



# **Australian Government**

Australian Government response to the  
Senate Community Affairs Legislation Committee report:

Inquiry into the Social Services Legislation Amendment (Welfare Reform) Bill 2017

June 2018

## Introduction

The Australian Government welcomes the Senate Community Affairs Legislation Committee (the Committee) report on the Inquiry into the *Social Services Legislation Amendment (Welfare Reform) Bill 2017* (the Bill).

The original Bill as introduced sought to implement changes to:

- the administration of certain welfare payments;
- cease and transfer recipients from a range of payments to one jobseeker payment;
- alter conditions applying to certain jobseeker and other payment recipients;
- introduce a random drug testing trial for certain income support recipients;
- amend exemptions and reasonable excuse provisions in relation to drug and alcohol dependence in order to encourage people into treatment;
- introduce a new compliance framework;
- streamline administration of information to facilitate the collection of tax file numbers;
- enable the use of certain information for prosecutions without the need to apply for warrants; and
- align social security law with the Disability Discrimination Act 1992.

These changes were contained in 18 schedules:

Schedule 1: Creation of the Jobseeker payment

Schedule 2: Cessation of Widow B Pension

Schedule 3: Cessation of Wife Pension

Schedule 4: Cessation of Bereavement Allowance

Schedule 5: Cessation of Sickness Allowance

Schedule 6: Cessation of Widow Allowance

Schedule 7: Cessation of Partner Allowance

Schedule 8: Minister's Rules

Schedule 9: Changes to activity tests for persons aged 55 to 59

Schedule 10: Start day for some participation payments

Schedule 11: Intent to claim provisions

Schedule 12: Establishment of a drug testing trial

Schedule 13: Removal of exemptions for drug or alcohol dependence

Schedule 14: Changes to reasonable excuses

Schedule 15: Targeted compliance framework

Schedule 16: Streamlining tax file number collection

Schedule 17: Information management

Schedule 18: Aligning social security and disability discrimination law

On 22 June 2017, the Senate, referred the provisions of the Bill to the Committee for inquiry with the report tabled on 6 September 2017. The Committee received 63 submissions and held public hearings in Sydney on 30 August 2017 and Melbourne on 31 August 2017.

Submitters provided feedback in written submissions and in oral evidence to the committee, particularly covering:

- creation of Jobseeker Payment and cessation of payments;
- changes to activity tests for persons aged 55 to 59;
- removal of intent to claim provisions;
- substance misuse measures;
- targeted compliance.

Having considered the feedback, in its tabled report the Committee recommended that the Bill be passed. The Australian Government supports this position. Dissenting Reports by Australian Labor Party Senators and the Australian Greens recommended that the Bill not be passed. The Australian Greens made an additional recommendation that there be an independent public review of the compliance system for people who are unemployed before any reform to the existing framework. Further detail is provided on the following pages.

The Bill passed Parliament on 27 March 2018 with Government and non-Government amendments. The Bill received Royal Assent on 11 April 2018.

# **Inquiry into the Social Services Legislation Amendment (Welfare Reform) Bill 2017**

## **Recommendations made by the Committee**

<b>1. The Committee recommended that the Bill be passed.</b>
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Government Response: Supported.

The Government announced a comprehensive Welfare Reform package in the 2017-18 Budget.

The original Bill contained an integrated suite of measures to deliver a simpler and fairer welfare system, including:

- introducing a new JobSeeker Payment from 20 March 2020 to replace seven existing payments, including (Schedules 1-8)
  - Newstart Allowance;
  - Sickness Allowance;
  - Wife Pension;
  - Bereavement Allowance;
  - Widow B Pension;
  - Widow Allowance; and,
  - Partner Allowance
- measures to address substance misuse by welfare recipients including (Schedules 12-14)
  - introducing trial drug testing for new recipients of Newstart Allowance and Youth Allowance (other);
  - removing exemptions from mutual obligation requirements for drug/alcohol related reasons; and
  - tightening the reasonable excuse for non-compliance due to drug or alcohol misuse.
- Introducing limitations on the amount of volunteering that people aged 55-59 years can do to meet their activity test (with non-legislated changes for other cohorts aged between 30 and 49 and 60 and Age Pension age);
- faster connection to employment services;
- introducing a new demerits based targeted job seeker compliance framework that strengthens penalties for persistent and deliberate non-compliance; and
- several streamlining processes, including:
  - amending the intent to claim (deemed claim) provisions to apply only to claimants in vulnerable circumstances who are unable to collate the required documentation;
  - streamlining Tax File Number collection as part of social security claims; and
  - streamlining the processes for referrals of welfare fraud prosecution. This measure will amend social security, family assistance, paid parental leave and student assistance laws.

