individual, employment participation is more than a means to income; it provides connection, purpose and inclusion. Employment participation and productivity are key drivers of economic growth and underpin the quality of life of all Australians enabling access to such things as a well-functioning health system, quality education and strong social safety net.

The Australian employment services sector plays a critical role in preparing Australians to participate productively in the labour market and connecting them to employment opportunities.

NESA's mission is to lead a sustainable, effective and diverse employment services sector to support individual job seekers and employers and to contribute to our nation's achievement of employment participation objectives.

NESA membership encompasses the breadth of Australia's diverse labour market assistance programmes including jobactive, Disability Employment Services (DES), the Community Development Programme (CDP) and all complementary programs and services. A large proportion of NESA members deliver multiple programmes.

Our membership is extensive and diverse, and open to all contracted providers (for-profit, not-for-profit and public). To illustrate, of providers of Australia's largest employment programme – jobactive – NESA members have a collective footprint covering 100% of Employment Regions.

NESA delivers intensive policy, operational and capacity building support to member organisations. NESAs work collaboratively with Government Departments, agencies and non-government stakeholders to support the effective delivery of labour market assistance and social policy. Our extensive membership and intensive member and stakeholder interaction provide unique insight into the policy and operational settings that underpin effective labour market assistance.

Preamble

The National Employment Services Association (NESA) welcomes efforts to modernise and streamline Australia's social security law. NESA recognises that it is imperative that our social security laws are accessible and transparent with unnecessary complexity removed so they can be easily understood by the citizens and stakeholders they impact. It is also critical that the currency of laws are maintained, reflect the contemporary environment in which they are applied and they enable the implementation of improvements to policy and program responses to address issues such as unemployment.

The explanatory memorandum outlines that the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021 intends to modernise and streamline social security law to support the introduction of New Employment Services Model, clarify provisions supporting current policy, reduce duplicated and redundant provisions, thereby ensuring that the law is fit for purpose; as well as making amendments that enable 2021-22 Budget measure to be enacted.

The explanatory memorandum indicates that the Bill intends to amend the social security law to better support the new model and its objectives while still maintaining the protections for job seekers that currently exist in social security law. There has been a rapid increase in the role of technology in employment services over recent years including in the job seeker compliance framework. With the expanded role of technology and its interaction with requirements associated with ongoing income support eligibility requirements, merely maintaining existing protections in social security law is insufficient. Additional protections need to be considered and embedded in legislation to ensure those job seekers, including those self-managing their requirements through online employment services, have adequate protections.

As has been said many times, the best form of welfare is a job. Australia's employment system is founded on the principal of mutual obligation with the expectation that job seekers being supported by the social safety net will undertake activities to improve their capacity for and search for work. Ensuring job seekers receive adequate support to undertake such activity and build their capacity for, find and sustain employment is part of the social contract and should be an investment priority.

The explanatory memorandum states that as per the key recommendation of the Employment Services Expert Advisory Panel report, I Want to Work, the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021 will enable digital employment services to be leveraged. This will enable resources to be redirected away from administration and into proactive support and tailored assistance for the most disadvantaged job seekers - who will be serviced by providers in face-to-face servicing. Increased investment in Enhanced Services is needed to improve personalised support to job seekers who are long-term unemployed or at risk of becoming so, to decrease the proportion of job seekers that are long-term unemployed or at risk of becoming long-term unemployed.

The I Want to Work paper¹ outlined the rationale and commitment to the new model of employment assistance stating: *"The future employment services system will ensure that funds are invested in smarter, more targeted ways. It is smarter to invest in a digital and data ecosystem which helps all job seekers look for work, with many being able to self-service. This creates cost efficiencies. It is smarter to invest in automating business processes and administration. This creates time efficiencies. It is smarter to invest in a data ecosystem which analyses what works and what doesn't for job seekers. This creates outcome efficiencies. It is smarter to spend this time and money on job seekers who need the most help. It is the best chance we have to break cycles of welfare. It's the best chance we have to cut entrenched unemployment. This is how we will invest".*

Of the top ten things the I Want to Work paper stated that should not be done is to cherry pick recommendations and not to pocket savings from the efficiencies gained through digitalisation rather than reinvesting in those who need it most.

¹ I want to work, Employment Services 2020 Report, Department of Jobs and Small Business 2018

If New Employment Services - Enhanced Services is to achieve the stated goal of breaking cycles of welfare and reducing entrenched unemployment the investment must be fit for purpose. As the Competition Review stated, funding is and will continue to be the most important part of both human services policy and governments' role as market stewards².

