



9 June 2021

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

RE: Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021

The St Vincent de Paul Society National Council of Australia (the Society) is a lay Catholic charitable organisation that comprises over 50,000 volunteers and members and 6,000 employees who provide on-the-ground assistance across Australia.

Our members and volunteers work directly with those in need by giving them a hand up so that they can achieve their full potential. Many of those we assist receive income support payments.

The Society notes the claim in the Explanatory Memorandum (EM) and second reading speech that the new model offers jobseekers who are assessed as 'job-ready' the opportunity to self-manage their pathway to work using a digital platform, while providing more intensive, tailored face-to-face support for those who need or want it.

Background

The Bill relies on evidence from the New Employment Services Trial and Online Employment Services Trial and recommendations contained in the Employment Services Expert Advisory Panel's report, *I Want to Work: Employment Services 2020*.

The Society considers that while the Bill's amendments attempt to align with recommendations made by the Expert Advisory Panel, there are a number of elements that are contrary to these recommendations.

Further, the Senate's Education and Employment Committee's inquiry (senate inquiry), *Jobactive: failing those it intends to serve*, recommended that the government consult in a meaningful way with jobactive participants, including participants from disadvantaged groups.¹

The EM states that consultation in relation to the Bill was conducted with: the Department of Finance, Office of Parliamentary Counsel, Department of Social Services, Department of Agriculture, Water and the Environment, Services Australia, National Indigenous Australians Agency, Australian Government Solicitor and Attorney-General's Department. While the trial involved income support recipients, there are key areas for which limited evidence has been provided, as outlined below.

Building trust was also identified by the Expert Advisory Panel as essential to any system changes, and particularly that the system culture be changed so that it is less punitive and recognises job seekers' circumstances.² However, increased automation and insufficient flexibility with respect to mutual obligation requirements potentially threaten trust between job seekers, employers, providers and government.

Will job ready, job seekers be expected to 'opt-in' to the automated system and how will variations be managed?

The Bill states that the Employment Secretary may arrange for the use of technological processes in relation to persons entering into employment pathway plans, while the EM refers to job seekers, assessed as job ready, 'opting' to self-manage through the online system without an employment service provider. The concern is the extent to which this will become standard practice and expected of those assessed as job ready.

The other concern is that if variations to an approved employment pathway plan are required, these will need to be initiated by the job seeker. If assistance is required, the job seeker will need to know about and be able to contact the Digital Services Contact Centre.

The new service model places the onus on the job seeker to initiate these activities and assumes that the job seeker is sufficiently familiar with the system, able to undertake these activities, knows what to do, how to do it and when.

We raise this because the Expert Advisory Panel noted that an essential element of a personalised service model was the capacity to assess and reassess plans, particularly when job seekers' circumstances change. This process must be clear and straightforward.³

Similar concerns arise if activity requirements are not met. The onus is again placed on the job seeker or provider to inform the system that requirements have been met otherwise payments will be automatically suspended.

The Society also refers to the senate inquiry recommendation that the government investigate how it can better encourage people to disclose personal barriers and make it easier for job seekers to move between different levels of service.⁴ It is difficult to see how an online system will enable this to happen in practice, unless again the action is initiated by the job seeker through the Digital Services Contact Centre.

The Society agrees with ACOSS' views that the Bill provides the Secretary with wide discretionary powers, such as determining the time periods for exemptions from activity requirements or specifying the content of job plans (through regulations or guidelines). It also appears that the Bill does not retain the existing limit of 15 hours a week of employment that principal carers and people with partial capacity are required to undertake as part of their job plans. It seems that this is covered by exemptions from meeting pathway plan requirements.