The measures are designed to build a simpler system that provides more encouragement and support for people transitioning to work. The Bill demonstrates that the Government is committed to improving the integrity of the welfare system and ensuring that recipients receive the necessary support and incentives to address barriers to employment, to look for work and to take a suitable job when it is available. This will benefit not just the job seekers themselves but also their families, the wider community and the Australian economy.

The current income support system of multiple payments is very complex and difficult for people to navigate. The new JobSeeker Payment will be the main working age payment, consolidating seven current payments, and creating a single payment for those of working age with capacity to

work now or in the near future. The JobSeeker Payment will simplify the income support system and treat people in similar circumstances consistently.

<b>2. Dissenting Reports by the Australian Labor Party Senators and the Australian Greens recommended that the Bill not be passed</b>
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Government Response: Noted.

The following addresses key concerns raised in the dissenting reports.

Jobseeker Payment Measures (Schedules 1-8)

The dissenting Senate Community Affairs Legislation Committee reports raised concerns about the impact of the changes on Wife Pension recipients who do not transfer to the Age Pension or Carer Payment. These recipients who are aged between 39 and 63 will remain frozen at their current rate when they transition to the new JobSeeker Payment and will not be worse off.

With regards to the 200 Wife Pension recipients currently living overseas who are not anticipated to transition to another income support payment, a large proportion of these women currently receive a part-rate of Wife Pension because they have insufficient Australian Working Life Residency to receive a full rate of payment. Some Wife Pension recipients have their payment reduced because of their levels of income and assets, which indicates that they have other income sources besides their Wife Pension.

The dissenting Committee reports also raised concerns about the impact of replacing Bereavement Allowance with the JobSeeker Payment. The existing bereavement arrangements create unnecessary administrative inefficiencies and complexity for bereaved people. Streamlining these arrangements will help to simplify the welfare system.

During the Senate debate of the Bill, the Government acknowledged that some pregnant women may receive less assistance under the new arrangements than they currently do. This is because pregnant women can receive bereavement support until their child is born, which may be longer than the standard 14 weeks available to other people. For this reason, amendments were made to Schedule 4 of the Bill to increase the additional upfront support for these women from two fortnight's payment, to three fortnight's payment, plus an additional amount determined by the length of the recipient's bereavement period. The additional amount starts at \$1,000 for pregnant women who give birth or their pregnancy ends within 14 weeks of their partner's death, with the maximum amount payable up to \$4,250. This will ensure that pregnant women who suffer the loss of a partner will generally be no worse off financially compared to current payment arrangements. Similar arrangements will be in place for bereaved pregnant mothers on Youth Allowance. The Senate passed this amendment to Schedule 4 (Cessation of Bereavement Allowance) in December 2017.

Subsequently, the Government supported an amendment by Pauline Hanson's One Nation party which changed the calculation of the upfront lump sum amount for non-pregnant bereaved people so that the amount paid is broadly equivalent to the amount of Bereavement Allowance paid over 14 weeks. This ensures that recipients claiming bereavement support under JobSeeker Payment or Youth Allowance (other) will generally be no worse off under the new arrangements compared to the support currently available under Bereavement Allowance.

Minor amendments were also made to Schedule 6 to change the start date of the Cessation of Widow Allowance measure and to better align the mutual obligation exemption wording with the relevant qualification.

#### Amend the activity test for persons aged 55 to 59 (Schedule 9)

The Bill will also strengthen the employment focus of mutual obligations and better connect mature age job seekers with the labour market, while still recognising that volunteering can be a valuable stepping stone into paid work.