Recent Budget measures include efficiencies of \$1.1 billion. Over the forward estimates there is a net decrease of total spending on jobactive in the employment services model from \$2 billion to \$1.7 billion in 2024- 25. Digital efficiencies over the forward estimates are \$658.2 million derived from having people in digital servicing and self-managing requirements. NESA acknowledges the reinvestment of \$691.8 million in the expansion of the Transition to Work program (\$481.2 million), and the expansion of the NEIS self-employment program (\$129.8 million) and \$80.8 million for the Digital Services Contact Centre³. It is disappointing that the commitments to increase investment in those most disadvantaged in the labour market have not been realised. An estimated 761,000 Australian job seekers are now long term unemployed and the principal program designed to support them has largely been overlooked. NESA notes that there has been no transparency of assumptions underpinning the proposed funding arrangements for Enhanced Services. A side-by-side comparison of current jobactive funding arrangements for Streams B and C (those most aligned to Enhanced Services target group) with the payment structure announced for the New Employment Services - Enhanced Services would indicate that there has likely been a considerable reduction in investment for this cohort of job seekers.

Social security arrangements have a profound impact on Australia's most vulnerable citizens. The Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021 (*hereafter referred to as Bill*) is a lengthy and complex document. The timeframe given to review, cross reference and analyse impacts of the proposed amendments, which in their entirety are reported to reduce social security legislation by an estimated 130 pages, is significantly insufficient. Importantly, the timeframe has not permitted stakeholders such as us, to gather valuable insights and contributions through consultation with relevant networks and community members.

NESA recommends:

The committee seeks an extension of time to report on the Bill and provide further opportunity for stakeholders to make contribution via submissions and/or supplementary submissions.

Given the considerable restraints arising from the limited timeframe, this response will focus on 3 of the 10 Schedules which raise immediate concern. However, this should not be taken as accepting the remaining 7 Schedules or be considered an exhaustive response to the Bill. NESA points out that in regard to such important legislation individual amendments appearing relatively innocuous on first consideration may prove to be substantial on further analysis and/or when there is adequate opportunity to consider the totality of amendments in context.

² Source: The Australian Government Competition Policy Review Final Report 2015

³ Proof Committee Hansard SENATE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE Estimates (Public) THURSDAY, 3 JUNE 2021

Response to the Schedule:

Schedule 1—Streamlined Participation Requirements

The explanatory memorandum indicates that “Schedule 1 of the Bill amends the social security law to better support the new model of employment services and its objectives while still maintaining the protections for job seekers that currently exist in social security law”.

The explanatory memorandum outlines that significant changes have occurred which warrant the need for the legislative reform proposed. These include (but are not limited to) the evolution of Activity Agreements, Employment Pathway Plans and particularly the introduction of the Online Employment Service (OES) which commenced as a trial in July 2018 and as a result of the impact of COVID-19 on the labour market was rolled out nationally in 2020 ahead of scheduled July 2022 release to meet the significant increase in demand for employment services.

There are some 62 pages of amendments contained in schedule 1 which relate to a diverse range of provisions including entering into and satisfying employment pathway plans, exemptions, approved programs of work supplement, use of questionnaires in relation to employment pathway plans and variation of such plans, approval of plans and use of technology to name a few and encompass requirements relating to various payments.

Given the grossly insufficient time to adequately analyse all changes NESAs recommends the following principles are applied to avoid adverse outcomes on current income support recipients or future income support applicants arising from enacting the Bill through:

1. Only supporting proposed streamlining and consolidation of legislation where there is a high degree of confidence that there are no adverse implications for current income support recipients or future applicants.
2. Only supporting amendments that include or are supported by adequate safeguards for income support recipients and future applicants (particularly those who are known to face increased barriers, vulnerabilities and be on the wrong side of the digital divide including Indigenous people, people with disability, principal carers, refugees and mature age workers).

Schedule 2 - Amend Social Security Law to Provide Legislative Authority for Spending For Employment Programs

The explanatory memorandum outlines that currently, the legislative authority for employment programs is currently contained in the *Financial Framework (Supplementary Powers) Regulations 1997*, which are the responsibility of the Minister for Finance; as is the case with many but not all Commonwealth programs. However, the explanatory memorandum outlines that it is more appropriate for legislative authority for Commonwealth expenditure on employment programs to be contained in portfolio legislation administered by the Minister and department responsible for employment policy and programs suggesting that this will enhance transparency and accountability for that expenditure.