Lack of trial data on extent to which human assistance was sought and review processes and risks associated with automated decision-making

The Society queries the processes and circumstances under which job seekers may vary their plans, and accessibility of appeal/review and complaint processes. The Bill contains little detail on these processes for the new service model. The Society notes three recommendations made by the senate inquiry which are related to this matter and do not appear to have been addressed, either through the new service model or Bill namely:

- that the government examine the appropriateness of existing appeal rights for participants and how to improve the accessibility of the appeals and complaints processes.
- the government implement a maximum turnaround period for the handling of complaints and appeals from participants
- the government consider establishing an employment services ombudsman, to provide an independent review mechanism.⁵

The EM states that if a job seeker is not satisfied with the choices about requirements which are presented to them by the online system, they will be able to discuss their plan with a human delegate. If they later become dissatisfied with their online plan, they will be able to vary it themselves online, or vary it with the assistance of a human delegate.

If the jobseeker remains dissatisfied with their online plan, they will be able to have it reviewed, initially by the Digital Services Contact Centre, then if necessary by an authorised review officer, the Administrative Appeals Tribunal or a court. The Bill is silent on the timeframes involved and it is assumed that the existing approved employment pathway plan remains in place until such time as the review process is complete. This is unsatisfactory mainly because a plan that presents issues for a job seeker is likely to increase the risk of non-compliance and subsequent breaching.

Although avenues for human contact will be available, through the Digital Services Contact Centre, the EM provides no data on how many contacts were made during the trial period, the nature of those contacts (to vary, review or appeal), the length of time transpired or outcomes.

The recently released report by the Australian Human Rights Commission highlights the fact that while technology is essential, it should be safe, fair and reliable and not threaten human rights to equality, non-discrimination, privacy, safety from violence, access and more.⁶ The Society is ever mindful of the human cost from Robodebt, which affected some 373,000 people,⁷ and should never be repeated.

Insufficient evidence has been provided in the EM on testing of the automated processes within the new service model, particularly with respect to outcomes, decision-making and fairness.

Extent to which disadvantaged job seekers will receive tailored assistance

The EM states that the new model will also allow resources to be redirected away from administration and into proactive support and tailored assistance for the most disadvantaged job seekers and that they will be assisted by providers in face-to-face servicing, in the form of individual case management for the hardest to place job seekers. Providers will have demonstrated expertise in working with job seekers with complex needs.

The Society considers that supporting the long-term unemployed requires ongoing, regular support and that the system requires additional funding to build the capacity of employment service providers before any significant change will be seen. This is essential given the numbers involved. As at April 2021, 1.1 million people were on JobSeeker, of which 735,000 people were long-term unemployed, having been on the payment for over one year.

Unfortunately, the employment services trial results do not instil confidence in the new model.

As at 31 January 2021, 7,587 long-term unemployed enhanced services job seekers in the trial were placed into a job. Of these, 43 per cent remained in this job for at least four weeks and 28 per cent remained in this job for at least 12 weeks.

Of concern are the overall low numbers, given how many people are long-term unemployed and the fact that less than one-third of people were still in a job after three months.

The Society notes the senate inquiry's recommendation that the funding model be examined to ensure it does not inappropriately incentivise the attainment of short-term or insecure employment outcomes at the expense of more sustainable medium and long-term outcomes. This should include consideration of whether outcomes payments are desirable, whether payments timeframes are too short and whether a portion of payments should be clawed back if a participant re-enters the system, and whether outcomes payments should be less for insecure jobs.⁸ The senate inquiry also recommended that the funding model should be improved to ensure it contains sufficient incentives for providers to properly assist harder-to-place participants.⁹

Further, a recent evaluation of the new model of Disability Employment Services found that it is not better at helping people with disability get jobs. The program helped providers profit from unemployment without actually helping more people get jobs, which was what the model was meant to improve on. The mutual obligation requirements were also found to be unhelpful and inflexible. We support ACOSS' call to stop funnelling people into training, for training sake, that reforms should ensure that problems of the past are not repeated and that broader societal change is needed to stop employers' discriminating against people with disability.¹⁰

Case studies from across the Society also demonstrate how often income support recipients have reported being 'shoe-horned' into training, regardless of their previous experience, skill-sets or interests. The Society's case studies are accessible on our [website](#).

We can see nothing in the Bill or the new service model that addresses these issues or prevents them from re-occurring.