In the 2017-18 Budget it was announced that job seekers aged 55-59 would no longer be able to fully satisfy the activity test through undertaking 30 hours per fortnight of any combination of paid and voluntary work. Instead, they would need to undertake at least 30 hours of a combination of paid work and voluntary work, with at least 15 hours of those hours in paid work. There are 40,000 job seekers currently within this age group, and around 7,500 of them meet their mutual obligation requirements through volunteering alone and are not expected to look for work. These job seekers do not benefit by being excused from looking for a job.

Data shows that mature age people are 13 times more likely to find work when actively looking for it. The OECD has previously recommended that mutual obligations for mature jobseekers be strengthened and made consistent with other cohorts.

However, to secure passage of the Bill through the Senate, the Government amendments have been passed to impose a time limit of 12 months for job seekers aged 55 to 59 to be subject to the proposed activity test changes, instead of for the full term of income support receipt.

For their first 12 months on an unemployment payment, mature-aged job seekers will be able to satisfy the activity test through a combination of at least 30 hours per fortnight of paid and voluntary work, with at least 15 hours being in paid work. After 12 months in receipt of payment this would be relaxed so that any combination of paid and voluntary work of at least 30 hours per fortnight would fully meet the activity test. Individuals who have been receiving payment for more than 12 months at the commencement of the measure will not be subject to the changes in the activity test. As an indication of the number of job seekers who may be affected following this amendment, at 31 December 2017, around 1,100 job seekers who were fully meeting their requirements through voluntary and/or paid work had been in employment services for less than 12 months.

The Australian Labor Party and the Greens' dissenting reports suggest that the measure would have an adverse impact on the volunteering sector. However, neither the original nor amended measure would stop older job seekers from undertaking approved voluntary work or have more than minimal impact on the number of volunteers or the hours contributed towards the volunteering sector.

The Australian Labor Party and the Greens' dissenting reports also suggest that the Government has not provided any additional support to help these job seekers. However, the Government is investing over \$110 million in a mature age reskilling package to help older Australians re-train and find work in addition to existing programs such as the Restart wage subsidy program.

#### Faster connection to employment services (Schedule 10)

The Bill will also encourage job seekers to connect more quickly with employment service providers such as jobactive and Transition to Work. For job seekers subject to RapidConnect, their Newstart Allowance or Youth Allowance (other) payment will generally commence from the date they attended their initial appointment with their provider, instead of being paid from the date the recipient first contacted the Department of Human Services or lodged their claim, as they currently are.

Connecting job seekers more quickly with employment services will improve their chances of finding work faster, and this measure will encourage this behaviour.

The Australian Labor Party and the Greens' dissenting reports both raised the issue of extended delays for job seekers due to inability to attend appointments and the impacts on vulnerable job seekers. Labor's report also raised concerns on how this measure would impact on job seekers in rural and remote areas. However, the measure already addresses these concerns.

As soon as a job seeker submits a claim to the Department of Human Services, they will be advised of available provider appointments in their area. Where an appointment is available within two business days, the job seeker will be required to attend that appointment and their payment will commence from the day they attend. Because providers are contractually required to have appointments available within two business days, this is ordinarily what will occur.

However, if for some reason the only available appointment is more than two days away, the job seeker will be required to attend the next available appointment. In this case, once they attend the appointment, their payment will commence from the date the appointment was booked, not the date they attended, so that they are not unfairly penalised for the provider's inability to provide an appointment within two business days.

In both cases payment will be made on the job seeker's first scheduled payday. As is currently the case, payment is usually made in arrears and backdated to the appropriate commencement day, which will be the date the job seeker attended their provider appointment if it was within two days of them submitting their claim or the date the appointment was booked if an appointment was not available within two days.

Vulnerable job seekers who are currently exempt from RapidConnect will also not be subject to this measure. This includes job seekers who are medically or otherwise exempt from their requirements, youth unable to live at home, or those with a disability or illness affecting their capacity to work. The measure will also not apply to job seekers in remote areas that are serviced by the Community Development Program.

The Government considers that with these safeguards, this is a fair measure that simply makes income support for able job seekers contingent upon them showing they are genuine about finding work by connecting with an employment services provider as soon as possible.