The proposals in Schedule 2 amend the social security law accordingly. Funding for employment programs will not be supported by the standing appropriation in the social security law. Instead, it will need to come from annual appropriations in the usual way. Government decisions in relation to these programs will therefore be subject to Budget processes, and will be published in the Employment Department’s portfolio budget papers. Parliament will continue to be able to scrutinise expenditure on, and the operation of, these employment-related programs through all of the usual mechanisms available to it, including the Senate Estimates process.

The Simplified outline indicates that the amendments in this schedule will enable “The Employment Secretary may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth, or make, vary or administer a grant of financial assistance, in relation to various activities aimed at assisting unemployed or other persons to obtain and maintain paid work”.

The amendments require the Department of Education, Skills and Employment to publish information about the programs in its annual report including: the total of the amounts paid in that period under arrangements or grants

referred to in section 1062A; and the total number of arrangements and grants referred to in section 1062A that were made in that period.

NESA has concerns about these proposed amendments:

In the report on the Introduction of Competition and Informed User Choice into Reforms to Human Services, the Productivity Commission stated that the “implementation and ongoing maintenance of sound stewardship arrangements needs to be a core part of the reform and delivery process”⁴

The Competition Policy Review emphasised the role of Government as Stewards. The report made the observation that in many human services sectors in Australia, there are still instances where the government develops policy, block funds, regulates and provides services through the one organisation. The Competition Policy Review recommended separation of responsibilities noting greater independence into service regulation is underpinned by the notion that good market stewardship delivers clarity about whose interests the government is serving when it acts. The following captures the Review recommendations which were supported by the Australian government⁵.

Chapter 1: Competition principles: The model for Government provision or procurement of goods and services should separate the interests of policy (including funding), regulation and service provision, and should encourage a diversity of providers.

Chapter 2: Human services: Governments should retain a stewardship function, separating the interests of policy (including funding), regulation and service delivery. (Vest rulemaking and regulation with a body independent of government's policy (including funding role).

Maintaining integrity and accountability requires perceived or actual potential conflicts of interest to be addressed. Arguably, as a service provider the Department now have additional potential conflicts of interest that may influence its decision making, policy advice and recommendations. For example, a very simple illustration may be that limited IT resources prioritise systems work that enhances the Departments' efficiency and capacity to meet Online Employment Service commitments ahead of those that support Enhanced Services. On more sensitive areas the Departments funding, and funding distribution recommendations for New Employment Services has potential to be influenced by its needs/desires in relation to its responsibilities for provision of OES. The proposal would appear to increase the Departments authority to make or vary funding decisions thereby further increasing potential for perceived conflict of interest.

With the introduction of OES the Department of Education, Skills and Employment (the Department) is now the largest provider of Australian employment services. The decision to bring forward the national rollout of OES during the existing jobactive contract period rather than at the expiry of contracts as planned, had the effect of transferring market share from contracted providers to the public provider.

The Department has responsibility for all aspects of stewardship of Australian employment services encompassing but not limited to policy, program design, funding, procurement, contract management, managing access to clients, quality assurance and complaints, evaluation and IT systems, this includes for the delivery of OES and Digital Contact Centre. NESA believes that stakeholders would be able to have greater confidence in the digital system if independent quality, performance and impact evaluation were required to be undertaken and results reported.

Arguably, the information that the proposed amendment requires to be published, are currently available and as such transparency and accountability are not considered to be enhanced by the inclusion. The sector would argue that

⁴ Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services, Productivity Inquiry Report 2017

⁵ Source: The Australian Government Competition Policy Review Final Report 2015

significantly more granular detail about program and sub program expenditure is required as well as robust independent performance and impact evaluation.

Schedule 8—Start Day for Jobseeker Payment and Youth Allowance

Schedule 8 proposes to address inconsistency in the start date of Jobseeker Payment or Youth Allowance recipients to address perceived inequity and provide greater incentives to job seekers to connect more quickly with services including those online.

- Job seekers in face-to-face employment services programs start date is the date of their interview with their provider (if that occurs within 2 business days of notice of the requirement to attend) or from the day that they are given notice of the requirement to attend.
- Job seekers assisted through OES start date is the date of claim and triggered by acceptance of their employment pathway plan (hereafter referred to as Job Plan). The proposed item under subclause 4B(2), will establish the general rule will be that a person's start day for Jobseeker Payment or Youth Allowance will be the day that they enter into their online Job Plan.

The amendment proposed includes provision that where the person is able to satisfy the Employment Secretary that they had the intent to accept the Job Plan earlier but failed to do so due to circumstances beyond the persons control the start date is either the day the Employment Secretary notified the person of the requirement or the day on which the claim was made.