Job seekers' rights are stymied, employment providers and employees' rights are enhanced, risk of automated non-compliance record and breaching is increased

The second reading speech includes the statement that "...jobseekers will have greater agency to determine and access the activities they undertake on their pathway to employment and will be rewarded for their active effort and engagement."¹¹

However, the Society believes the opposite to be the case. Job-seekers rights' are stymied and they are disempowered by the fact that work is deemed "...not unsuitable for a person merely because they consider that they are too highly qualified to do it or would prefer a higher rate of pay." The EM states that this reflects the manner in which courts and tribunals have interpreted the provisions and will send a clearer message that job seekers cannot expect to be supported by the tax payer if they turn down work which they are capable of safely doing merely because it is not their preferred type of work or preferred rate of pay. We consider it inequitable to mandate that a person accept a job, simply because it is a job, regardless of whether they are over-qualified and/or over-experienced for it. This is unfair, punitive and exploitative.

The Society is also concerned about provisions that push people into signing on to employment pathways plans that might not reflect their needs or requirements but have little choice because delays in signing up result in delays to payments. Schedule 8, which delays payment start dates for people using digital employment services, should be rejected.

The Society believes these examples are contrary to the Expert Advisory Panel's recommendations of the need to build trust, establish a system that puts users at the centre of it, is personalised (by recognising job seekers' strengths) and empowers through personal responsibility, choice and independence (through more flexible mutual obligation requirements).¹²

This approach is also contrary to the senate inquiry recommendation that the government ensure the 'reasonable excuse' rules protect the welfare of unemployed people.¹³

Related to this matter, the Employer Reporting Line is currently investigating 240 cases, out of a possible 1.1 million people on JobSeeker. Not only is this approach inhumane and punitive, it is costly and wasteful, particularly when important resources are needed to improve support services for the long-term unemployed.

Finally, this approach is inconsistent with Australia's human rights obligations, as it does not provide job seekers greater choice and flexibility in how they meet and manage their requirements and reduce compliance action.

Yours sincerely

Toby oConnor
Chief Executive Officer

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- ¹ The Senate. February 2019. Education and employment References Committee. *Jobactive: failing those it is intended to serve*. Recommendation 4. Accessed at:
https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024217/toc_pdf/Jobactivefailingthoseitistintendedtoserve.pdf;fileType=application%2Fpdf
- ² Employment Services Expert Advisory Panel Report. 2020. *I Want to Work: Employment Services 2020*. Recommendation 5. p. 52. Accessed at: https://docs.employment.gov.au/system/files/doc/other/final_-_i_want_to_work.pdf
- ³ *ibid.*, recommendation 3, p. 52.
- ⁴ The Senate *op.cit.* Recommendation 5.
- ⁵ *ibid.*, recommendations 32, 33 and 34 respectively.
- ⁶ Australian Human Rights Commission. 2021. *Human Rights and Technology Final Report*. Sydney. Accessed at: https://tech.humanrights.gov.au/?_ga=2.178301732.1605163594.1623214507-1324762861.1612406523
- ⁷ Whiteford. P. November 2020. Robodebt was a policy fiasco with a human cost we have yet to fully appreciate. Probono Australia. Accessed at: <https://probonoaustralia.com.au/news/2020/11/robodebt-was-a-policy-fiasco-with-a-human-cost-we-have-yet-to-fully-appreciate/>
- ⁸ The Senate. *op. cit.* recommendation 36.
- ⁹ *ibid.*, recommendation 37.
- ¹⁰ ACOSS. 28 May 2021. *Report finds new Disability Employment Services not better at helping people*. Accessed at: https://www.acoss.org.au/media_release/report-finds-new-disability-employment-services-not-at-helping-people/
- ¹¹ Hansard. 27 May 2021. Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021. Second Reading. Minister Tudge. Accessed at:
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F1ec0be33-a42d-4fb9-9e33-2885c7ce573c%2F0029;query=Id%3A%22chamber%2Fhansard%2F1ec0be33-a42d-4fb9-9e33-2885c7ce573c%2F0028%22>
- ¹² Employment Services Expert Advisory Panel Report. *op. cit.* recommendations 1,3 and 5.
- ¹³ The Senate. *op.cit.* recommendation 30.