#### Intent to Claim Provisions (Schedule 11)

Following amendments to the Bill, the new Schedule 11 – Intent to Claim Provisions, retains and amends the current intent to claim provisions in the social security law. The intent to claim provisions will now apply to a person in vulnerable circumstances. The amendment includes an instrument making power to allow a legislative instrument to define a vulnerable claimant for the purposes of the intent to claim provisions.

Vulnerable claimants will be those who have a genuine difficulty in collating their documentation, and will include, but not be limited to, being homeless, affected by a major disaster or family and domestic violence, a recent humanitarian entrant or recently released from prison or psychiatric confinement.

For all other claimants, the date of claim will be the date the claim is lodged rather than the date they initially contact the department. The purpose of the measure is to encourage social security claimants to provide timely and complete information in support of claims.

It is reasonable for applicants to provide information that is available to them when lodging a claim and to do so in a timely manner. The 'intent to claim' provisions were introduced at a time when claim forms were mailed to claimants, completed by the claimants, and then returned by mail. With the advent of technology that allows people to gather and submit

documentation quickly and easily, this level of assistance is generally no longer necessary or appropriate. These provisions allowed leniency for claimants by effectively backdating their entitlement to payment to the date they initially contacted the Department of Human Services and indicated their intention to claim.

#### Substance Misuse Measures (Schedules 12, 13 and 14)

The Bill contained three measures to help ensure job seekers address substance abuse issues that may be preventing them from meeting their mutual obligation requirements, or getting work. These measures are designed to better encourage and support job seekers to take reasonable steps to overcome those issues so they can find work. This includes changes which will ensure that job seekers with substance abuse issues remain actively engaged in appropriate activities, including treatment, to address their barriers to work, rather than being exempt from all mutual obligation requirements for a period, as can currently occur.

The Bill will also allow the tightening of reasonable excuse rules to prevent job seekers from repeatedly using drug and alcohol dependency as an excuse for not meeting their requirements without being prepared to do anything about it. Instead, they will be encouraged to undertake treatment as part of their mutual obligation requirements. The Government has agreed to exclude participants in the Community Development Programme from this measure.

The dissenting report by the Australian Greens claims that the tightening of reasonable excuse does not recognise the complicated nature of drug and alcohol recovery. However, the measure does take this into account. Where an individual has used drug or alcohol dependency as a reasonable excuse, providers would work with existing referral services to help job seekers into treatment. If treatment is not available, or treatment professionals judge that treatment is not appropriate for the individual's circumstances, existing reasonable excuse provisions would continue without change.

A third measure in the Bill was to establish a two year trial of random drug testing for 5,000 new recipients of Newstart Allowance and Youth Allowance (other). Government amendments were passed in the Senate to remove this measure from the Bill. The Government remains committed to the drug testing trial and believes that randomised drug testing can be an effective way of identifying welfare recipients for whom mandated treatment could be successful. The Government will continue constructive discussions with the crossbench and seek to progress the drug testing trial through separate legislation.

The Australian Greens' dissenting report expresses concern that the new section 28C in Schedule 13 – remove exemptions due to drug and alcohol use provides the Secretary of the Department of Jobs and Small Business “exceptionally broad power which goes far beyond what is necessary to achieve the stated purpose.”

Broadly, section 28C would allow the Secretary to determine, by legislative instrument, categories of income support recipients who are ‘declared program participants’. These recipients would be excluded from the application of the new job seeker compliance framework and the removal of exemptions for drug and alcohol misuse. It is the intention of section 28C to allow people who are participating in the Community Development Programme to not be subject to these measures.

Subsection 28C(2) also gives the Secretary the power to provide for the operation of social security law in relation to a person who becomes, or stops being a declared program participant. This is needed to enable arrangements to be made for people moving between the Community Development Programme and jobactive or Disability Employment Services, should they relocate.

Legislative instruments made under this section would face Parliamentary scrutiny through the disallowance process. When the instrument is tabled, any Senator or Member could move a disallowance motion and if that motion were not defeated or withdrawn within 15 sitting days the instrument would cease to operate.