NESA opposes the amendments under schedule 8 in their current form as they have potential to result in inequity and fail to include adequate provisions to avoid/minimise unintended impacts on access to income support by citizens that are vulnerable and disadvantaged.

1. Job seekers engaged in face-to-face services have the right to be informed of and accept a period of up to 48 hours 'think time' to consider their Job Plan before accepting it, without impact to their start date. Under the proposed arrangements job seekers in online services would experience a change in their payment start date if they took time to consider the appropriateness of their Job Plan before accepting it; and as such it is considered that the proposed provision potentially creates inequity.

There is also a concern that attaching the start date to the acceptance of the Job Plan will place pressure on job seekers to accept a Job Plan that is not suitable to their circumstance in order to receive payment. To illustrate the impact of such pressure; the Online Job Seeker Classification Instrument (JSCI) Trial Evaluation Report⁶ indicates that of all trial participants 51% completed the JSCI and 80% of these did so because they thought it was a compulsory part of the income support process with one participant quoted as saying: *But I'm in the situation where I need financial assistance, so, I just felt like I had to do it if I wanted the financial assistance, which I desperately need. (Job seeker, 2019)*

2. The Bill contains no definition/guidance on what types of circumstance are intended to constitute "circumstance beyond a person's control" for failure to enter into a Job Plan earlier that should satisfy the Employment Secretary. Similarly, there are also no indications of how job seekers will be informed of this provision, or the steps required. Without such information it is not possible to understand the ease in which this protection can be called upon, the timeframe to achieve resolution of such matters and restoration of payments where appropriate.
3. The Bill lacks provisions to ensure that job seekers are fully informed and understand their rights, responsibilities and obligations in relation to entering into and meeting the requirements outlined in their Job Plan. This should expressly include the right of job seekers in OES to have access to the Digital Services Contact Centre or elect to enter an employment pathway plan with a human delegate if they choose.

⁶ Online Job Seeker Classification Instrument Trial Evaluation Report; Department of Education, Skills and Employment

As an increased use of technology forms part of compulsory requirements to maintain income support eligibility, merely maintaining existing protections in social security law, is insufficient. Additional protections need to be considered and embedded in legislation to ensure those job seekers self-managing their requirements have adequate protections.

NESA notes The Online JSCI Trial indicated that the most common reasons for non-completion of the JSCI (49% of trial participants) was 19% were not aware that they had to complete it, 9% could not find enough instructions on how to do it, 10% had problems with the website, and 8% had problems with their devices. The OEST Evaluation Report indicates that only 72% of participants were aware that they could choose to opt out of OEST at any time and transfer to a jobactive provider. OEST participants were also less aware of their servicing arrangements than were their counterparts in provider-based servicing.

Under face-to-face service arrangements for jobactive providers of employment services at Initial Interview⁷ are contractually required to explain and ensure participants understand:

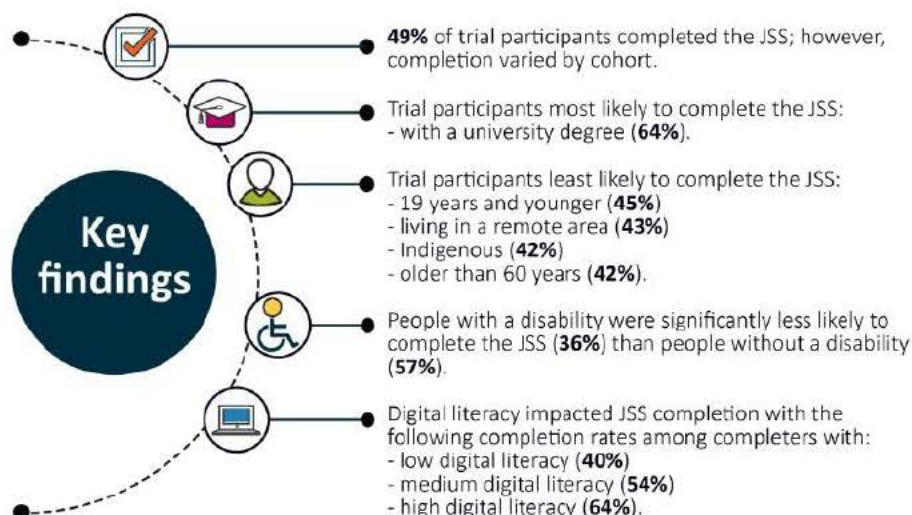
- the purpose of the Job Plan
- the Mutual Obligation Requirements the Participant needs to undertake in return for income support payments, including the requirement to record their own attendance (where relevant)
- the Participant's rights and responsibilities under the Job Plan (including 'think time' to consider the Job Plan before agreeing to it)
- what the Participant needs to do if they have a change in circumstances that affects their ability to meet the requirements in their Job Plan
- how to contact the Provider to give prior notice if unable to meet requirements and the consequences of not giving prior notice if the Participant is able to do so
- the consequences of failing to meet the requirements without a Reasonable Excuse, and any impact this may have on the Participant's income support payment
- the consequences of failing to give prior notice (with a Valid Reason) if they cannot attend compulsory Appointments or participate in compulsory Activities
- the Participant's right to appeal decisions and where they can find assistance to do this
- how the Provider intends to support the Participant
- the Provider's Service Guarantee and Service Delivery Plan
- the section entitled 'Information You Need to Know' in the Job Plan
- how information is protected under privacy legislation and Social Security law; and
- that all relevant contact details will need to be accurately recorded and updated in the Department's IT Systems including phone numbers, email address and postal address.

Assessing job seekers prior to requiring the completion of a Job Plan

The explanatory memorandum indicates that before a job seeker is offered the opportunity to enter an employment pathway plan via the new online arrangements, they will have their circumstances assessed with those job-ready being able to use and access Digital Services to choose to manage their requirements online, without being serviced by a provider". It has been acknowledged in various pieces of local and international research as well as reports from the OES Trial findings that digital services are not appropriate to all job seekers and sound targeting is essential.

NESA notes that the assessment tool used in employment services is the Job Seeker Classification Instrument (JSCI) with the online version of this tool known as the Job Seeker Snapshot (JSS). Employment service arrangements have evolved over recent years with the JSCI assessment, and the digital literacy assessment recently developed to support introduction of the new employment services model are principally completed online. Job seekers experiencing disadvantage are most likely to have difficulty completing assessments online and therefore experience delays connecting to employment services including digital services.

⁷jobactive guideline: Job Plan and Scheduling Mutual Obligation Requirements Guideline Effective from: 12 April 2021 TRIM ID: D21/240359

Accessibility: factors affecting online completion⁸

The Job Seeker Classification Instrument (JSCI) and the online version of this tool known as the Job Seeker Snapshot (JSS -hereafter *referred to as JSCI*) do not assess an individuals job readiness.

The JSCI classifies job seekers for employment services, based on a measure of their **relative labour market disadvantage** determined by their responses to a series of questions⁹. A score is derived from the completed JSCI that indicates job seekers probability of remaining unemployed for more than 12 months. Job seekers are then assigned services based on their relative scores that being those with higher scores receive more intensive assistance than those with lower scores. However, a lower score does not necessarily mean the job seeker has a low probability of remaining unemployed for more than 12 months, just a lower probability *than others*. As such a job seekers service eligibility classification reflects individual job seekers circumstance relative to the composition of the job seeker caseload, and not necessarily their actual employment support needs.

To clarify, job seekers currently classified as Stream A in jobactive and indicative of the population likely to be OES and expected to self-manage requirements via the digital platform moving forward. This cohort of job seekers are often referred to as the **more or most job ready** because they have a lower JSCI score than other job seekers classified as Stream B or C.

As a relative measure, being classified as Stream A means job seekers have lower probability of remaining unemployed for more than 12 months *than others*. In reality many Stream A job seekers are long term unemployed or at risk of becoming long term unemployed, do not have job search skills and would not be considered job ready using tools specifically designed to measure job readiness.

Responses to the JSCI may also trigger an Employment Services Assessment (ESAt) which further explores particular barriers to work, capacity to work due to disability, illness or injury and results in service eligibility recommendation which may include Stream C of jobactive or referral to another program such as Disability Employment Services. However, confirmation of barriers and complex issues through either the JSCI or ESAt such as (but not limited to) poor/low language/literacy, homelessness, mental health, refugee status and offending history (including those recently released from after lengthy periods of incarceration) does not exclude an individual being classified as only eligible for Stream A, indeed such job seekers form a significant part of the Stream A jobactive caseload.

It is NESA's view that assessment of job seekers individual needs and job readiness rather than relative measures is more suitable to determining employment service eligibility and minimising risks associated with job seekers assigned to digital services that lack capacity to self-manage requirements.

⁸ Online Employment Services Trial Evaluation Report; Department of Education, Skills and Employment

⁹ Online Job Seeker Classification Instrument Trial Evaluation Report; Department of Education, Skills and Employment



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