In addition to this necessary flexibility, originally the Bill contained a power to use the legislative instrument to modify provisions in the social security law as they apply to declared program participants. This power was intended to modify particular social security provisions via legislative instrument in the event of unintended consequences relating to the exclusion of 'declared program participants'. The Government has amended the Bill to limit the powers of the Secretary in this regard by removing section 28C(3).

In the unlikely event that there are unintended consequences relating to 'declared program participants', these will be able to be addressed through legislative change with full parliamentary oversight, if required.

#### Targeted Compliance Framework (Schedule 15)

The Australian Greens dissenting report describes the targeted compliance framework as a 'punitive approach'. However, as well as being more effective, the new framework should actually be much fairer than the current compliance framework. Penalties will be directed to those with a history of persistent non-compliance and who, following multiple assessments, have been found able but unwilling to meet their requirements. Those who are found to be having genuine difficulties will not be subject to penalties but will have their requirements reviewed and, where needed, will receive additional assistance. In addition, as part of negotiations to secure passage of the Bill, the Government agreed to further strengthen protections for job seekers by increasing from five to six the number of failures without valid reason that a person could commit before they would generally receive a financial penalty. In contrast, under the current compliance framework, job seekers experience multiple financial penalties before they undergo any assessment to see if they are having difficulty meeting their requirements.

The new targeted job seeker compliance framework will not affect the majority of job seekers who are genuine in their efforts to find work, but will be stringent on those who are not, with appropriate financial penalties for job seekers who persistently and deliberately do not meet their requirements.

In their dissenting Committee reports, both the Australian Labor Party and the Australian Greens have called for the continuation of waivers and provider discretion. This would retain the most ineffective features of the current compliance framework, which allow deliberately non-compliant job seekers to avoid consequences for their actions.

Waivers under the current framework have resulted in only 7 per cent of applied penalties for job seekers who repeatedly fail to meet their requirements or refuse suitable work being served. That means there is no real consequence for job seekers in 93 per cent of cases (based on 2015-16 data).

Provider discretion allows providers to effectively ignore non-compliance, even where the job seeker has no reasonable excuse. This results in inconsistent and unfair application of penalties. The National Social Security Rights Network acknowledged this in its evidence at the Senate Committee hearing, stating that the new framework "deals with a range of problems in the existing system. They include an arbitrary levelling of penalties depending on a provider discretion".

Under the new compliance framework, providers will still exercise discretion as to whether or

not they find the excuse offered by the job seeker to be acceptable, in which case no financial penalty or demerit will be applied – the appointment will just be re-booked as currently occurs. However, they will be unable to ignore blatant non-compliance with no excuse.

The Department of Human Services will also retain the discretion they currently have in relation to all decisions about applying financial penalties.

The Australian Labor Party's dissenting report also cites evidence from ACOSS that sanctions in the United Kingdom have driven people away from support. There are a number of key differences in the United Kingdom penalty arrangements which mean that evidence from the United Kingdom is not applicable in an Australian context. Under the targeted compliance framework there will be multiple assessments of a person's ability before they face lasting financial penalties, with the maximum penalty being four weeks' loss of payment, applicable only for an eighth failure without reasonable excuse or outright refusal of an actual job. In contrast, in the United Kingdom, a Universal Credit recipient may lose payment for of up to three months for a first offense without additional assessment, depending on the type of failure.

<p><b>3. In their dissenting report the Australian Greens recommended that there be an independent public review into the compliance framework for people who are unemployed before any reform to the existing framework.</b></p>
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Government Response: Noted.

A further review prior to the implementation of the targeted compliance framework is unnecessary. The new framework was developed in full awareness of the views of all of those with an interest in this matter, including welfare sector organisations, employment services providers and job seekers. It was also based on detailed analysis of the administrative data, drawing on expertise from those areas of the three relevant Government departments that have day to day involvement with the job seeker compliance framework.

Further, a core role of the public service is the continued evaluation of the programs and policies for which they are responsible for implementing, as well as staying informed about various stakeholder views.

However, the Government recognises that formal review of the compliance framework is necessary to ensure that arrangements achieve the policy intent. For this reason, the Government has already committed to review of the targeted compliance framework 18 months after commencement.

This review would of course look at the effectiveness of the framework and any unintended adverse effects, taking into account the views of relevant experts and stakeholder groups.